

Enforcement of Nationality Principle: A Basic Approach for Human Right Protection

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Abstract

This research is a study of international law principle, namely the nationality principle. This principle is generally used to support obligation of state to provide protection to its citizens wherever they may be. As international relations have evolved, the interactions of citizens with other countries have also increased, often resulting in citizens facing legal issues in foreign countries. In line with this, a review of references related to the protection of human dignity as a fundamental aspect of international law through the enforcement of the nationality principle was carried out. The research method used in this study is qualitative, involving an approach to regulations in the form of multilateral, regional, and even bilateral international agreements. This approach is further supported by conceptual interpretations of general legal principles and the resolution of cases related to the application of these principles. The study results show that the enforcement of the nationality principle is one form of human rights protection in international relations. This is based on respect for human dignity and is only applied to specific crimes, different legal systems among countries, and global peace and security within the context of healthy state relations as well. Therefore, this article provides recommendations for improving cooperation among states, including a review of extradition agreements between countries, where its implementation is incapacitated.

Keywords: *Nationality Principle, Human Right, International Law*

Abstrak

Penelitian ini berupa kajian terhadap salah satu asas dalam hukum internasional yakni *nationality principle* atau asas kebangsaan. Prinsip ini pada umumnya digunakan untuk mendukung kewajiban negara dalam memberikan perlindungan terhadap warga negara nya dimanapun mereka berada. Seiring berkembangnya hubungan antar negara sehingga interaksi warga negara pun semakin *berkembang*, seringkali berdampak pada warga negara berhadapan dengan hukum di negara lain. Maka sejalan dengan hal tersebut, dilakukan penelusuran referensi terkait perlindungan martabat manusia sebagai hal yang fundamental bagi setiap individu dalam persepektif hukum internasional melalui penegakan *prinsip nationality*. Metode yang digunakan adalah metode penelitian kualitatif, dengan melakukan pendekatan terhadap aturan berupa perjanjian internasional bersifat multilateral, regional bahkan bilateral, kemudian didukung dengan penafsiran secara konseptual terhadap prinsip hukum umum serta penyelesaian kasus-kasus yang berkaitan dengan penerapan prinsip-prinsip tersebut. Hasil study menunjukkan bahwa penegakan terhadap prinsip kebangsaan menjadi salah satu bentuk perlindungan HAM dalam pergaulan internasional, hal ini didasari pada penghormatan terhadap martabat manusia, hanya diberlakukan pada kejahatan-kejahatan tertentu, system

hukum yang berbeda antar negara, dan perdamaian dan kemanan dunia dalam konteks relasi yang sehat antar negara. Maka, artikel ini memberikan rekomendasi pada peningkatan Kerjasama antar negara salah satunya peninjauan Kerjasama perjanjian ekstradisi antar negara yang pada faktanya masih lemah dalam aspek implementasi.

Keywords: Nationality Principle, Human Rights, International Law



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A. INTRODUCTION

The development of international law no longer debates the emergence of non-state actors as entities with rights and obligations under international law. However, with this development, international relations, human rights aspect have also expanded.¹ The presence of foreign nationals in a country has consequences, shifting a state's focus beyond its security stability to strengthen the protection of its citizens outside its territorial boundaries.² This state obligation is accommodated under a single principle known as the nationality principle.

The nationality principle provides extraterritorial protection (extraterritorial jurisdiction) for its citizens, even when they are subject to the laws of another country. However, the application of this principle cannot be implemented without considering the existence of the territorial principle in international law, where states have exclusive rights to exercise their jurisdiction.

In the 21st century, the assertion of extraterritorial jurisdiction has grown more prevalent. Although designed to tackle transnational crimes, such assertions frequently take on a highly politicized nature, serving as tools for states to pursue individual foreign policy goals unilaterally. While some extraterritorial claims may compromise the rule of law and hinder the delivery of proper justice, principles like respect and fairness can offer safeguards for state rights. Nevertheless, these principles may not consistently guarantee the protection of individual rights.³

For instance, in cases like Indonesia's response to the execution of some Indonesian Migrant Workers (TKI) in Saudi Arabia without prior notification,⁴ or Indonesia's refusal to extradite an Australian national involved in a legal case in Indonesia, the implications are not

¹ Rachel Sabates-Wheeler and Jeremy P. Barker, "The Place of Religious Inequalities within International Development and Humanitarian Response Frameworks: Lessons from Iraq," *World Development* 173, no. October 2023 (2024): 106417, <https://doi.org/10.1016/j.worlddev.2023.106417>.

