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## **THE GLOBAL REGULATION OF SURROGACY: COMPARATIVE LEGAL DEVELOPMENTS AND THE CASE FOR ABOLITION**

### **Abstract**

Surrogacy, long debated at the crossroads of law, ethics, and culture, entered a new phase of polarisation in 2024 and 2025. Judicial rulings, legislative initiatives, and international documents revealed not a trajectory of convergence but a fractured landscape, in which prohibitionist, restrictive, permissive, and emergent approaches coexist in tension. This article offers a comprehensive comparative analysis of these developments, drawing on national case law and legislation, as well as regional and international instruments. It highlights how divergent models engage with fundamental principles such as the best interests of the child, the dignity of gestational mothers, and the structural risks of exploitation, while also situating current debates within broader cultural logics that privilege adult reproductive projects – what scholars have termed adultcentrism. By integrating national reforms with emerging international instruments – including the 2024 EU Directive on trafficking, the 2024 UN General Assembly Resolution on violence against women and girls, the 2025 Report of the UN Special Rapporteur on violence against women and girls, its causes and consequences – the article underscores the need to reassess the adequacy of existing paradigms. It concludes that only an abolitionist framework can coherently address the structural harms of surrogacy – commodification, the transformation of adult desire into entitlement, the disproportionate burdens on women, risks to health, and the dangers of exploitation and human trafficking – while safeguarding the rights of children and women.

## KEYWORDS

surrogacy, human dignity, best interests of the child, women rights, exploitation and reproductive tourism, adultcentrism, universal abolition of surrogacy

## SŁOWA KLUCZOWE

surogacja, godność człowieka, dobro dziecka, prawa kobiet, wyzysk i turystyka reprodukcyjna, adultocentryzm, uniwersalna abolicja surogacji

## I. INTRODUCTION

Public discourse often presents surrogacy as glamorous and liberating. Illustrative of this tone are celebrity testimonials such as the following: ‘Becoming a parent: this way has been the most incredible experience of my life. Our surrogate gave us the chance to make our dream come true, and I will always see it as the greatest gift anyone could give’. Statements of this sort, frequently amplified in high-profile interviews, epitomise the image of surrogacy promoted by the media, Silicon Valley success stories, and portrayals of the practice as a fashionable lifestyle choice. Yet the reality is far more complex, as behind these images lies an expanding global market, one that reduces children to transferable objects and women’s reproductive capacities to contractual services.<sup>1</sup>

Over the course of 2024 and 2025, developments in surrogacy regulation have been particularly revealing.<sup>2</sup> Unlike earlier waves of reform – often driven by isolated domestic controversies or gradual judicial clarification – this period has been characterised by a near-simultaneous burst of legislative and judicial interventions across multiple continents, prompted by intensified cross-border reproductive travel, litigation before international courts, and growing political mobilisation around reproductive markets. Rarely before had so many jurisdictions across different continents intervened almost simultaneously in the regulation of surrogacy. The result was not convergence, but a deepening polarisation: while some countries consolidated prohibitionist frameworks (or showed a tendency in

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<sup>1</sup> The commercial surrogacy industry itself is projected to expand nearly tenfold by 2032. Precedence Research, ‘Surrogacy Market Size, Share and Trends 2024 to 2034’ (Precedence Research, 29 July 2025) <<https://www.precedenceresearch.com/surrogacy-market>> accessed 18 September 2025.

<sup>2</sup> This article covers legal developments up to 30 September 2025.

this direction), others legalised or expanded surrogacy, and still others adopted restrictive or hybrid approaches.<sup>3</sup>

At the same time, the debate became explicitly framed in terms of human rights. Courts and legislatures were forced to consider whether surrogacy is compatible with principles such as the *best interests of the child* and the *dignity of the woman*. International organisations began to articulate surrogacy as a matter of reproductive exploitation and human trafficking. The question is no longer simply whether surrogacy should be regulated, but whether it can be reconciled at all with a framework that protects children and women.

Against this normative backdrop, the analysis approaches that question from a critical perspective grounded in international human rights law, arguing that recent regulatory trajectories reveal deep structural tensions between surrogacy practices and the protection of vulnerable parties. It analyses legal developments grouped into prohibitionist, permissive, restrictive, and emergent tendencies – none of which exist in pure form, but which help to identify the dominant directions of reform.

The inquiry, therefore, centres on whether existing regulatory models can adequately protect women and children, or whether an abolitionist approach under international human rights law is ultimately required.

For the purposes of this study, ‘abolition’ denotes a comprehensive prohibition of surrogacy in all its modalities, whether remunerated or formally altruistic, coupled with robust enforcement mechanisms, at both domestic and international levels. In practical legal terms, this entails prohibiting surrogacy on national territory, denying legal validity to contracts obliging a woman to carry and relinquish a child, criminalising the activities of intermediaries and corporate facilitators, and subjecting commissioning parties to criminal liability, including where nationals resort to surrogacy abroad. At the international level, domestic measures should be complemented by the negotiation of a binding global instrument aimed at suppressing surrogacy markets and preventing reproductive exploitation

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<sup>3</sup> Given the absence of a comprehensive, publicly accessible and fully up-to-date international database on legal changes in this field, regular comparative legal reviews are necessary in order to track recent legislative and judicial developments and to assess how legal frameworks evolve over time. This gap complicates comparative analysis and underscores the need for year-by-year monitoring to identify trends, ruptures and continuities in the regulation of surrogacy. At present, the Observatoire de la Procréation Assistée constitutes the most extensive database in this area; however, its coverage is not fully up to date. See Observatoire de la Procréation Assistée <<https://procreation-assistee.fr/>>. For legal developments in 2024, see María A Vanney, ‘Evolución global de los marcos legales sobre maternidad sustituta’ (2025) 52(2) Revista Chilena de Derecho 123 <<https://doi.org/10.7764/R.522.5>>.

across borders. Such an approach would raise substantial political and legal challenges, but the magnitude of the human rights interests implicated – particularly the protection of women and children – means that these questions cannot be set aside by the international community and warrant careful consideration not only by policymakers and advocates but also within academic debate.

