



JAPAN
METROPOLITAN
MODEL
UNITED
NATIONS

Commission on the Status of Women

Background Guide Topic:

Protecting Children's Rights after Surrogacy
Arrangements



Director's Note

Dear Delegates,

Thank you all for joining the Advanced Committee of Japan Metropolitan Model United Nations 2020. Hello, my name is Yuriko Watanabe from Senzoku Gakuen High School, and I will serve as the director of this committee. I am in my junior year of high school, and this is my second year chairing in JMMUN.

This year, the Advanced Committee will explore the topic: "Protecting Children's Rights After Surrogacy Arrangements." In recent years, surrogacy has developed several complex issues such as financial issues. Last year, the United Nations addressed the issue from disparate stances and passed a resolution regarding the safety of surrogacy and different state laws, reaffirming the necessity to solve case by case. This topic interpretation differs depending on the country's stance since the state laws are outlawed separately. Further research is absolutely vital, understanding all of the statements about surrogacy and how the country interprets it.

My Model United Nations experience began five years ago. Attending the New York Junior Model United Nations conference, gaining an insight into the procedural matters and the basic fundamentals of Model United Nations was certainly the beginning of my interest. With the participation in JMMUN 2019 in the Advanced Committee as a chair, serving next to the director, this experience led me to further discover the heavy responsibilities that chairs must possess. Carrying this to teach the inexperienced chairs this year, developing the skills needed for serving as facilitators was definitely challenging. Nevertheless, as of procedural matters, we will pursue our best collaborative efforts to run the committee as smoothly as possible.

This is the Advanced Committee; therefore, the topic itself establishes a complex web of subtopics and the procedure will go in depth in terms of completing all the essential procedures. Although the research is an immense amount to cover all the problems listed below, the chairs expect well-spoken delegates with enthusiastic and respectful manners. The chairs are looking forward to some high level debate and comprehensive resolutions to eventually pass. I hope all of you enjoy this conference and learn many skills from others.

Sincerely,



Yuriko Watanabe, Director
Commission on the Status of Women
Senzoku Gakuen Model United Nations Club
Japan Metropolitan Model United Nations 2020

Terms and Concept

Gestational Surrogacy

Gestational surrogacy is a type of surrogacy in which the child is not biologically related to the surrogate mother, gestational carrier. In most cases, at least one intended parent is genetically related to the child, and the surrogate mother is not. This makes gestational surrogacy less legally complicated than other forms of surrogacy because stepparent or second-parent adoption is not required. The embryos are made through IVF process, using the eggs and sperm of the intended parents or donors. *¹

Traditional Surrogacy

Traditional surrogacy is another type of surrogacy in which the gestational carrier uses her own egg and is artificially inseminated using sperm from the intended father or a donor. The gestational carrier carries and delivers the baby, and because she is the child's biological mother, she must relinquish her parental rights so that the child can be raised by the intended parents. Traditional surrogacy is less common than gestational surrogacy due to traditional surrogacy's legal and emotional complexities. *²

In Vitro Fertilization Process (IVF Process)

In vitro fertilization process, IVF process, is a series of procedures where mature eggs are retrieved from ovaries fertilized by sperm in a lab, and fertilized egg(s), or embryo, are transferred to the uterus. In surrogacy case, the gestational carrier who has an embryo implanted in her uterus can possibly use this process. IVF process is a treatment for infertility or genetic problems, working as fertility preservation for cancer or other health conditions in spite of establishing several risks including multiple births if more than one embryo is transferred to the uterus and premature birth as well as low birth weight. *³

Stepparent Adoption

Stepparent adoption illustrate any situation in which someone becomes a legal parent for his or her spouse's child. The legal process for stepparent adoption is similar to any other forms of adoption in that it requires background checks, birth parent consent, and legal finalization. This procedure differs depending on the country and the state. *⁴

History of the Committee

The Commission on the Status of Women (CSW) is the principal global intergovernmental body exclusively dedicated to the promotion of gender inequality and the empowerment of women. A functional commission of the Economic and Social Council (ECOSOC), it was established in February 1947. From 1947 to 1962, the committee focused on setting standards and formulating international conventions to change discriminatory legislation and foster global awareness of women's issues. The committee contributed in drafting the Universal Declaration of Human Rights, arguing the gender equality and introductions of inclusive language. In 1975, the First World Conference on Women was held in Mexico City, after 1975 being designated as the International Women's Year, followed by 1976-1985 UN Decade for Women: Equality, Development and Peace. Additional conferences were held in various places across many years with the development of UN Development Fund for Women (UNIFEM), the International Research and Training Institute for the Advancement of Women (INSTRAW), and the Office of the Special Advisor on Gender Issues and Advancement of

Women (OSAGI). In 2011, DAW, INSTRAW, OSAGI, and UNIFEM merged to become UN Women, current Commission on the Status of Women. *⁵

Past UN Actions

1. UN Convention on the Rights of the Child (CRC)

According to United Nation International Children's Emergency Fund declares children to have their own rights and "are not just objects who belong to their parents and for whom decisions are made, or adults in training." This convention defines children until 18 as a "special and protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity." *⁶

