

# Reproductive Entanglements in Times of War: Transnational Gestational Surrogacy in Ukraine and Beyond

Anika König 

Institute of Social and Cultural Anthropology, Freie Universität Berlin, Berlin, Germany

## ABSTRACT

Until early 2022, within the global fertility industry, Ukraine was one of the most important destinations for reproductive travel worldwide, particularly specializing in gestational surrogacy for international intended parents. Already weakened by the COVID-19 pandemic and related restrictions, the surrogacy market, and here especially surrogates and intended parents, was strongly affected by the Russian invasion in February 2022. In this article, I discuss and analyze the reproductive entanglements of surrogates, intended parents, and the children born through such transnational surrogacy arrangements in Ukraine and how this extreme crisis of war exposed and exacerbated existing vulnerabilities.

## АНОТАЦІЯ

Допочатку 2022 року в межах світової індустрії репродуктивної медицини Україна була одним із найважливіших напрямків для здійснення міжнародних репродуктивних подорожей з окремою спеціалізацією на гестаційному сурогатному материнстві для іноземних потенційних батьків. Ослаблений пандемією COVID-19 та супутніми обмеженнями, ринок сурогатного материнства, насамперед сурогатні матері та потенційні батьки, сильно постраждав від російського вторгнення в лютому 2022 року. У цій статті я описую та аналізую репродуктивні зв'язки між сурогатними матерями, потенційними батьками та дітьми, народженими за допомогою транснаціонального сурогатного материнства в Україні, а також досліджую, як надзвичайна воєнна криза виявила та загострила вже наявні фактори ризику.



## KEYWORDS

Germany; Ukraine; Cross-border reproductive care; surrogacy; vulnerability; war

On February 23, 2022, one day before Russia invaded Ukraine, I received a direct message in German from the perhaps best-known among the many Ukrainian surrogacy agencies cum clinic via Twitter:

Dear Ms. König! You probably know how dramatic the situation is here in Ukraine, which is why we have now organized a bunker for all the parents and children in Kiev and carried out the exercises: Warm greetings of peace from Kyiv (Direct message on February 23, 2022).

An almost six-minute-long video<sup>1</sup> was attached to the message which began with someone's hands opening a bunker door, the scene illuminated in dark red light and accompanied by the sound of sirens mixed with dramatic music. In the next scene, a group of people entered a door with the sign "bomb shelter" and the interior of the bunker was shown: mattresses and camouflage sleeping bags on the floor, shelves filled with canned food, boxes of baby formula, and diapers. Some of the people who had just entered the bunker were holding baby carriers and inside, there were cots with infants and masked

**CONTACT** Anika König  [anika.koenig@fu-berlin.de](mailto:anika.koenig@fu-berlin.de)  Institute of Social and Cultural Anthropology, Freie Universität Berlin, Landoltweg 9-11, Berlin 14195, Germany

**Media Teaser:** In this article, I show how the entangled lives of different actors in the commercial surrogacy industry are affected by the war in Ukraine.

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women bottle-feeding and comforting babies. In the next shot, a man, seated at a desk behind a laptop computer and identified as the “clinic adviser,” assured the viewers that the clinic “is ready to protect the surrogate mothers, the clients and their newborn children, even if armed aggression against Ukraine begins tomorrow.” He explained that the threat to Ukraine was serious and that the clinic, therefore, had decided to act preventively as the situation caused great anxiety among their clients. In the following scenes, a woman showed the viewers around the bunker and its facilities – from toilets to first aid equipment, drugs, and gas masks. She explained that the bunker could host up to 200 persons and praised its comfort: “You see that children will feel comfortable here, there is everything you need.” However, she continued: “We won’t promise our clients that there will be VIP service here in our bunker. No, but we can promise and guarantee that in case there will be acts of war in the city of Kyiv, you and your children will be safe.” The video ended with a final statement by the clinic adviser in which he referred to the 2014 Russian invasion of Crimea and the beginning of the war in Donbas in the same year: “We kept our clinic working then and we assure you that we will cope with it now. Therefore, we ask you to remain calm and stay assured that [the clinic] is ready to guarantee your safety.”

Surrogacy is a reproductive arrangement within which a surrogate (also surrogate mother or gestational carrier) is commissioned to carry a child for others who for medical or social reasons cannot or do not wish to be pregnant themselves. After the child’s birth it is handed over to the commissioning “intended parents” (IPs). Therefore, a surrogacy pregnancy is a form of reproduction that always involves a third person who gestates a child she will not keep after birth.<sup>2</sup> As many countries prohibit surrogacy or offer it at costs unaffordable to IPs, a considerable number of these reproductive arrangements are transnational, with IPs commissioning it abroad in a country where surrogacy is permitted and/or where these reproductive services are offered at lower cost than in their home country. Ukraine is one of the few countries in the world where surrogacy is not only unregulated (and, therefore, not prohibited), but since 2013 explicitly allowed and legally sanctioned (Gryshchenko and Pravdyuk 2016; Guseva 2020; Sylkina et al. 2020). In addition, costs for a surrogacy pregnancy are approximately a third of those incurred in other popular surrogacy hubs like California or Texas. Therefore, the country has become a “reprohub” (Inhorn 2015) for IPs from all over the world.