## II. PRINCIPLES AND CULTURAL CATEGORIES

Two principles must guide any evaluation of surrogacy. The first is the *best interests of the child*, as enshrined in Article 3 of the Convention on the Rights of the Child.<sup>4</sup> Surrogacy undermines this principle by fragmenting parentage into genetic, gestational, and intentional components. Such fragmentation has been argued to create identity confusion and emotional distress, destabilising the child's sense of genealogical belonging and recognition of origins.

Some strands of developmental psychology and socio-legal research, including influential longitudinal studies, have reported generally positive outcomes for children born through surrogacy arrangements.<sup>5</sup> These findings are frequently cited to support the claim that surrogacy does not, as such, harm children's welfare. At the same time, however, critics have questioned the methodological robustness of this literature, pointing to problems such as attrition bias, reliance on parental self-reporting in early childhood, the exclusion of commercial arrangements, the conflation of gestational and traditional surrogacy, and the limited discussion of difficulties identified at intermediate stages of development.<sup>6</sup>

More broadly, developmental psychology has long emphasised that knowledge of one's origins is essential to constructing a coherent sense of self. As Reuss observes, 'knowledge of one's genetic origins plays a crucial role in identity formation as it enables the individual to locate him- or herself in a world of interpersonal relations'.<sup>7</sup> Beyond these psychosocial implications, assisted reproduction

<sup>4</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Art 3.

<sup>5</sup> Susan Golombok and others, 'Children Born through Reproductive Donation: A Longitudinal Study of Psychological Adjustment' (2013) 54 *Journal of Child Psychology and Psychiatry* 653 <<https://doi.org/10.1111/jcpp.12015>>.

<sup>6</sup> See Emma Waters, 'Inconclusive: The Research on Surrogacy's Impact on Children' (The Heritage Foundation, 27 March 2024 <<https://www.heritage.org/marriage-and-family/commentary/inconclusive-the-research-surrogacys-impact-children>> accessed 13 September 2025).

<sup>7</sup> Philipp M Reuss, 'Surrogacy' in Barbara Stark and Jacqueline Heaton (eds), *Routledge Handbook of International Family Law* (Routledge 2019) 231–232.

entails medical risks, including obstetric and neonatal complications documented in clinical studies.<sup>8</sup>

Surrogacy may also restrict the child's right to know their biological origins, a dimension increasingly recognised as part of the right to identity. This includes not only personal identity but also access to genetic and medical information vital for managing health risks and informing reproductive decisions – an absence that may affect both the child and future generations. Moreover, disputes between the surrogate and intended parents regarding pregnancy management – such as decisions about abortion – can directly affect the child's situation in utero.

Taken together, these factors suggest that surrogacy raises serious questions for the application of the best interests principle on both psychological and physical levels, with potential long-term consequences for development and well-being.

The second principle is the *dignity of the gestational mother*, grounded in the conviction that the human body and its essential functions should not be commodified. As Radin argues in her critique of market inalienability, some goods cannot legitimately be reduced to exchangeable objects, since they embody intrinsic human bonds. Among them, 'the deep bond between a baby and the woman who carries it... created by shared life, apart from DNA or genetic connection'.<sup>9</sup> This perspective challenges contractual framings of surrogacy, which abstract gestation from its embodied, relational reality. Surrogacy contracts oblige a woman to renounce the relationship with her child even before conception, thereby treating her body and reproductive capacity as instruments for the realisation of another's project. Michael Sandel explains that such arrangements exemplify both coercion – where structural inequalities constrain women's choices – and corruption – where intrinsic goods like pregnancy are reduced to commodities.<sup>10</sup>

These principles collide with a dominant cultural logic of adultcentrism, described by Goode as 'a subtle mechanism that places adults at the center of

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<sup>8</sup> See Meredith A Reynolds and others, 'Risk of Multiple Birth Associated with In Vitro Fertilization Using Donor Eggs' (2001) 154 *American Journal of Epidemiology* 1043 <<https://doi.org/10.1093/aje/154.11.1043>> and Laura A Schieve and others, 'Low and Very Low Birth Weight in Infants Conceived with Use of Assisted Reproductive Technology' (2002) 346 *New England Journal of Medicine* 731 <<https://doi.org/10.1056/NEJMoa010806>>. Children born through surrogacy via IVF face significant health risks, including a very low live-birth rate, prematurity, low birth weight, and long-term complications such as respiratory distress, chronic conditions and developmental disorders: Julie Doughty, *Modern Families: Parents and Children in New Family Forms* (Cambridge University Press 2012).

<sup>9</sup> Margaret J Radin, 'Market-Inalienability' (1987) 100 *Harvard Law Review* 1932.

<sup>10</sup> Michael J Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Farrar, Straus and Giroux 2013).

the social structure, while children are positioned and evaluated in reference to them'.<sup>11</sup> Unlike autonomy-based liberal frameworks, which emphasise individual choice and consent as normative foundations, adult-centrism refers more specifically to a structural orientation in which social practices and legal narratives systematically prioritise adult projects and aspirations, even where formally neutral principles are invoked. This logic privileges the reproductive projects of adults while marginalising the vulnerabilities of children and gestational mothers. Declarations such as 'surrogacy gave us the chance to make our dream come true' epitomise this orientation: the adult project is celebrated as central, while the perspectives and interests of the child and the woman remain in the background.<sup>12</sup>

Taken together, these principles and cultural categories reveal the deep tensions at stake in the regulation of surrogacy. By foregrounding the best interests of the child, the dignity of the gestational mother, and the pervasive influence of adult-centrism, the discussion highlights how ethical and cultural frameworks shape the way societies perceive and evaluate this practice. Yet principles and cultural logics acquire concrete force only when translated into legal norms and institutional responses. The following comparative section, therefore, turns to recent legislative reforms and judicial decisions in 2024 and 2025 in order to explore how these normative concerns are reflected – sometimes explicitly, sometimes only indirectly – in contemporary regulatory choices across jurisdictions. Through this examination, the analysis traces how national and international bodies have sought, with varying degrees of coherence, to respond to the challenges posed by surrogacy.