² C. H.Ng Stephen, "The Role of Perceived Organizational Supports and Management Nationality amid Physical Workplace's Planned Quality Change," *Asia Pacific Management Review* 28, no. 2 (2023): 132–45, <https://doi.org/10.1016/j.apmr.2022.07.004>.

³ Humberto Cantú Rivera, "Developments in Extraterritoriality and Soft Law: Towards New Measures to Hold Corporations Accountable for Their Human Rights Performance?," *Anuario Mexicano de Derecho Internacional* 14, no. June (2014): 727–63, [https://doi.org/10.1016/S1870-4654\(14\)70020-0](https://doi.org/10.1016/S1870-4654(14)70020-0).

⁴ Dewi Nurvianti and Fathurrahman, "Perlindungan Melalui Notifikasi Konsuler Bagi Pekerja Migran Indonesia Di Arab Saudi (Kasus Eksekusi Mati Tanpa Pemberitahuan)," *Fakultas Hukum, Universitas Borneo Tarakan* 32 (2020): 422–35.

limited to the minimal protection of individual rights by states. These cases turn out tension in international cooperation and relations between countries.

Protection of individuals or every citizen even when they are abroad is not just the vision of every country as outlined in the 1962 Vienna Convention on Diplomatic Relations. More fundamentally, the protection is based on respect for human dignity, which is at the core of the respect for human rights. This extends to individuals, regardless of any violations or crimes they may have committed that necessitate them facing legal consequences in another country.

This has indeed sparked debates concerning a state's ability and willingness to provide both protection and adequate justice for perpetrator, especially when the crimes have occurred outside their jurisdiction. Therefore, it is important to find solutions through the enforcement of nationality as an effort to protect human dignity within the perspective of international law.

B. METHOD

This legal study employs a qualitative methodology, delving into the examination of literature and secondary data as the fundamental research approach within the field of law. The qualitative research process involves a thorough investigation of regulations and literature pertinent to the specific issue being studied.⁵ Qualitative data analysis is conducted when empirical data collected takes the form of qualitative information, characterized by textual content rather than numerical data, and is challenging to easily categorize or structure. Various methods, such as observation, interviews, document summaries, or tape recordings, can be employed for data collection. Typically, the collected data undergoes processes like processing, recording, typing, editing, or transcription to make it usable. Unlike quantitative analysis, qualitative analysis relies on words and text, usually organized into expanded texts, and does not involve mathematical or statistical calculations as analytical tools. According to Miles and Huberman, the analysis process involves three simultaneous activities: data reduction, data display, and conclusion drawing/verification. These activities occur in tandem, forming a cyclical and interactive process that takes place before, during, and after data collection, contributing to the development of a comprehensive understanding referred to as analysis.⁶

C. RESULTS AND DISCUSSIONS

1. Nationality as a basic of Jurisdiction

The nationality principle is also known as the Extraterritorial Principle, which posits that every country has full authority over its citizens. This means that the country can claim the right to regulate and protect its citizens outside its own territory. For example, in the case of criminal actions committed by a citizen abroad, the citizen's home country can still take the legal action.

⁵ Jumal Ahmad, "Desain Penelitian Analisis Isi (Content Analysis)," *Jurnal Analisis Isi* 5, no. 9 (2018): 1–20, <https://doi.org/10.13140/RG.2.2.12201.08804>.

⁶ Ahmad Rijali, "Analisis Data Kualitatif," *Alhadharah: Jurnal Ilmu Dakwah* 17, no. 33 (2019): 81, <https://doi.org/10.18592/alhadharah.v17i33.2374>.

The Nationality Principle is a fundamental aspect in international law that governs the relationship between individuals and states, as well as how states claim jurisdiction over their citizens, especially when they are abroad.⁷ The principle of nationality emphasizes that a state has jurisdiction over its own citizens, particularly in matters of nationality or actions outside the state's territory. This means that a state can take legal action against its citizens even when they engage in illegal activities abroad.⁸ The Nationality Principle has significant implications, specially in the context of extraterritorial jurisdiction, legal proceedings, and the protection of human rights for citizens outside their home country's territory.