This setting, however, comes at a price. Although research (e.g. Jadvá et al. 2012, 2015; Teman 2010) has shown that it may be practiced in ways that make all involved persons feel valued, connected with each other and result in life-long relations, surrogacy may also be extremely fragile as certain settings foster vulnerability of either or both surrogates and IPs (and their children), and facilitate power differences within and disruptions of surrogacy arrangements (e.g. DasGupta and Dasgupta 2014; Saravanan 2013; Siegl 2023). Such issues become amplified in times of crisis, most recently the COVID-19 pandemic and the Russo-Ukrainian war that began in February 2022. The above-described message and video are examples of the effects of such major disruptions on the surrogacy industry in Ukraine and beyond and shows how important actors within it tried to exercise damage control, assure IPs that their surrogates and children were safe, and that there was no reason to worry. The weeks and months following the publication of the video, however, showed a different picture of the situation.

The message and the video illustrate some of the main issues that mark the global surrogacy industry: the decoupling of pregnancy and parenthood and the often large geographic distance between surrogate and IPs (Lustenberger 2016); the anxiety and worries that come with this distance, for both IPs and surrogates (Schurr and Militz 2018; Ziv and Freund-Eschar 2014); the gatekeeper role held by agencies and brokers (Weis 2019); the important role played by the internet, for example in the form of social media content (Teman 2019); and the exacerbation of existing power differences and vulnerabilities (Deomampo 2013), particularly in times of crisis such as the COVID-19 pandemic or the current war in Ukraine (Guseva 2020; Marinelli et al. 2022).

In this article, I address these issues and provide a preliminary discussion and reflection of the consequences of the Russian invasion of Ukraine on the local and global surrogacy industry and the actors within it. I do so through the lens of what Rapp (2011) calls “reproductive entanglements,” focusing on “the layered complexity of the social worlds that support, distort, or otherwise enable

reproductive technological innovation and intervention” (696). On the one hand, such entanglements are geographical and physical, materializing in cross-border reproductive travel of persons, tissue, and things, and on the other, they are more abstract – although certainly not less meaningful – involving stratified reproduction (Colen 1995), gender relations (Inhorn and Patrizio 2015), kinship (Gunnarsson Payne 2018), and different national legal regulations (Trimmings and Beaumont 2013). All of these are part and parcel of what Heather Jacobson and I call “reprowebs” (2021)—elastic and flexible webs of relations that span the entire globe. In this context, I discuss the complexities of transnational surrogacy, the disruptions, vulnerabilities, and insecurities the people involved in these arrangements are subjected to, and the challenges this involves, especially in times of crisis.

## Methods

The analysis in this article is informed by the long-term research on transnational surrogacy commissioned by IPs from Germany and Switzerland that I have conducted since 2013 (König 2018, 2020a). In both Germany and Switzerland surrogacy is strictly prohibited; therefore, IPs from these countries need to go abroad if they wish to enter a surrogacy arrangement. The majority of IPs from the German-speaking region commission surrogacy either in the US (mostly California) or in Ukraine. Most of my data on transnational surrogacy arrangements in Ukraine stems from interviews with IPs, surrogates, surrogacy agents, surrogacy brokers or “concierges,” lawyers and other actors in the surrogacy industry in Ukraine and Germany.<sup>3</sup> Over the course of several years, I conducted interviews face-to-face, via phone or video-call in Germany and face-to-face (especially those with surrogates and some Ukrainian brokers, agents and lawyers) during a fieldwork stay in Kyiv in 2019.

With the onset of the COVID-19 pandemic and the resulting travel restrictions, my research completely shifted to remote research, interviewing research participants and participating in events via phone, video-call or online events. While this approach has certain disadvantages, such as the lack of sensory experience, it also has the advantage of easy access to research participants all over the world and lower costs (König 2020b).

When Russia invaded Ukraine in February 2022, I closely followed the developments in the Ukrainian fertility industry and their impact on the lives of the people involved in it: surrogates, IPs, and children, but also agency staff, doctors, and brokers. I also wanted to find out how the sudden disruption in Ukraine affects the global surrogacy industry. Researching this topic in a situation of war, however, was and continues to be an ethically delicate matter – my wish to collect information was in conflict with the psychological and emotional stress and anxiety of surrogates, intended parents, and those who look after them in the middle of war. Therefore, I was hesitant to even contact people but finally decided to conduct research in the form of what Krause (2021:329, emphasis in the original) calls “*limited and/or uneven immersion*,” using this approach as an “ethical research strategy that incorporates ethnographic sensibility to a varying extent.” I thus posted interview requests through my online networks to which two intended mothers from Germany replied. Both expressed their wish to share their experiences with surrogacy in Ukraine during the war as affected IPs, preferably with a researcher and not a journalist as they were concerned about their privacy. In addition, I interviewed a Korean mother whose child had been birthed by a Ukrainian surrogate in the early days of the war in Warsaw, Poland. All three women agreed to records of our conversations which I indexed and partly transcribed. In order to protect their identities, their names and those of the other individuals I quote in this article (apart from quotes taken from publicly available information such as newspaper articles or TV reports) are anonymized. I also interviewed a lawyer, a member of an internationally operating nonprofit organization that supports intended parents all over the world, and had informal conversations on different occasions with IPs whose children were born in Ukraine before the war, an intended mother who had just signed a contract for surrogacy in Ukraine in June 2022, journalists, and researchers. In addition, I reviewed media reports and publicly available material published by different surrogacy agencies and fertility clinics. What is missing in this article is the voice of