### III. NATIONAL LEGAL DEVELOPMENTS 2024–2025

#### 1. PROHIBITIONIST TENDENCIES

The clearest movement towards prohibition in 2024–2025 came from States that consolidated restrictive frameworks, reaffirming surrogacy as incompatible with fundamental rights and human dignity. These dynamics can be seen in specific reforms and case law across different jurisdictions, as follows.<sup>13</sup>

<sup>11</sup> David A Goode, 'Kids, Culture and Innocents' (1986) 9 *Human Studies* 95 <<https://doi.org/10.1007/BF00142911>>.

<sup>12</sup> On the deeper cultural roots of adultcentrism, see Carl Trueman, *The Rise and Triumph of the Modern Self: Cultural Amnesia, Expressive Individualism and the Road to Sexual Revolution* (Crossway 2020).

<sup>13</sup> Note: All statutory provisions and judicial decisions not originally issued in English have been translated by the author.

In October 2024, the Supreme Court of *Argentina* rejected the claim of two intending fathers who sought recognition as the sole parents of a child born through surrogacy.<sup>14</sup> Relying on the Civil and Commercial Code – which provides that ‘children born as a result of assisted human reproduction techniques are the children of the woman who gave birth and of the man or woman who has also given prior, informed, and free consent [...] regardless of who contributed the gametes’<sup>15</sup> and which bars the recognition of more than two filial ties – the Court attributed parentage in accordance with the long-standing principle *mater certa est*. Crucially, the judges dismissed the argument that the absence of an explicit prohibition implies permission, affirming that surrogacy is already regulated by the Code, which establishes that the woman who gives birth is the legal mother. Any contract attempting to override this statutory rule was therefore declared null and void.

Only weeks later, in November 2024, in *Italy*, the Parliament adopted Law 169/2024, amending Article 12 of Law 40 on Medically Assisted Procreation.<sup>16</sup> The reform, which entered into force on 3 December 2024, extended criminal liability extraterritorially by establishing that ‘if the acts referred to in the previous sentence, [referred to surrogacy], are committed abroad, the Italian citizen shall be punished in accordance with Italian law’. Surrogacy committed abroad by Italian citizens thus became prosecutable under domestic law, widely described in doctrine and public debate as a form of universal crime.

Although, before the reform, surrogacy was already criminalised, the prohibition often left national and international authorities confronted with a *fait accompli*: children born through surrogacy abroad were brought into Italy, and their legal status required resolution. Judicial practice was inconsistent: in some cases, foreign birth certificates listing both intended parents were recognised, while in others, only the biological parent was acknowledged, and the second parent was directed to pursue adoption.<sup>17</sup>

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<sup>14</sup> Supreme Court of Justice of the Nation, *S, I N v A, C L*, action contesting parentage, CIV 86767/2015/1/RH1 (22 October 2024).

<sup>15</sup> Civil and Commercial Code, Art 562.

<sup>16</sup> Law No 40 on Medically Assisted Procreation (19 February 2004) (Italy); Law No 169 amending Law No 40/2004 (4 November 2024).

<sup>17</sup> See Italy, Supreme Court of Cassation (Civil Section I), Judgment No 85/2024 (3 January 2024), concerning a same-sex couple married in New York who had two children via surrogacy abroad using the genetic material of one partner. Although both men appeared as parents on the foreign certificates, Italian authorities recognized only the biological father. The request to transcribe the certificates to include the second parent – the so-called *genitore d'intenzione* – was rejected, with the Court affirming that ‘recourse to surrogacy, regardless of the modalities and purposes pursued, intolerably offends the dignity of women and profoundly undermines human relations’ (para 3.2).

*Spain* soon followed this restrictive trajectory, reinforcing its own prohibition through both judicial and administrative measures. In December 2024, the Spanish Supreme Court delivered a plenary judgment insisting that surrogacy ‘undermines the moral integrity of the gestational woman and the child, who are treated as things susceptible of commerce, deprived of the dignity proper to the human being’.<sup>18</sup> The ruling emphasised that surrogacy ‘violates the dignity and the free development of personality, both of the gestational woman and of the children born by virtue of the surrogacy agreement,’ since, under the very celebration of the contract, ‘the woman and the child are treated as mere objects’. It explained that ‘the gestational mother undertakes from the outset to hand over the child she is to carry, and renounces, even before birth, indeed even before conception, any right derived from her motherhood [...] the future child is objectified, for he or she is conceived as the object of the contract, which the gestational mother (and, in this case, also her husband) undertakes to deliver to the commissioning party or parties’.<sup>19</sup>

The jurisprudence was reinforced in April 2025 by the Instruction of the Directorate-General of Legal Security and Public Faith, which ordered consulates to refuse registration of children born abroad through surrogacy.<sup>20</sup> By doing so, Spain expressly defended its prohibition on the grounds of public order, making clear that foreign surrogacy arrangements cannot override domestic law.

Also in December 2024, the 38th Family Court of Bogotá, *Colombia*, delivered an unprecedented decision rejecting a petition to contest the maternity of a child born through surrogacy.<sup>21</sup> The case had been initiated by one of the intended parents, who sought to remove the gestational mother from the birth certificate on the basis that the child was conceived with his gametes and an anonymous donor’s ovum. The Court held that, under Colombian law, the woman who gave birth is rightly recognised as the mother and went further in affirming the existence of dual biological motherhood. As the judgment explained, ‘in cases of surrogacy there are two biological mothers: one is the donor of the ovum, who provides the genetic material, and the other is the woman who for nine months makes her body available to successfully carry out the biological process of embryonic development, that is, the gestational mother’.<sup>22</sup> The ruling concluded that even

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<sup>18</sup> Supreme Court (Civil Chamber), Judgment No 1000/2024 (4 December 2024), CENDOJ: 28079110012024100024. Section III, No 2, para 3.

<sup>19</sup> Section III, No 2, para 2.

<sup>20</sup> Directorate-General for Legal Security and Public Faith, Instruction on civil registration of minors born through surrogacy abroad (28 April 2025) BOE-A-2025-8647.

<sup>21</sup> Although a first instance ruling subject to review on appeal or through a constitutional action for the protection of fundamental rights, the case is significant for the arguments advanced by the judge.

<sup>22</sup> Family Court No 38 of Bogotá, Judgment No 17-2023-00926-00 (4 December 2024). Legal issue in the specific case, Section 1, Evidence of the matter.

where the gestational mother contributes no genetic material, she is nevertheless the biological mother, since it is she who enables the vital process of embryonic development, without which human reproduction cannot be completed.