2. United Nations Human Rights Council

The United Nations Human Rights Council announced a research on children's rights which included the topic of surrogacy. The research focuses on a wide range of policies about surrogacy, including international norms that are currently lacking. Moreover, the document also includes existing problems of "abusive practices in both unregulated and regulated contexts." In order to prohibit the sale of children, strengthening the "legitimacy and viability of the fundamental norm" is crucial. This implementation is consequential as it relates to the topic of surrogacy. *⁷

Current Situation

1. Financial Issue

A large amount of money goes through the progress of surrogacy. "A surrogate in Ukraine can earn up to \$20,000 - more than eight times the average yearly income" (Fenton-Glynn, 2019). Women in developing countries are frequently targeted for commercial surrogacy industry. *⁸

There are problems that connect to human rights. Women from poor backgrounds are often forced to be surrogate mothers in order to earn money. According to the Office of the High Commissioner for Human Rights, the fact that the surrogate mother receives compensation in exchange for a child is amounting the sale of the child, therefore valuing the child as a service. *⁹

There are several cases of surrogate mothers not receiving payment. "Commercial surrogacy in Ukraine is unregulated and two-thirds of the industry operates illegally" (Roache, 2018). Some surrogate mothers are exploited by surrogate agencies, most of the profit taken away or not paid if miscarried. *¹⁰

2. Health Impact

Being a surrogate mother carrying someone else's child is an emotionally demanding process followed by all the trials and risks. Health impacts are often times overlooked, especially in cases of surrogate mothers. According to the *Surrogate Mothers: A Violation of Human Rights*, "First, it separates sex from reproduction; second, it separates motherhood from pregnancy; and third, it separates the unity of one couple in the involvement of a third person within the potential family relationship." *¹¹

Although surrogate mother needs to give up her baby to the intended mother, the detachment causes severe emotional pain. While giving birth for the intended parents may be overwhelming and

exhilarating, it is the parents who eventually take home the child resulting in the surrogate mother to feel grief and loss. *12

Not only do these surrogate mothers undergo high-risk emotional experience, they also suffer physical agony. Since giving birth to multiple infants that are ensured to be successful is required, surrogate mothers normally endure gestational diabetes, fetal growth restriction, pre-eclampsia, and premature birth. The drug, Lupron, which is used to transfer embryos, has also been documented to put surrogate women at risk for increased intracranial pressure. *13*14

3. Gender Selection

Gender selection is a medical technique used by prospective parents who wish to choose the sex of their offspring, called Pre-implantation Genetic Diagnosis (PDG). This is a screening which allows IVF embryos to be tested for gender-related genetic conditions before being transferred to the uterus. The main aim of this test is to confirm the only healthiest embryos are implanted into the uterus. *15

Gender selection raises many ethical concerns regarding surrogacy; however, through medical perspectives, those pursuing IVF process can choose the gender of their baby. The IVF process itself does not automatically allow for the creation of an embryo of a certain gender, yet rather lends itself to gender selection before the embryo is transferred. Gender selection is more of a personal matter than discrimination against a certain sex. For example, intended parents who select a certain gender most often do so to bring a sense of balance to an existing family as if they already have a boy and a girl or vice versa. Additionally, many argue that “slippery slope” of choosing sex will occur, leading to genetic modification and other unnatural changes to reproduction process. Many ethical considerations are brought down under discussion through a complicated process of gender selection and a complex relationship with the doctor; therefore, gender selection in surrogacy is one of the vital issues in this topic. *16

Subtopic A: Surrogate Mother

Introduction

Bear in mind, the situations in legal and illegal countries hold very distinctive perspectives on this issue. This section will be divided into countries where surrogacy is legal and illegal to justify the stances.

Overall

Although the definition varies depending on the nation, concerns regarding the surrogate mother stay the same. The definitions and further explanation will be discussed later in this Introduction section. Thus, this section will focus on ethical problems about the surrogate mother.

Many concerns are taken into consideration especially the full implications of undergoing treatment by IVF and surrogacy, the possibility of multiple pregnancies, and medical risks associated with pregnancy. These risks involve preeclampsia and eclampsia, urinary tract infections, and stress incontinence, yet these risks are not specifically associated with surrogacy, but pregnancy in general. Moreover, as a form of psychological risk, surrogate mothers may experience emotional trauma after having to relinquish the child. *17

Surrogacy has raised several ethical debates. For instance, womb commodification, which is a term used due to the economic agents engaged in the practice. The commodification arrangement promotes the argument whether women are given control over their body or being exploited for their individual body parts. On the other hand, womb commodification allows the rich to take advantage of the willingness of poor women to perform any job as long as they are able to earn a wage. *¹⁷

Illegal Countries

The surrogate mother is the legal mother of any child they carry, even if they are not genetically related, until they sign a parental or adoption order following the birth, which transfers their rights to the intended parents. Pregnant employees have the right to fifty-two weeks maternity leave, and to return to their job after maternity leave. Whatever the birth mother does with the child in a surrogacy arrangement following the birth it has no impact on her right to maternity leave. *¹⁸