surrogates – an issue that has, rightfully, been criticized in commentaries about reporting on surrogacy in Ukraine during the war (Mahmoud and Horsey 2022). Although I tried to find Ukrainian surrogates currently pregnant who would be willing to share their experiences with me, at the time of writing of this article, this search was still unsuccessful. Among other things, this is certainly due to the fact that in this very critical situation pregnant surrogates had very different priorities. Moreover, again due to ethical considerations, I did not wish to be too insistent with my calls for participation. Accordingly, in this article, I can only refer to stories IPs and other actors in the surrogacy industry told me about surrogates they worked with or personally knew and media reports that quote surrogates. Finally, as of writing this text, I am still conducting research on the effects of the still ongoing war on the surrogacy industry in Ukraine and beyond. The data presented here is only a snapshot of the situation in mid-2022.

## Global surrogacies

Although the surrogacy market comprises only a fraction of the global fertility market which in the last few decades has developed into a billion-dollar industry (Allied Market Research 2018), it has attracted considerable attention from researchers, feminists, ethicists, politicians, and other commentators contributing to public discourse. This is certainly due to the fact that surrogacy is perhaps the most contested assisted reproductive arrangement as it involves long-term involvement of third persons who gestate the fetus for others, often in exchange for money. One line of criticism is the commercialization and commodification of surrogates and children and the potential exploitation of surrogates (e.g. Ekman 2013 [2010]; Ilyushina 2020; Klein 2017). Moreover, the nine-month-long process of gestation and, linked to this, ideas of a “natural bond” between carrying person and child (Dow 2017) and the assumed prenatal psychological (Klein 2017) and epigenetic (José 2017) impacts of the pregnancy on a fetus strongly inform criticism of and lead to widespread uneasiness with surrogacy arrangements.

At the same time, it is important to note that the term “surrogacy” does not describe one specific kind of arrangement, but that surrogacy can take many different forms and is practiced in highly varying ways. Therefore, I use the plural, *surrogacies* (König et al. 2022), when discussing the “global reproscape” (Inhorn 2011) of this reproductive arrangement. Within this reproscape, certain places have become “reprohubs” (Inhorn 2015): places or geographic areas where the technological skills to provide fertility treatments, a legal setting which facilitates the performance of such services, and the availability of reproductive workers (such as gamete donors and surrogates) coalesce. In the last decade or so, however, such reprohubs have splayed and become parts of “reprowebs” (König and Jacobson 2021): interconnected and highly flexible global webs within which reproductive technologies and arrangements are organized and performed, often crossing national borders or even spanning several continents, leading to a hybridization and fragmentation of reproductive arrangements such as surrogacy (Whittaker 2018). Reprohubs, however, have never ceased to exist; rather, they have become integral elements of global reprowebs. One of the central characteristics of these reprowebs is that they flexibly react to sudden change, as has been the case after new legal regulations were introduced in places such as Thailand or India which banned surrogacy in 2015 and 2016, respectively (Rudrappa 2018a; Whittaker 2016), or after a large earthquake hit Nepal in 2015, when at least a hundred pregnant surrogates were waiting to give birth to children for foreign IPs (Rudrappa 2018b; Shalev et al. 2017). In most of these cases, the industry swiftly moved to other countries, with mostly the same fertility doctors and agencies resuming operations across the border (Rudrappa 2018b; Whittaker 2018).

The COVID-19 pandemic was the first major disruption that was not regionally limited but affected the entire surrogacy industry world-wide, almost bringing it to a halt. Nevertheless, children continued to be birthed by surrogates who had become pregnant prior to the pandemic and travel restrictions made it impossible for their parents to pick them up. However, due to its great flexibility and adaptability, the global surrogacy industry quickly overcame these disruptions and regained

momentum after a few months as ways were found to circumvent pandemic restrictions and travel became possible again.