At the Parliament of *Chile* in January 2025, Bill No 17337-07 was presented, which proposes to prohibit surrogacy in all its forms.<sup>23</sup> The draft amends the Civil Code by excluding surrogacy from recognised assisted reproduction techniques, declaring contracts null and void, reaffirming filiation by birth, and preserving only the general action of the biological father to claim paternity. It also adds a new section to Title VII (On Offences Against the Family Order and Public Morality) of the Criminal Code,<sup>24</sup> entitled ‘On Surrogacy of Maternity,’ which creates specific offences for intermediaries, organisers, healthcare professionals, and promoters, with aggravated penalties where the conduct is habitual, profit-driven, or exploitative. Further reforms extend jurisdiction abroad through amendments to the Organic Code of Courts, and the Health Code and Adoption Act are also modified, for example, by excluding from adoption those who have taken part in surrogacy agreements.

Finally, in 2025, *Slovakia* became unique in the global regulatory landscape as the only State to insert an explicit constitutional ban on surrogacy. Before this reform, surrogacy was already prohibited by ordinary legislation. Article 82 of the Family Act provided that ‘(1) the mother of a child is the woman who gave birth to the child; (2) agreements and contracts contrary to paragraph 1 shall be null and void’.<sup>25</sup> This prohibition was reinforced by Article 180 of the Criminal Code that states: ‘Whoever, in violation of a generally binding legal regulation, entrusts another person with a child for the purpose of adoption or whoever, in violation of a generally binding legal regulation, obtains a child for the purpose of adoption, shall be punished by imprisonment for up to three years’. The following paragraphs aggravated the penalty by providing higher sentences of four to ten years where there was greater benefit or serious conduct, and ten to fifteen years where the act caused serious bodily harm, death, or another particularly grave consequence.<sup>26</sup>

The constitutional amendment approved on 26 September 2025 added to Article 15, which regulates the right to life, a new paragraph 5 with the following wording: ‘The agreement to give birth to a child for another person is prohibited’.<sup>27</sup> The

<sup>23</sup> Chamber of Deputies, Bill amending various statutes to prohibit and penalise surrogacy, Docket No 17337-07 (12 January 2025).

<sup>24</sup> Criminal Code (1874).

<sup>25</sup> Family Act (Act No 36/2005 Coll) § 82.

<sup>26</sup> Criminal Code (Act No 300/2005 Coll) § 180(1).

<sup>27</sup> Constitutional Act No 422/2025 Coll amending the Constitution of the Slovak Republic (26 September 2025) Art 15(5).

reform enters into force on 1 November 2025, making any future attempt to regulate or legalise surrogacy impossible without a further constitutional amendment.

Beyond its immediate legal effects, the Slovak reform carries significant symbolic and systemic implications. By constitutionalising the ban, the legislature elevated surrogacy from a matter of statutory family law and criminal policy to a core element of constitutional identity, closely associated with the protection of life and fundamental values. This move substantially raises the threshold for future regulatory change and signals a deliberate effort to entrench an abolitionist stance against shifting political majorities or judicial reinterpretation. In comparative terms, the amendment also illustrates a broader strategy observable in some jurisdictions: the use of constitutional norms not merely to regulate reproductive technologies, but to pre-emptively close the space for plural regulatory models within ordinary legislation.

Taken together, these developments reveal recurring rationales underpinning the renewed prohibitionist turn in 2024–2025. Courts and legislatures relied on human dignity, reaffirmed *mater certa est*, invoked public order to resist the recognition of foreign arrangements, and increasingly extended domestic prohibitions extraterritorially; in the case of Slovakia, these strategies were reinforced at the constitutional level.

These measures point to a regulatory moment characterised by multi-layered legal techniques – civil, criminal, constitutional, and conflict-of-laws – aimed at constraining both market expansion and cross-border recognition.

## 2. RESTRICTIVE AND EMERGENT APPROACHES

The period of 2024–2025 also witnessed reforms and legislative proposals that did not embrace outright prohibition but rather introduced restricted or emergent approaches. These initiatives typically imposed limitations – such as nationality or residence requirements, medical necessity, or judicial oversight – aimed above all at preventing cross-border surrogacy and its associated risks of exploitation. The following section surveys these developments, presenting both enacted reforms and pending bills that reflect this restricted or emergent orientation.

The most recent reform of *India's* surrogacy framework took place in March 2024, when the Ministry of Health and Family Welfare amended the Surrogacy (Regulation) Rules 2022, authorizing the use of a donor gamete in cases where a District Medical Board certifies that one member of the intending couple suffers from a medical condition preventing them from contributing gametes, provided that

the other gamete is supplied by the couple itself.<sup>28</sup> The amendment Act reaffirmed the ban on commercial surrogacy, while introducing limited openings such as the use of donor gametes and clearer eligibility criteria for altruistic surrogacy. Prompted by judicial challenges – including cases before the Delhi High Court and the Supreme Court involving women born without a functional uterus who, therefore, cannot carry a pregnancy – it also reinforced sanctions against clinics and intermediaries, underlining the prohibition of any profit-making element. By combining narrow exceptions with strict controls, the 2024 reform signalled a decisive departure from the period when India functioned as a global hub of commercial surrogacy.

At the same time, reports from law-enforcement authorities and civil-society organisations indicate that exploitative practices persist despite these reforms, including illegal recruitment of egg donors, unlicensed fertility clinics, and other underground arrangements that circumvent statutory safeguards.<sup>29</sup> This mixed picture suggests that while the 2024 reform formally seeks to prevent exploitation through prohibition and administrative controls, significant enforcement gaps remain, pointing to the limits of formal bans in the absence of robust monitoring and implementation mechanisms.