Nationality Principle as the Determinative Factor. The Nationality Principle can also be explained as a principle that views nationality as the determinative factor in establishing jurisdiction and the applicable law for individuals in the context of international law. In other words, the laws of the country to which an individual belongs will govern their rights and obligations in various situations.⁹

This principle of nationality is closely related to the sovereignty of a state, as confirmed in the 1933 Montevideo Convention. One of the requirements or conditions for the creation of a nation is the sovereignty or self-governance of a government. The term sovereignty was first coined by the French expert Jean Bodin (1539-1596), who explained that sovereignty is the highest authority of a nation. Every sovereign state is based on its territory and has the right to determine its own legal regime based on its jurisdiction. In the Encyclopedia Americana, the term jurisdiction is defined as follows “Jurisdiction in law, a term for power and authority, it is usually applied to courts and quacy judicial bodies, describing the scope of their right to act. As applied to a state or nation, the term means the authority to declare and enforce the law”.

In the book authored by Imre Anthony Csabafi titled "The Concept of State Jurisdiction in International Space Law," the book expounds upon the meaning of a nation's jurisdiction in accordance with its international law¹⁰, which is “State jurisdiction in public internasional law means the right of a state to regulate or afet by legislative, excecutive or judicial measures the rights of persons, property, acts or event with respect to matters not exclusively of domestic concern”.

There are two overarching classifications of jurisdiction: prescriptive and enforcement.¹¹ Prescriptive jurisdiction pertains to a state's authority to create legislation concerning a specific matter, while enforcement jurisdiction involves the ability to ensure compliance with these laws.¹² Four fundamental principles enable a state to assert its jurisdiction, namely territoriality, nationality, protective, and universality. As can be seen, the Nationality is one of the main principles for jurisdiction issue.

⁷ Malcom N. Shaw, “International Law 8th Edition,” *Angewandte Chemie International Edition*, 6(11), 951–952., 2017, 1124.

⁸ Shiri Pasternak et al., “Infrastructure, Jurisdiction, Extractivism: Keywords for Decolonizing Geographies,” *Political Geography* 101, no. December 2022 (2023): 102763, <https://doi.org/10.1016/j.polgeo.2022.102763>.

⁹ Shaw, “International Law 8th Edition.”

¹⁰ Shaw.

¹¹ Luis Jardón, “The Interpretation of Jurisdictional Clauses in Human Rights Treaties,” *Anuario Mexicano de Derecho Internacional* 13, no. 13 (2013): 99–143, [https://doi.org/10.1016/s1870-4654\(13\)71040-7](https://doi.org/10.1016/s1870-4654(13)71040-7).

¹² Cyber Law, “Ancasila And” 3, no. 1 (2022): 15–30.

States also maintain the jurisdiction to enforce their criminal laws on their citizens, even if the actions leading to the criminal offense take place within the borders of another country.¹³ This form of jurisdiction is commonly known as the active nationality principle. Conversely, a state may also claim jurisdiction through the passive nationality principle or passive personality principle. In this scenario, a state can enforce its criminal laws when the victim of an offense is a citizen of that state, even if the incident occurred in the territory of another state and the wrongdoer is a citizen of a different state. This jurisdictional basis can be more controversial, as highlighted by the dissenting perspective of Judge Moore in the Lotus case. Which stated that:¹⁴

We might inquire, what does this system entail? Essentially, it signifies that an individual, by virtue of being a citizen of a particular country, subjects those with whom they interact to the application of the laws of their own country. This assertion diverges not only from the principle of a State's exclusive jurisdiction over its own territory but also conflicts with the well-established principle that a person visiting a foreign country does not extend the jurisdiction of their home country for their protection. Instead, such an individual falls under the authority of the local laws in the foreign jurisdiction.

The principles of active and passive personality, also known as nationality, confer jurisdiction upon states depending on either the nationality of the accused or that of the victim of a crime. Certain rights are considered non-derogable, meaning they cannot be waived or suspended.¹⁵ These rights encompass various fundamental principles, such as the right to legal personality, the right to life and humane treatment, freedom from slavery, protection against ex post facto laws, freedom of conscience and religion, family rights, the right to a name, rights of children, nationality, and the right to participate in government.