## Surrogacy in Ukraine

Although there are no reliable numbers, there is no doubt that in the last few years, the Ukrainian surrogacy market has become one of the largest of its kind worldwide (Siegl 2022). While the surrogacy industry in the US, which due to its long tradition of more than three decades is the largest and most established surrogacy market, mainly caters to a wealthy clientele (with a singleton pregnancy costing at least US\$ 150,000), Ukraine entered the global surrogacy industry in the mid-2010s, following the legal regulation and sanction of this reproductive arrangement in 2013 (Gryshchenko and Pravdyuk 2016; Guseva 2020). With this law, Ukraine is one of the few countries in the world whose “legislation inherently recognizes the couple that commissioned the surrogacy process as the legal parents of the child” (Gryshchenko and Pravdyuk 2016:251) and where intended parents do not need to undergo lengthy legal procedures in order to also become legal parents.<sup>4</sup> The legalization of surrogacy in Ukraine came at a time when India, until then the most important “low budget” destination for transnational surrogacy, banned this reproductive arrangement first for same-sex IPs in 2012 and, subsequently, all international IPs three years later (Rudrappa 2018a).

Costs for surrogacy in Ukraine amount to approximately one third of the costs in the US (€ 40,000 - € 50,000 per arrangement), therefore making the country an attractive surrogacy destination even for intended parents from places where such arrangements are permitted and available, but more costly. According to conversations I had with surrogacy agents in 2019, demand for surrogacy had continuously increased until the time of the interviews. It is estimated that until the beginning of the COVID 19-pandemic, up to 2000 children were born annually through such reproductive arrangements in the country (Siegl 2019).

Like all industries that are highly dependent on international travel, the global surrogacy market was seriously hit by the closing of borders, the limited mobility of persons and cryopreserved gametes, and other pandemic-related restrictions. Compared to other, less time-sensitive industries, these restrictions were particularly dramatic as pregnancies, once they were underway, could not be put on hold, children continued to be born, and intended parents were unable to pick them up. Around May 2020, a large Ukrainian surrogacy agency, well-known for its aggressive advertising and PR, posted a video on their website which showed newborns, who could not be collected by their parents, in long rows of cribs in a large hotel hall.<sup>5</sup> This video quickly made it into newspaper headlines and TV reports all over the world (e.g. Berdnyk and Goncharenko 2020; Ilyushina 2020; Kramer 2020). The images (and sounds) of screaming parentless infants, the sheer number of children lined up in rows of cribs in the hotel hall, the bright light, and the masked and gloved nannies who looked after the babies, shocked the international audience. Here, the pandemic became a magnifying lens through which the surrogacy industry and its weaknesses became more visible (König et al. 2020). This resulted in a general condemnation of surrogacy by its critics, including the Ukrainian Ombudsman for Human Rights Ludmila Denisova, who in a Facebook post in May 2020 demanded the closure of the Ukrainian surrogacy market for foreigners, as had been the case in other countries (e.g., India, Thailand, and parts of Mexico) which had reacted to surrogacy scandals by prohibiting surrogacy for an international clientele (Hovav 2019; Rudrappa 2018b; Whittaker 2016)<sup>6</sup>. However, despite these attempts to limit surrogacy to Ukrainian IPs, the suggested ban was not implemented and the Ukrainian surrogacy industry regained momentum with rising numbers of contracts signed once COVID-19-related travel restrictions were lifted.

## Transnational surrogacy during the war in Ukraine

This was the situation in February 2022 when Russia invaded Ukraine. It did not take long for the first international newspapers to begin reporting on the effects of the war on surrogacy arrangements involving foreign IPs and Ukrainian surrogates (e.g. Aoraha 2022; Carcamo 2022; Kupfer 2022). As Mahmoud and Horsey (2022) show, however, apart from few exceptions (e.g. Callaghan 2022; Cernik and Levchenko 2022; Dominus 2022; Motluk 2022), there was and continues to be a remarkable silence in the media regarding the surrogates who carried children for foreigners. Although the war certainly made it difficult for journalists to find surrogates for interviews, and in addition there were rumors about agencies forbidding their surrogates to talk about their experiences, the surrogates' invisibility also exemplifies structural inequalities which have always existed, but were magnified in this situation of crisis.

While many Ukrainian residents fled their region or even the country, surrogates were in a particularly difficult situation since they were carrying other people's children, thereby making them not only responsible for themselves and their families, but also for the babies they were pregnant with. Moreover, they were accountable to both agencies and intended parents, who, as I show below, did not always agree on how to proceed in these exceptional circumstances. At the same time, all over the world, IPs were extremely anxious regarding the fates of their not-yet or new-born children and the surrogates who carried them. Many offered to bring the surrogates and their families out of the country, not only during, but also after the pregnancy. Surrogates themselves, however, did not always want to leave the country, which also led to conflicts with IPs. Agencies, too, had to decide how to deal with this extreme situation and chose varying ways of doing so, with some agency staff fleeing the country and leaving pregnant surrogates behind, others moving surrogates to safer parts of Ukraine or even to neighboring countries such as Poland. Finally, others again, as illustrated by the video described above, preferred their surrogates to stay where they were, while assuring the IPs that surrogates and babies were safe and well looked after (although media reports suggested otherwise and presented a very different picture). This shows the heterogeneity of surrogacy practices as they can be found in Ukraine, but also globally, and how different vulnerabilities are acted upon in times of crisis.