The case of *Armenia* shows a similar restrictive turn. The 2002 Law on Reproductive Health and Reproductive Rights (HO-474-N) had made gestational surrogacy available to both nationals and foreigners, directly transferring parentage to intending couples and excluding the surrogate from filiative rights.<sup>30</sup> Though defined as non-profit, the system facilitated remunerated arrangements and soon made Armenia a hub for reproductive tourism. This openness ended with Organic Law 317-N of 12 July 2024, which amended the 2002 law by limiting access to citizens of Armenia only. The reform also imposed stricter eligibility for gestational women: they must be aged 20–38, have at least one child, not exceed three births or one caesarean section, and be medically certified fit. Traditional surrogacy remains prohibited and contracts retain their non-commercial character, but international participation has been curtailed.<sup>31</sup> The combined effect of these reforms is to bring an end to Armenia's role as a jurisdiction open to international

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<sup>28</sup> Ministry of Health and Family Welfare, Surrogacy (Regulation) Rules 2022, as amended by notification of 14 March 2024.

<sup>29</sup> The Times of India, 'Unwed egg donors: Mumbai police bust international surrogacy racket; women sent abroad with fake marriage papers' (18 January 2026) <<https://timesofindia.indiatimes.com/city/mumbai/unwed-egg-donors-mumbai-police-bust-international-surrogacy-racket/article-show/126623012.cms>> accessed 28 January 2026.

<sup>30</sup> Law on Reproductive Health and Reproductive Rights HO-474-N (26 December 2002).

<sup>31</sup> Organic Law 317-N amending the Law on Reproductive Health and Reproductive Rights (12 July 2024).

surrogacy arrangements, while maintaining the practice for its own citizens under tightly regulated conditions. Contracts involving foreign intending parents have lost legal validity and cannot be recognised by Armenian courts, whereas Armenian citizens remain subject to the detailed criteria on age, medical fitness, reproductive history, and filiative status introduced in 2002 and reinforced in 2024. The reform, therefore, replaced a transnationally open regime, which had facilitated reproductive tourism, with a nationally circumscribed system that narrows the availability of surrogacy to domestic cases only.

This regulatory shift reflects an attempt to prevent exploitation primarily by closing the jurisdiction to international reproductive travel and by tightening eligibility criteria for gestational women; whether these structural constraints will be sufficient to eliminate abusive practices, however, remains to be seen.

In 2024, *Ireland's* long-standing legal vacuum on surrogacy shifted with the enactment of new legislation. Until then, the Children and Family Relationships Act 2015 had excluded surrogacy from its scope.<sup>32</sup> In *MR and Anor v An tArd-Chláráitheoir* (2014), the Supreme Court acknowledged that ‘radical scientific developments in assisted human reproduction ... have not been addressed in legislation’.<sup>33</sup> Citizenship law followed the same pattern: in *A, B and C v Minister for Foreign Affairs* (2023), the Court held that ‘the reference to a parent [with regard to the acquisition of citizenship by a child born outside Ireland if, at the time of birth, one parent was an Irish citizen] must be taken to refer to either a biological father or a birth mother,’ thereby excluding non-biological intending parents from transmitting nationality.<sup>34</sup>

Reform came with the Health (Assisted Human Reproduction) Act 2024, enacted on 2 July 2024, which regulated domestic and international surrogacy while prohibiting commercial arrangements.<sup>35</sup> The Act establishes the Assisted Human Reproduction Regulatory Authority (the ‘AHRRA’), mandated to oversee the approval of surrogacy agreements and the licensing of services. The Authority has been formally established but is still not fully operational.<sup>36</sup> Parentage is to be transferred by court order after birth, subject to the surrogate’s consent. Yet Parts 7, 8 and 12 of the Act have not been commenced by ministerial order, leaving gaps in cross-border recognition. To address this, the General Scheme of the Health (Assisted Human Reproduction) (Amendment) Bill 2024 was introduced

<sup>32</sup> Children and Family Relationships Act 2015.

<sup>33</sup> *MR and Anor v An tArd-Chláráitheoir* [2014] IESC 60.

<sup>34</sup> *A, B and C v Minister for Foreign Affairs* [2023] IESC 17.

<sup>35</sup> Health (Assisted Human Reproduction) Act 2024 (2 July 2024).

<sup>36</sup> Established on 13 October 2025 by the Minister for Health. See <<https://www.irishstatutebook.ie/eli/2025/si/468/made/en/print>> accessed 28 January 28, 2026.

in October 2024, aiming to clarify filiative and citizenship consequences.<sup>37</sup> The Bill remains in preparation, and its final content and practical effects, therefore, cannot yet be assessed.

From 2025, *Denmark's* legal framework on surrogacy has operated under a new regime. For many years, the Children Act recognised only the woman who gave birth as the legal mother, regardless of genetics, and surrogacy agreements – domestic or foreign – were given no effect.<sup>38</sup> Intending parents had to rely on step-parent adoption, which could only be pursued at least three months after birth, leaving children in a prolonged period of legal uncertainty.

This restrictive framework was challenged in *KK and Others v Denmark* (2022), where the European Court of Human Rights examined the case of a child born in Ukraine through surrogacy to two intended fathers, one of whom was Danish. Danish authorities had refused to recognise the non-biological father, limiting him to step-parent adoption after the statutory delay. The Court found a violation of Article 8 ECHR, stressing that such refusal failed to strike a fair balance between Denmark's interest in regulating surrogacy and the child's right to respect for family life.<sup>39</sup>

Reform followed with Law No 1687 of 30 December 2024, which entered into force on 1 January 2025 and amended the Children Act.<sup>40</sup> The law defines foreign surrogacy agreements as those involving a surrogate resident abroad for at least six months prior to conception, concluded before pregnancy, and providing for the intended parents or parent to assume legal parenthood. Recognition is conditional on a genetic link with at least one intended parent and the lawfulness of the arrangement. It is expressly denied where the agreement was entered into under coercion or involved illegal payment, including compensation for lost earnings. The reform also removed the blanket bar on adoption in such cases and empowered the Agency for Family Law to confer legal parenthood directly, avoiding

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<sup>37</sup> Parliament, General Scheme of the Health (Assisted Human Reproduction) (Amendment) Bill 2024, Parliamentary Bills Register (21 October 2024). See also *X v Minister for Foreign Affairs and Ors; Z (by his mother Y) v Minister for Foreign Affairs and Ors* (High Court, 27 May 2025), where the Court held that a genetic Irish mother of a child born overseas could transmit Irish citizenship under section 7(1) of the 1956 Act, but denied that right to an intended parent with no genetic or gestational connection. Both rulings are now under appeal before the Supreme Court.