Given that each state holds sovereignty and jurisdictional authority and is composed of individual person, it is imperative to establish a legal connection between the state and the individuals residing within its territory.¹⁶ The concept of nationality serves as the crucial link that connects the state and the people it encompasses. Different countries have conflicting definitions of nationality within their domestic legal frameworks. Furthermore, the rights and responsibilities associated with nationality differ from one state to another.¹⁷

In general, international law often respects the domestic jurisdiction of states in determining the criteria for granting nationality. This principle was central to the Nationality Decrees in the Tunis and Morocco case. The dispute in this case centered on the disagreement between Britain and France over French nationality decrees that conferred French nationality to the children of certain British subjects. When the Council of the League of Nations sought an advisory opinion, the International Court of Justice affirmed that¹⁸ “The determination of

¹³ Krzysztof Szczucki, “Ethical Legitimacy of Criminal Law,” *International Journal of Law, Crime and Justice* 53, no. March (2018): 67–76, <https://doi.org/10.1016/j.ijlcrj.2018.03.002>.

¹⁴ Shaw, “International Law 8th Edition.”

¹⁵ Pérez-León Acevedo, “The Close Relationship between Serious Human Rights Violations and Crimes against Humanity: International Criminalization of Serious Abuses.”

¹⁶ Cantú Rivera, “Developments in Extraterritoriality and Soft Law: Towards New Measures to Hold Corporations Accountable for Their Human Rights Performance?”

¹⁷ Jardón, “The Interpretation of Jurisdictional Clauses in Human Rights Treaties.”

¹⁸ Shaw, “International Law 8th Edition.”

whether a specific issue falls exclusively within the jurisdiction of a state is inherently relative and contingent upon the evolution of international relations. According to this court, within the current framework of international law, matters related to nationality are, in principle, considered to be within the reserved domain of individual states”.

Nonetheless, even though states have the authority to establish the conditions for granting nationality, international law remains pertinent, particularly in cases involving other states. This was underscored in Article 1 of the 1930 Hague Convention on the Conflict of Nationality Laws, which states¹⁹ “A legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties”.

The 1930 Hague Convention on the Conflict of Nationality Laws was a legal representation of the connection between an individual and the state conferring nationality, acknowledging that the person had a stronger and more significant affiliation with that state compared to any other.

Nationality functions as the vital link between an individual and their state, defining specific entitlements and obligations. It also serves as the crucial connection between the individual and the privileges conferred by international law. While international law is progressing to recognize individual rights autonomously from state influence, the foundational principle persists: in a world structured around states, the complete range of benefits provided by international law is accessible to individuals only through the involvement of the state, underscoring the significance of nationality.²⁰

2. The Protection of Individual Rights is kind of State’s Obligation

As a legal consequence when a state confers citizenship status on an individual from birth, it becomes the duty of that state to provide maximum protection throughout their entire life. This concept is a part of the terminology right to life, which is a fundamental right in international human rights instruments.²¹ In the context of the rule of law within a state, human rights are elements and principles that must be realized. Therefore, a rule-of-law state is obligated to acknowledge, respect, and protect human rights based on respect for the dignity and worth of every individual.²² Consequently, the recognition, respect, and protection of individuals are fundamental principles of a rule-of-law state.²³

States are responsible for safeguarding their citizens, regardless of their location. This responsibility entails offering consular aid, legal protection, and diplomatic involvement when their citizens face difficulties or crises in foreign lands. The Nationality Principle, in this context, is a legal concept that empowers a state to extend protection and enforce its own

¹⁹ Shaw.

²⁰ Pérez-León Acevedo, “The Close Relationship between Serious Human Rights Violations and Crimes against Humanity: International Criminalization of Serious Abuses.”

²¹ Rowena Rodrigues, “Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities,” *Journal of Responsible Technology* 4, no. October (2020): 100005, <https://doi.org/10.1016/j.jrt.2020.100005>.

²² Salvador Santino F. Regilme, “Contested Spaces of Illiberal and Authoritarian Politics: Human Rights and Democracy in Crisis,” *Political Geography* 89, no. May 2020 (2021): 102427, <https://doi.org/10.1016/j.polgeo.2021.102427>.

²³ Gustavo Gozzi, *Rechtsstaat and Individual Rights in German Constitutional History, Law and Philosophy Library*, vol. 80, 2007, https://doi.org/10.1007/978-1-4020-5745-8_5.

national laws for its citizens who are outside the state's borders. This principle underscores a state's duty to ensure the well-being and legal rights of its nationals beyond its territory, allowing them to receive assistance and legal remedies even when abroad.²⁴

In essence, the Nationality Principle asserts that a state's commitment to its citizens doesn't stop at its borders. It acknowledges that a state should intervene on behalf of its nationals, employing its legal framework to ensure their safety and well-being when they encounter problems in foreign countries.²⁵ This principle serves as a fundamental component of international law, underscoring the enduring link between a state and its citizens, regardless of their geographical location, and emphasizes the state's responsibility to uphold the rights and interests of its people worldwide.²⁶