## Anxious parents, torn surrogates, entangled lives

In mid-March 2022, I interviewed Simone, an intended mother whose surrogate at the time of the interview was in the last weeks of her pregnancy with Simone's and her husband's twins. After three failed attempts with three different surrogates, the fourth embryo transfer in mid-2021 had finally been successful. Due to pregnancy complications the surrogate, who lived in a remote rural area, had come to Kyiv for medical treatment and monitoring earlier than originally planned.<sup>7</sup> When the agency at the beginning of the war offered to move their surrogates to the safer Western part of the country, the surrogate decided to stay and gave birth to the twins in Kyiv in late March. Simone had discussed the option of evacuation with both the surrogate and the agency and recalled:

[The agency] said very clearly that they can take her out [of Kyiv] if this is what she wants, but if she doesn't want this, they will, I mean, in the end it is her who decides anyway. [...] Right, well, I have to say that for us, that was very, very difficult, because we, and that is the biggest problem with the whole thing anyway, that we cannot do anything. I understand her, and I can't even put myself in her position, what it's like to be with a child, and ethically and morally I am of course absolutely of the opinion that this should be her decision alone, but for us it is of course, I would probably, well, I don't know what it would be like if we were there, but from our perspective, here from Europe, I have to say I would have preferred it if she had left.

This quote illustrates a major problem in this setting: the fact that the surrogate carries a child that "belongs" to others, thereby "entangling" her with the baby and the commissioning parents. As Barad (2006:IX) notes:



To be entangled is not simply to be intertwined with another, as in the joining of separate entities, but to lack an independent, self-contained existence. Existence is not an individual affair. Individuals do not preexist their interactions; rather, individuals emerge through and as part of their entangled intra-relating.

Surrogacy is a prime example for such entanglements. The three parties surrogate, IPs, and fetus are inseparably linked and would not exist as such without each other. The fetus is only alive because it grows within the surrogate; at the same time, it is the IPs who with their parental intent (Dorfman 2016) brought the fetus into being in the first place, often after many years of dealing with infertility; finally, the surrogate would not be in this role if there was no IPs' intent and no viable fetus. Because of the entangled nature of the relationship any decision or incident affecting one of the arrangement's members also affects the others. As the example of surrogacy in Ukraine shows, in times of crisis, this entanglement becomes particularly challenging as life-altering (and potentially life-threatening) decisions cannot be made without taking into consideration the other parties.

In contrast to one of the main criticisms of surrogacy which maintains that IPs only consider their child's, but not the surrogates' wellbeing, however, the IPs who participated in my research were either ambivalent or even very concerned about the ethical and moral implications of commissioning a pregnancy and utilizing another person's body for it. Simone's statement regarding her inability to imagine "what it is like to be with a child" and her instant reference to her ethical and moral perspective on the surrogate's role demonstrate the difficulties and ambivalence especially intended mothers often struggle with. The sadness regarding the inability to carry a child herself, coupled with the moral issues Simone talked about, were exacerbated when the surrogate was caught in the perilous situation of war.

But surrogates are not only entangled with the IPs and the children they carry. They have their own lives and entanglements with their family, friends, and country. From newspaper reports it transpired that Simone's surrogate's wish to remain where she was not unique. As Motluk (2022) wrote in *The Atlantic* in early March, 2022:

some of the surrogates did not want to move—or in some cases, to remain in safe locations but separated from family. They wanted to make their own decisions, about where and how they might survive the next days and months.

For other surrogates, it was not only the separation from their families, but also the separation from their country which they did not want (Dominus 2022). Accordingly, some surrogates chose to stay against their IPs' and agency's wishes – a decision which is contrary to the common image of disenfranchised surrogates who do not possess any agency. Rather, staying can also be read as resistance against power structures.

Olga, the surrogate who carried a child for South Korean intended mother Soo-jin, who I interviewed in early May 2022, decided differently. Shortly before the Russian invasion, South Korea had issued a travel prohibition regarding Ukraine, therefore making it impossible for Soo-jin and her husband to enter the country and pick up their child which was due in mid-March. The agency put Soo-jin in touch with an internationally operating nonprofit organization that helped evacuate surrogates, their own families, and the surrogacy babies from Ukraine. Although Soo-jin had offered the surrogate to also help her family out of the country, Olga decided against it as her children were in a different part of the country, looking after their grandmother. She herself, too, was unsure if she wanted to leave her family behind and travel at the very end of her pregnancy (at the time, she was 39 weeks pregnant) but finally decided to take the trip to Warsaw and give birth there. The first try to leave Kyiv failed as Olga was unable to get transportation to the evacuation bus, but with the help of a security firm Soo-jin hired in the last minute, she eventually reached an evacuation train to Warsaw, the trip taking 24 hours. Since Soo-jin had not arrived in Warsaw yet, a friend who lived in Warsaw came to the train station, yelling that they were looking for a pregnant woman until they finally found each other in the chaos. Two days later, Olga gave birth in a private hospital and for the following weeks stayed with Soo-jin, her husband, and their baby Tom in Warsaw in order to arrange the paperwork.