<sup>38</sup> Children Act, Consolidated Act No 1256 (7 September 2015, as amended).

<sup>39</sup> *KK and Others v Denmark* App No 25212/21 (ECtHR, 6 December 2022). In June 2025, the Committee of Ministers of the Council of Europe, referencing Denmark's legislative amendments, adopted a resolution concluding that the country had taken all necessary measures to comply with this ruling. See Council of Europe, Committee of Ministers, Resolution CM/ResDH(2025)140 (12 June 2025).

<sup>40</sup> Law No 1687 amending the Children Act (30 December 2024).

lengthy proceedings. While commercial surrogacy remains prohibited, domestic altruistic arrangements may now benefit from streamlined procedures.

From 2024, *Rwanda's* family law framework on surrogacy shifted markedly. Before the reform, Law No 32/2016 Governing Persons and Family codified a strictly biological conception of motherhood in Article 257: 'The mother of a child is presumed to be the one who gave birth to the child and who is registered in the birth record'.<sup>41</sup> This rule remained in force until its revision by Law No 71/2024 Governing Persons and Family, promulgated on 26 June 2024, which for the first time explicitly addressed assisted reproduction.<sup>42</sup> Article 279 recognised assisted reproduction between spouses, with or without the involvement of a third party through a written contract, while Article 282 departed from the earlier biological criterion of maternity by stipulating that 'the mother of a child born through assisted reproductive technologies is the one mentioned in the contract related to that reproduction through technological means'.<sup>43</sup>

This framework was further expanded by the Health Services Law, enacted on 4 August 2025.<sup>44</sup> The statute expressly defined surrogacy, introduced eligibility requirements for surrogate mothers, imposed obligations on intending parents – including medical coverage and acceptance of pregnancy outcomes – and prohibited genetic modification and sex selection. It also required surrogates to comply with medical instructions throughout pregnancy. Although these provisions are formally in force, implementation remains incomplete. As of September 2025, the Ministry of Health had not yet issued detailed guidelines, leaving unresolved questions regarding compensation, recognition of intended parenthood, and enforcement mechanisms.

In 2025, *Greece* introduced a significant reform of its surrogacy law in response to reproductive tourism and abuses that had turned the country into a hub for international arrangements. The immediate trigger was a scandal in Crete in 2023, when a fertility clinic was investigated for human trafficking, illegal adoptions, and systematic breaches of surrogacy legislation. The case also exposed the passivity of the IVF regulator and the fact that, because surrogacy by Greek women was socially stigmatised, clinics systematically recruited foreign women to satisfy the domestic demand.<sup>45</sup>

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<sup>41</sup> Law No 32/2016 Governing Persons and Family (28 August 2016) Art 257.

<sup>42</sup> Law No 71/2024 Governing Persons and Family (26 June 2024).

<sup>43</sup> *Ibid* Art 282.

<sup>44</sup> Law No 027/2025 of 4 August 2025 Relating to Health Services.

<sup>45</sup> Progress Educational Trust, 'Eight arrested in Crete over surrogacy and IVF fraud' (21 August 2023) <<https://www.progress.org.uk/eight-arrested-in-crete-over-surrogacy-and-ivf-fraud/>> accessed 25 September 2025.

Law 5197/2025 of 30 January 2025 tightened the framework by requiring applicants to prove medical infertility, excluding gender-related inability to gestate as a qualifying condition, reaffirming that surrogacy agreements must remain gratuitous and in writing, and clarifying that judicial approval would only take effect once the decision became irrevocable.<sup>46</sup> At the same time, amendments restricted access to surrogacy to cases where both the intended parents and the surrogate are permanent residents of Greece, thereby curtailing cross-border practices. Transitional provisions safeguarded permits already granted.

By combining stricter medical criteria with territorial restrictions, the 2025 reform represented a decisive shift towards a restrictive model. Its effectiveness will ultimately depend on the Ministry of Health issuing detailed implementing measures to secure uniformity in judicial practice and enforcement.

### 3. PERMISSIVE TENDENCIES

The most significant permissive developments in 2024–2025 occurred in the *United States* and in *Australia*.

In Michigan (USA), surrogacy had been expressly prohibited for more than three decades. The Surrogate Parenting Act of 1988 declared all surrogacy contracts void and unenforceable, whether altruistic or compensated, and imposed civil and criminal penalties where remuneration was involved. Custody disputes could even result in recognition of the surrogate's parental rights irrespective of contractual terms, reflecting the legislature's determination to uphold the surrogate's maternal status and to deter commercialisation.<sup>47</sup> The legal landscape shifted when, on 9 November 2023, the House of Representatives approved Bill 5207 on assisted reproduction, followed by Senate approval on 19 March 2024. The new Assisted Reproduction and Surrogacy Parentage Act authorised surrogacy agreements subject to judicial validation, providing that 'Before, on, or after the birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with this part, a party to the agreement may commence an action ... for entry of a parentage judgment ... the court must, without holding a hearing unless the surrogate challenges the accuracy of the attorney certificates, enter a judgment of parentage'.<sup>48</sup> Safeguards include a minimum age of twenty-one, prior child-birth, medical and psychological evaluation, and mandatory independent legal representation for all parties, paid by the intended parents. The surrogate retains

<sup>46</sup> Law No 5197/2025 of 30 January 2025 amending Article 1458 of the Civil Code.

<sup>47</sup> Surrogate Parenting Act 1988, MCL §§ 722.851–863.