The intended parents of the child can change who is regarded as the legal parents by obtaining a parental order. This will ensure that the parental rights are transferred from the surrogate mother to the intended parents. Parental orders to become legal parents of the child can be sought six weeks after the child is born, and before they are six months old. To be able to apply for a parental order, at least one intended parent must be genetically related to the child. If they are not genetically related to the child, intended parents will need to use a registered adoption agency and get an adoption order. *¹⁹

Regional Situation

Legal Countries

“The cross-border patterns of international surrogacy arrangements are diverse. Commonly, intending parents from developed countries, including Australia, Canada, France, Germany, Israel, Italy, Norway, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America, have engaged in commercial international surrogacy arrangements with surrogate mothers in developing countries, such as Cambodia, India, Lao People’s Democratic Republic, Nepal and Thailand. However, California and other jurisdictions in the United States are centres for commercial international surrogacy arrangements, as are Georgia, the Russian Federation and Ukraine, creating a different set of cross-border relationships. In addition, intending parents from China frequently engage in commercial surrogacy in South-East Asia and the United States. All of these patterns pose human rights concerns.” *²⁰

India

Although India allows surrogacy, they maintain a strict law on the conditions of those who are permitted to do so. “In 2015, the Indian government passed new regulations on the surrogacy process. Today, Indian surrogacy laws make it illegal for **foreign** intended parents to complete a surrogacy in India. The only people who can complete a commercial surrogacy in India today are Indian intended parents who have been married for at least five years,” states the article, *Surrogate*. In December 2018, the Indian surrogacy law narrowed the condition of parents who are allowed to do surrogacy. This law banned commercial surrogacy and only authorized altruistic surrogacy for infertile Indian couples. Furthermore, “It also requires intended parents to be married for five years and have a doctor’s certificate of their infertility. India restricts women to being surrogates only once, and only if they are a close relative of the intended parents, are married and have a biological child.” *²¹

Illegal Countries

“National laws governing surrogacy vary across a spectrum from prohibitionist to permissive. This variation occurs across national boundaries and sometimes within national boundaries, as surrogacy is sometimes regulated primarily by local law (i.e. in Australia, Mexico and the United States). The most prohibitionist jurisdictions, such as France and Germany, ban all forms of surrogacy, including commercial and altruistic, and traditional and gestational. Most jurisdictions with laws governing surrogacy, including Australia, Greece, New Zealand, South Africa and the United Kingdom, prohibit “commercial”, “forprofit” or “compensated” surrogacy, while explicitly or implicitly permitting “altruistic” surrogacy. Only a small minority of States explicitly permit commercial surrogacy for both national and foreign intending parents, thereby choosing to become centres for both national and international commercial surrogacy. Cambodia, India, Nepal and Thailand, and the Mexican State of Tabasco, are examples of States or jurisdictions which have served as centres for commercial international surrogacy arrangements but have recently taken steps to prohibit or limit such arrangements, generally in response to abusive practices. However, Georgia, the Russian Federation and Ukraine, and some states in the United States, have for a sustained period of time chosen to remain centres for international surrogacy arrangements.” *22

United States of America

The United States have different surrogacy laws depending on the states. States located in the very West and the East allow surrogacy for all parents including married same-sex couples. Many of the states permit surrogacy, but require long procedures and some policies are still unclear. Louisiana, Michigan, and New York are the only three states that prohibit surrogacy. Often times, the intended parents cannot be declared as legal parents and arrangements such as surrogacy contracts or birth certificates cannot be obtained. *22

Subtopic B: Intended Parents

Introduction

Along with the subtopic A: surrogate mother section, the definition of intended parents differs according to the country’s stance. Taking an overall perspective on intended parents will be the essential key point of this section.

In many cases, intended parents are people who have tried for years to have a biological child, either naturally or through the in vitro process. Intended parents can include all kinds of couples and single people. For example, single men who want a child, single women who cannot carry a child to term themselves, due to infertility or health risks, same-sex male couples Same-sex female couples who cannot carry a child themselves, and heterosexual couples struggling with infertility and the inability to carry a child. *23

Regional Situation

United States of America

Countries such as the United States (US) has different legality towards surrogacy in each state. Because the private sector is in charge of healthcare in the US, the cost is expensive compared to other countries. The cost for surrogacy differs in each country and many intended parents make surrogacy arrangements abroad. *24

Illegal Countries

When intended parents live in a country considering surrogacy illegal, they will need to find surrogate mothers abroad. There are some countries that ban international surrogacy arrangements from other countries such as India and is necessary for intended parents to check regional surrogacy laws.

International surrogacy arrangements can cause complication of legal parentage and other legal issues.

*2.5

Questions to Consider

What is your country's definition of surrogacy?

What is your country's definition of surrogate mother?

What is your country's definition of intended parents?

Is your country defined as illegal or legal country?

Are there any other controversial issues that resulted in affecting one's country's stance on surrogacy?

Has your country been taking action in the past to support your stance?

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