This shows that the entanglement does not end with the child's birth as surrogates need to choose between remaining with the IPs to help them with the finalization of bureaucratic procedures or returning to their own families. Simone's surrogate decided to directly return home to her village and in the beginning of April, Simone emailed me from Lviv where they were staying with their new-born children:

Unfortunately, this is turning into a nightmare for us. After it took us over a week to get the Ukrainian birth certificate (due to tightening [of regulations]), it now looks like we have no chance of getting passports. The problem is that the German embassy requires a video call with the surrogate during the embassy appointment. However, our surrogate mother is currently back home and due to the war situation, she has no internet, at most poor telephone reception, or cannot be reached. In addition, the embassy can currently only be reached by email (they won't give out their phone number) and they are probably on holiday until after Easter (we were told there are no more appointments). No help is to be expected from this side.

While Simone and her husband eventually crossed the border without passports, Soo-jin and her husband were unable to leave Poland as, according to Polish law, Tom was considered to be Olga's and her husband's child and neither Soo-jin nor her husband had any parental rights. Although both the IPs and the surrogate wished to "disentangle" the relationship through official acknowledgment of Soo-jin's and her husband's parentage – a process Olga actively supported by remaining with them in Warsaw for several weeks – this was unsuccessful. It took the support of several lawyers and repeated pleas to the Korean Ministries of Foreign Affairs and Justice over the course of several months to receive travel documents for Tom, issued shortly before Soo-jin's Polish visa expired which would have forced her to leave him behind. In Korea, they had to undergo a lengthy adoption process in order to acknowledge their parentage.

In both cases, parents' and surrogates' entanglements could be navigated and wishes negotiated because arrangements had been made through agencies that run so-called "open programs" within which surrogates and IPs know each other and are able to directly communicate. Even though most foreign IPs do not speak Ukrainian or Russian and many surrogates do not speak English, the IPs and surrogates I met used online translation programs and instant messaging to communicate with each other which for most of them worked quite well.

This was completely different for arrangements in "closed programs" within which IPs and surrogates remain anonymous, either for the entire pregnancy or at least for the first few months of it. According to the global director of an NGO that supports IPs worldwide, during the first few weeks of the war, some agency staff fled Ukraine and their agencies effectively stopped operations, including the management of identifying information. For IPs in these arrangements, the beginning of the war was not only worrying because of the dangers to their surrogates and the children they were carrying, but also because they were unable to contact their surrogates and find out about their wellbeing and whereabouts. The same was true for the surrogates who were pregnant with the children of people they did not know, could not contact, and who they could not be sure they would ever find in order to hand over the child. Several nonprofit organizations tried to find out about affected surrogates and collect their contact details by combing through social media groups where surrogates meet. Surrogates, too, were reported to have tried finding their IPs on social media platforms (Coles 2022). More often than not, according to my interlocutor, these searches were unsuccessful. It is still unclear what happened with these surrogates and the children they gestated. These cases illustrate that the entangled relations within surrogacy arrangements were forcefully disentangled through the war and resulting breakdown of agency structures, causing major suffering for all involved persons.

### **Competing interests, power dynamics, and legal obfuscation**

As shown above, some surrogates, like the women who carried children for Simone and Soo-jin, chose to stay in Ukraine. In our conversation in mid-March, Simone recounted:



Well, our surrogate isn't from Kyiv, but she comes from the inland, southeast [...]. We asked innumerable times, but it must be a small village where everything is quiet, at least that's what she keeps writing, and for her, we asked her, we offered to financially support her [...] for the escape, if she needs anything, or if only her relatives want to flee, but that was never an option for her. They seem to feel safe there, or they want to stay there.

Several people I spoke to recounted that most IPs they knew had offered their surrogates to help them out of the country and host them and their families for as long as necessary. But, to many IPs' surprise, many surrogates refused to leave and decided to do what they felt was best for themselves and their families, therefore acting upon their own family entanglements rather than the one with the IPs.

However, not all surrogates had this choice and in certain arrangements, surrogates who wanted to leave the country were forced to stay, for example through agencies' threats to not pay them for their reproductive work (Carthaus 2022). IPs, who paid large sums up front to agencies, too, feared losing their money if they refused following agencies' instructions. Moreover, some agencies threatened both IPs and surrogates with legal consequences (Carthaus 2022). For example, one agency "warned" IPs against helping their surrogates out of the country, as the following Facebook-announcement, entitled "Important and urgent! Ukrainian surrogates should birth your children in Ukraine" (in German) illustrates:

The war in Ukraine is unexpected for everyone and instead of the hoped-for happiness of having a baby, it only causes our intended parents to be petrified. There is a lot of panic at the moment, many intended parents express their wish to bring their surrogate mothers to the border and that they will then give birth abroad. But we are warning you against this! Giving birth to the child outside Ukraine is illegal and will have legal consequences: the surrogate mother will be considered the mother and the attempt to hand over the child will be called child trafficking, you will never be recognized as the child's parents. Such acts are punishable by imprisonment or fines. In addition, there are health risks: long and dangerous journeys across Ukraine. A pregnant woman can be on the road for several days, endangering her life and health!<sup>8</sup> (February 28, 2022)

The threat of not being acknowledged as the child's legal parents, and in addition the possibility of even being convicted of child trafficking, hit the mark. In early March, German attorney Nina Inn, who specializes in transnational surrogacy cases, told me that her "phone lines were running hot" as petrified German IPs sought her advice. Germany, however, does not bestow citizenship and legal parentage based on foreign birth certificates (as issued in Ukrainian surrogacy arrangements), but – regardless of where the child was born – according to German law. The German Civil Code states that "[t]he mother of a child is the woman who gave birth to it" (§1591). Accordingly, Germany regards the surrogate and the German intended father as the child's parents, and the intended mother's parentage is subsequently achieved through adoption.

Contrary to the alarming note posted by the agency, all these legal procedures can also be completed in Germany. In fact, as the attorney maintained, in a situation of crisis such as the war in Ukraine, completing these processes in Germany is preferable to filing the paperwork in Ukraine where at the time of my interviews most state offices were closed or only working irregularly, embassy staff were not reachable, and the partly destroyed infrastructure made the arrangement of meetings or calls difficult or impossible. According to Simone, most IPs were not aware of this legal loophole and, against their own impulse, decided against bringing their surrogates out of the country for fear of the legal consequences. Another German attorney, Marko Oldenburger, "suspects other reasons why some agencies want to prevent their surrogate mothers from fleeing Ukraine, such as concerns that confidential information might be leaked, the business model might come under closer scrutiny or possible financial losses" (Carthaus 2022). Indeed, most agencies are aware of the legal situation in their clients' home countries. Their unfounded "warnings" can thus be interpreted as an abuse of power which shows that certain already existing inequalities and vulnerabilities are likely to be further complicated and exacerbated in times of crisis. This does not only concern the surrogates who carry children for others, but also the IPs and, as is often forgotten, the children who are born in bunkers and are looked after by nannies for days, weeks, or even months.

While IPs and surrogates may have competing interests regarding their obligations to each other and their respective families, especially in times of crisis, in all of my interviews the IPs were highly concerned about the surrogates' and their families' wellbeing. Disruptions were much more likely to arise from

some agencies' attempts to protect their business by threatening surrogates and IPs. Such problems with excessive power by agencies were, at least partly, mitigated by open programs and close relations and communication between IPs and surrogates, as well as solid knowledge of the legal situation, thereby taking some of the power out of the hands of agencies, even, and perhaps especially, in times of crisis.

## Conclusion

Gestational surrogacy is a strongly entangled form of reproduction, on the micro-level of the individual body as well as on the macro-level of cross-border reproductive care and travel. These reproductive entanglements (Rapp 2011) come with a wide range of challenges, from conflicts of interest between the different participants in surrogacy arrangements to stratified reproduction (Colen 1995), global inequalities (Pande 2015), clashing national legal regulations (König and Majumdar 2022), and many more. In a situation of crisis, such challenges and problems become magnified, further disclosing and exacerbating already existing vulnerabilities of surrogates, IPs, and the children born in such arrangements. Regarding the micro-level of bodily entanglement, one of the main problems in surrogacy is that things done or happening to the carrying person's body in most cases affect the fetus as well and vice versa. While this is true for every pregnancy and has been widely discussed, for example in the context of pregnancy termination – a topic that has recently gained notoriety due to the 2022 decision of the US Supreme Court to overturn *Roe vs. Wade*, which effectively ended the federal constitutional right to abortion in the US – in surrogacy, there is an additional layer involved: the fact that another party is added to the already complex relationship between carrying person and fetus. Especially in times of crisis this entanglement and the competing interests of IPs and surrogates may lead to conflict, for example when it comes to the surrogate's body and its whereabouts. Thus, on the one hand, there is the surrogate's "right to autonomy and of bodily control" (Rebouché 2022), and on the other, there are the interests of IPs who want to avoid harm to their not-yet born child. One example for such a conflict was the discussion about COVID-19 vaccinations of surrogates as they affect the bodies of both the surrogate and the fetus (Sherman 2021). But when war broke out in Ukraine in 2022, the problem of competing interest reached a new level. Surrogates suddenly found themselves in the difficult situation of having to decide whether to leave the area or even the country and leave behind family members or stay, whether to undertake potentially dangerous and exhausting travel or not (both of which could be harmful to their own or the baby's health), whether to act according to their IPs' or agency's wishes or not – decisions all of which could become a matter of life and death. In contrast to other people affected by the war in Ukraine, as "multi-entangled" persons, they had to make these decisions not only for themselves and their families, but also for the babies they were carrying for others.