<sup>48</sup> Assisted Reproduction and Surrogacy Parentage Act, Public Act 3 of 2024.

autonomy over medical decisions, including acceptance of embryo transfers or caesarean delivery, and may receive compensation. Amended birth certificates must list the intended parents; gamete donors are excluded from parentage, and children born through validated agreements acquire inheritance rights.<sup>49</sup>

In Massachusetts, by contrast, there had been no statutory prohibition but also no comprehensive framework. Chapter 209C of the General Laws governed children born out of wedlock, and case law such as *Partanen v Gallagher* (2016) extended recognition to non-biological parents in certain contexts. Intended parents relying on surrogacy had to resort either to adoption proceedings or to court-issued parentage orders, depending on judicial discretion, which reflected the absence of a comprehensive statutory framework.<sup>50</sup> Reform came with the Act to Ensure Legal Parentage Equality, adopted on 1 August 2024 and effective from 1 January 2025, which comprehensively restructured the parentage regime. It protects surrogacy agreements irrespective of marital status, gender, sexual orientation or genetic link, and allows filiative ties to be established from the outset of the process. Gestational and genetic surrogacy agreements are subject to expedited judicial validation, securing filiative certainty for intended parents at birth and excluding the surrogate from parental status.<sup>51</sup> While this design reduces legal uncertainty, it also shifts the regulatory centre of gravity towards facilitating intended parenthood, raising questions – within this article’s framework – about the depth of scrutiny afforded to consent, commodification, and the child’s long-term interests.

In *Australia*, permissive tendencies have advanced through both national and State-level initiatives. On 3 June 2025, the Australian Law Reform Commission published its *Review of Surrogacy Laws: Issues Paper*, which opened a consultation process on the possibility of national harmonisation. The document identified reform priorities, including reconsideration of permissible compensation for surrogates, clearer parameters for the recognition of international parentage orders, and stronger guarantees of the child’s right to know his or her genetic and gestational origins.<sup>52</sup>

At the state level, the most significant development occurred in Western Australia, where on 13 August 2025 Parliament introduced the Assisted Reproductive Technology and Surrogacy Bill 2025. The bill repeals existing legislation and expands access by prohibiting discrimination on the basis of sex, sexual orientation, relationship status, or religion. It provides that, once a surrogacy agreement has been

<sup>49</sup> Ibid, provisions on safeguards and legal effects.

<sup>50</sup> *Partanen v Gallagher* 59 NE 3d 1133.

<sup>51</sup> Parentage Act, ‘Act to Ensure Legal Parentage Equality’, ch 276 of the Acts of 2024.

<sup>52</sup> Australian Law Reform Commission, *Review of Surrogacy Laws: Issues Paper* (ALRC, 3 June 2025).

filed and considered by the Family Court, a parentage order may be issued after birth, transferring legal parenthood to the intending parents.<sup>53</sup> By broadening eligibility and streamlining procedures, the bill consolidates the normalisation of surrogacy within the state's legal framework.

In New South Wales, reform debates have taken place through parliamentary inquiries. The Terms of Reference of the most recent inquiry required examination of 'barriers to accessing assisted reproductive treatment, including in vitro fertilisation (IVF) technology and surrogacy, ... changes to government policies and procedures to better support families and surrogates, ... [and] relevant national and international laws that impact on surrogacy arrangements'.<sup>54</sup> The inquiry was limited to regulatory issues and did not extend to a broader ethical assessment of surrogacy, thereby illustrating the current emphasis of parliamentary debates on technical and procedural aspects.

Taken together, these permissive reforms prioritise accessibility, legal certainty, and procedural streamlining rather than regulatory restraint. By facilitating early or near-automatic recognition of intended parenthood, validating compensation, and simplifying approval mechanisms, the emerging frameworks risk marginalising the gestational woman's positional vulnerability and subordinating the child's interests to adult reproductive projects. While designed to reduce legal limbo and cross-border disputes, this emphasis on efficiency and coordination may also weaken opportunities for substantive scrutiny of consent, commodification, and longer-term welfare implications. In comparative terms, the US State reforms and the Australian initiatives thus illustrate a trajectory towards the normalisation of surrogacy through legal facilitation, a development that sits in tension with the dignity-based and child-centred principles articulated earlier in this article.

#### IV. INTERNATIONAL AND REGIONAL DEVELOPMENTS

Between 2024 and 2025, international and regional initiatives reframed surrogacy as an issue of human rights and trafficking in persons. The European Union and the United Nations recognised that reproductive exploitation – and particularly surrogacy for commercial or coercive purposes – cannot be treated as a neutral private arrangement but must be understood as a sphere where dynamics of violence, servitude, and commodification of the female body are reproduced.

<sup>53</sup> Assisted Reproductive Technology and Surrogacy Bill 2025 (WA, 13 August 2025).

<sup>54</sup> Parliament of New South Wales, *Terms of Reference, Inquiry into Barriers to Assisted Reproductive Treatment* (NSW 2025).

A decisive milestone was EU Directive 2024/1712, adopted on 13 June 2024, amending Directive 2011/36/EU on preventing and combating trafficking in human beings. For the first time, reproductive exploitation, especially coercive surrogacy, was expressly included among recognised forms of trafficking. The Directive broadened the notion of exploitation to cover economic benefits derived from the use of another's reproductive body.<sup>55</sup> Member States must criminalise coercive or exploitative surrogacy, intensify preventive measures such as awareness campaigns, and provide comprehensive assistance to victims, including medical care, psychological support, legal aid, and reintegration programmes. In this way, EU law links surrogacy to States' positive obligations to protect women's dignity and integrity.

This approach was echoed at the universal level through UN General Assembly Resolution A/RES/79/154, adopted on 13 November 2024. The Resolution condemned exploitative surrogacy as a form of trafficking and called for strategies addressing its causes, explicitly noting the role of poverty, gender inequality, and lack of access to reproductive health services in pushing vulnerable women into asymmetric contractual arrangements.<sup>56</sup> It also promoted international cooperation, information exchange, and the collection of disaggregated data to ensure evidence-based public policy.

Further momentum came with the Report of the UN Special Rapporteur on violence against women and girls, Reem Alsalem, published on 14 July 2025. The Rapporteur identified surrogacy as a form of violence with multiple dimensions: economic, psychological, physical, and reproductive. She also warned of the trafficking risks associated with international demand that fuels clandestine networks. On this basis, the report called for the global abolition of commercial surrogacy, advocating a model inspired by Nordic prostitution laws that sanction commissioning parents and intermediaries while treating gestational women as subjects of protection. The report concluded that commodification of the female body is irreconcilable with a human-rights and gender-justice approach.<sup>57</sup>

The recommendations were explicit. The Rapporteur stated that 'the practice of surrogacy is characterized by exploitation and violence against women and children, including girls. It reinforces patriarchal norms by commodifying and objectifying women's bodies and exposing surrogate mothers and children to serious human rights violations'.<sup>58</sup> In her conclusions she urged States 'at the interna-

<sup>55</sup> Directive 2024/1712 amending Directive 2011/36/EU, Art 2.

<sup>56</sup> UNGA Res 79/154 (13 November 2024) Art 16.

<sup>57</sup> UN Human Rights Council, 'Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem' UN Doc A/HRC/59/38 (14 July 2025).

<sup>58</sup> *Ibid* para 69.

tional level, [to] take steps towards eradicating surrogacy in all its forms. Pending its abolition, States must take action to prevent further harm and strengthen the protection of the rights of women and children involved in surrogacy arrangements; (b) Work towards adopting an international legally binding instrument prohibiting all forms of surrogacy'.<sup>59</sup> She further called on States to '(j) Ensure that the best interests of the child are the primary consideration in all decisions relating to parentage and care; (k) Require that any transfer of parental rights from the birth mother occur only through judicial adoption processes that include parental suitability screening, equivalent to normal adoption procedures'.<sup>60</sup> These recommendations included penalising commissioning parents, clinics and agencies, decriminalising surrogate mothers, providing exit strategies for women and intermediaries, and prohibiting the advertising of surrogacy services.

Finally, on 18 September 2025, the Special Rapporteur issued a Guidance Document examining the concept of consent in laws on violence against women. It underlined that 'most surrogate mothers come from lower-income backgrounds and are in a weaker position compared to the commissioning parents', so that the promise of a 'life-changing amount of money' makes their consent illusory. It observed that women are frequently required to 'relinquish medical decision-making rights or waive confidentiality in advance',<sup>61</sup> and stressed that consent cannot be described as informed when agreements are presented in foreign or overly legalistic language and women are unaware of serious health risks.<sup>62</sup> The text also affirmed that 'children, including girls, born through surrogacy, cannot consent to this practice and to being transferred from the birth mother to the receiving party'.<sup>63</sup> The conclusion was categorical: 'in situations where grave and irreversible harm is inflicted, including in the context of ... surrogacy ..., any alleged consent should be considered legally invalid'.<sup>64</sup>

## V. CONCLUSIONS

The comparative review of reforms and judicial decisions confirms that surrogacy remains a profoundly contested phenomenon at the intersection of law, ethics,

<sup>59</sup> Ibid para 70(a)–(b).

<sup>60</sup> Ibid para 70(j)–(k).

<sup>61</sup> UN Human Rights Council, 'Guidance Document on Consent in the Context of Laws on Violence against Women' (18 September 2025) para 44.

<sup>62</sup> Ibid para 45.

<sup>63</sup> Ibid para 46.

<sup>64</sup> Ibid para 91(d).

and culture. Approaches diverge: some jurisdictions adopt prohibitions, others establish permissive frameworks, while still others restrict access to their own nationals. These models demonstrate that regulation is not a merely technical exercise but reflects divergent cultural understandings of reproduction, kinship, and the rights of women and children. They also reveal contrasting conceptions of family and public order and, ultimately, the ethical values each national community regards as constitutive of its legal identity.

Advocates of regulated or altruistic surrogacy have advanced a series of arguments that merit explicit consideration. They contend that carefully designed permissive regimes – through judicial oversight, licensing of intermediaries, mandatory counselling, limits on compensation, and post-birth consent requirements – can reduce exploitation, enhance transparency, and secure the legal status of children while respecting women’s autonomy and reproductive choice. From this perspective, prohibition is said to drive practices underground and across borders, whereas regulation is presented as the more realistic harm-reduction strategy in a globalised reproductive market.

From the perspective adopted in this study, such regimes may indeed introduce procedural safeguards or mitigate specific risks in individual cases; however, these mechanisms remain insufficient to address the structural features of surrogacy identified above: the commodification of gestation, persistent power asymmetries shaped by gender and socio-economic inequality, pressures on consent, and the transformation of adult reproductive desires into legally enforceable entitlements. The critical assessment developed here therefore goes beyond questions of regulatory design and targets the underlying social and market logics that permissive frameworks leave intact.

Against this backdrop, the analysis further suggests that none of the prevailing models offers a fully adequate response to the structural risks identified in this article. Permissive regimes may provide legal certainty and procedural safeguards yet normalise contractual gestation; restrictive frameworks can limit participation and cross-border markets but often displace exploitation to other jurisdictions; and prohibitionist laws articulate strong dignity-based commitments but remain porous in the absence of international coordination. While some regimes incorporate limited protective mechanisms, each model ultimately leaves serious structural risks unresolved: permissive models exploit, restrictive models displace, and prohibitionist models leak – none, in their current form, succeeds in protecting those most at risk.

It is against this background that recent international developments acquire their full significance. The wave of reforms adopted between 2024 and September 2025 across multiple continents demonstrates that surrogacy is not a regional concern

but a genuinely global regulatory challenge. Echoing this momentum, the UN Special Rapporteur on violence against women and girls has emphasised that the regulation of consent and reproductive exploitation cannot be left to domestic law alone and, in her 2025 report to the Human Rights Council, explicitly called for the abolition of surrogacy as incompatible with women's dignity and children's rights. In parallel, the 2023 Casablanca Declaration articulates a civil-society demand for universal abolition in the name of those same values.<sup>65</sup>

The convergence of legislative innovation, institutional engagement, and advocacy thus points toward a strong case for international action. Whether through the expansion of instruments such as the Palermo Protocol<sup>66</sup> or CEDAW,<sup>67</sup> or through the negotiation of a dedicated convention, this article argues that only an abolitionist framework at the international level offers the most coherent response to the structural harms identified here. At the same time, the comparative divergence documented above underscores that any such move would confront significant feasibility and transition challenges, including the treatment of children already born through surrogacy, the management of cross-border situations, and the coordination of enforcement across heterogeneous legal systems. Addressing these transitional questions is therefore not peripheral but central to the credibility and practical effectiveness of any future international regime.

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<sup>65</sup> Casablanca Declaration on the Abolition of Surrogacy (Casablanca, 3 March 2023) <<https://declaration-surrogacy-casablanca.org/text-of-declaration/>> accessed 25 September 2025.

<sup>66</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000) 2237 UNTS 319.

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