Moreover, the different kinds of reproductive entanglements I have described in this article are tightly linked with corresponding disentanglements. These are enabled by the use of assisted reproductive technologies which render possible the division (and, therefore, disentanglement) of parental roles into genetic, biological, and social, all of which can be and are reinterpreted and naturalized in various ways (e.g. Franklin 2013). A surrogacy can thus be understood as a carefully arranged "choreography" (Thompson 2005) which is both entangled and disentangled at the same time, involving processes of kinning and de-kinning, connection and disruption (Smietana 2017). These dis/entanglements may change over time, one transforming into the other and vice versa. The concurrence of dis/entanglements and their sensitivity to time and situatedness in a specific setting became particularly salient during the war when many Ukrainian families were torn apart while (and partly also because) pregnant surrogates traveled within the country or across borders in order to meet with IPs, give birth, and hand over the child. Whereas fears regarding parentage, belonging and kinship already mark reproductive arrangements like surrogacy in times of peace, the war exacerbated these anxieties and uncertainty for many IPs and surrogates alike. At the same time, for some IPs I spoke with and their surrogates, the war and the shared worries it caused, leading to daily contact, also created new bonds (and entanglements) which would not have come into being otherwise.

Finally, despite the many disruptions and problems, in some surrogacy arrangements, the issue of agency and autonomy played out in unexpected ways. One of the main criticisms of surrogacy is the surrogate's loss of autonomy and agency once she enters a surrogacy contract and needs to adhere to a range of contractually agreed prohibitions and behavioral rules (for example regarding sexual contact or the consumption of coffee, alcohol, and nicotine). Yet, as my interviews and analysis of news reports show, in the catastrophic situation of war, some surrogates refused to leave the country or the city where they were located, or left the country against their agency's instructions, thereby exercising agency against their agency's or IPs' wishes. For others, however, power dynamics played out differently and in familiar ways, as they were threatened with nonpayment of their fees or even legal consequences, making resistance impossible. IPs, too, were affected by these threats and actively prevented by some agencies from helping their surrogates to leave the country. This shows that major disruptions like the COVID-19 pandemic and especially the war in Ukraine have highly increased vulnerabilities of surrogates, but also of IPs and children, especially in "closed" arrangements.

While in the beginning of the war in 2022, many pregnant surrogates and IPs were struggling to find suitable solutions for all actors in their arrangement, and numerous agencies moved their operations to other Eastern European countries, especially Georgia, the surrogacy industry in Ukraine, surprisingly, quickly recommenced operations. Several agencies began advertising their services on social media again as early as mid-2022, and in an informal conversation I had with an intended mother in mid-June 2022 I learned that she had just signed a contract for a surrogacy in Kyiv. Other conversations with intended parents revealed that as of early 2023, the Ukrainian surrogacy industry is again in full swing.

## Notes

1. <https://www.youtube.com/watch?v=JAY4rrZSkVA> (accessed June 29, 2022).
2. I use the pronouns "she" and "her" and the terms "women" and "mothers" as all surrogates and intended mothers I spoke with identified as cis women and mothers, respectively. This does not imply that all surrogates identify as women. In certain surrogacy arrangements, none of the IPs identifies as "mother.."
3. Until recently, most IPs solely worked with agencies who helped them find surrogates, gamete donors, fertility doctors, and lawyers. More recently, a new kind of actor has entered the global surrogacy market: brokers or concierges. These concierges help IPs navigate their way through the increasingly fragmented, hybrid, and complex surrogacy market.
4. The legal acknowledgment of IPs as parents in Ukraine does not necessarily also apply to the IPs' home country.
5. [https://www.youtube.com/watch?v=G\\_QSxXaImSQ](https://www.youtube.com/watch?v=G_QSxXaImSQ) (accessed July 17, 2022).
6. <https://www.facebook.com/office.ombudsman.ua/posts/604521453493366> (accessed July 17, 2022).
7. Usually, surrogates from rural areas come several weeks before their due date to the city where they will give birth.
8. <https://www.facebook.com/klinik.biotexcom/posts/pfbid0S6R5UJHnn3XJjicyBUESRSmqLLvcBBG1wXW1XryWCZPrASnt34JGcRUTeKxHNdNI>

## Acknowledgments

I would like to thank Andrea Whittaker for encouraging me to write this article. I am also grateful for comments and suggestions by the members of the Medical Anthropology working group at Freie Universität Berlin where I presented an earlier version of this article. Finally, the article has benefitted greatly from the comments of the three anonymous reviewers.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

## Notes on contributor

*Anika König* is Guest Professors of Gender and Diversity at Freie Universität Berlin, Germany. Her research focuses on reproduction and the body, especially in the context of transnational surrogacy, global ‘reprowebs’, non-invasive prenatal testing.

## Funding

The research on which this article is based was funded by Volkswagenstiftung, Grant Number A134136.

## ORCID

Anika König  <http://orcid.org/0000-0002-2884-1421>

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