Nations are typically required to uphold international human rights standards, even when these standards are not explicitly enshrined in their domestic laws. The principle of citizenship holds states accountable for ensuring that their citizens receive protection and fair treatment according to international human rights norms, regardless of their nationality.²⁷ This means that countries are expected to conform to global human rights expectations, irrespective of the specific rights outlined in their own national legal systems.²⁸ The citizenship principle obligates states to provide their citizens with the safeguards and equitable treatment mandated by international human rights standards. It underscores the universal nature of human rights, emphasizing that every individual, regardless of their citizenship status, deserves to be protected and treated fairly in accordance with these global principles.²⁹

The Nationality Principle plays a pivotal role in determining the extent to which an individual possesses fundamental rights as a citizen of a particular country. States bear a responsibility to safeguard the human rights of their citizens, underscoring the pivotal role of the Nationality Principle in this context.³⁰ Fundamental rights, including the right to life, freedom, and justice, must be ensured for all citizens in accordance with the laws and constitution of their respective countries. It ensures that individuals, by virtue of their citizenship, have access to these fundamental rights, which form the cornerstone of a just and equitable society. This principle underscores the importance of states in upholding and defending these rights and ensures that every citizen is entitled to the core principles of life, liberty, and justice as enshrined in their country's legal framework.

Throughout the history of international law, the concept of nationality has consistently served as a pivotal link between the state and the individual. This connection is particularly

²⁴ Gozzi.

²⁵ Shaw, "International Law 8th Edition."

²⁶ Nathaniel O'Grady and Duncan Shaw, "Resilience, Responsibility and State Abandon: The Changing Role of the Government in Emergencies," *Political Geography* 100, no. November 2022 (2023): 102796, <https://doi.org/10.1016/j.polgeo.2022.102796>.

²⁷ Gozzi, *Rechtsstaat and Individual Rights in German Constitutional History*.

²⁸ Jardón, "The Interpretation of Jurisdictional Clauses in Human Rights Treaties."

²⁹ F. Richard Georgi, "Peace through the Lens of Human Rights: Mapping Spaces of Peace in the Advocacy of Colombian Human Rights Defenders," *Political Geography* 99, no. November (2022): 102780, <https://doi.org/10.1016/j.polgeo.2022.102780>.

³⁰ Evelyn Téllez Carvajal, "The Political Rights of Mexican Migrants: Nationality and Citizenship in Mexico," *Mexican Law Review* 6, no. 1 (2013): 177–98, [https://doi.org/10.1016/s1870-0578\(16\)30023-3](https://doi.org/10.1016/s1870-0578(16)30023-3).

crucial in matters of jurisdiction and the international protection of individuals by their respective states. It is widely accepted that an individual's claim against a foreign state is generally assimilated within the broader context of their own national state's claim. Each state has the authority to define its nationals, a determination that should be respected by other states as long as it aligns with international law. However, for other states to acknowledge this nationality, there must be a genuine and substantive connection between the state and the individual in question.

Additionally, the issue of state succession is intricately tied to the concept of nationality, linking not only these two distinct domains but also intertwining with questions of human rights. The criteria by which a state bestows nationality are solely under its purview and control. This underscores the inherent sovereignty of states in determining the citizenship status of individuals, emphasizing the significance of a legitimate connection between the state and the person, and reaffirming the complex interplay of these principles within international law.³¹

The protection of individual rights by a state is an obligation incumbent upon that state, one that must be diligently pursued to its fullest extent. Most human rights are framed as belonging to each person individually. The safeguarding of human rights, which is the responsibility of a state, constitutes a fundamental norm for rule-of-law states worldwide. This is rooted in the concept of respecting human dignity. Fundamental norms in international law are also referred to as peremptory norms or *jus cogens*.³² the duty of a state to protect the rights of its citizens is a foundational principle of the international legal order. It signifies that states are obliged to uphold and defend the inherent rights of every individual within their jurisdiction. The term "*peremptory norm*" or "*jus cogens*" underscores the non-derogable and fundamental nature of these norms, highlighting that they are of such critical importance that they cannot be violated or set aside by any state or international agreement. The central concept for understanding *jus cogens* is derogability, meaning that *jus cogens* is characterized by a specific quality of the norm in question – the legal characteristic that it does not permit derogation or exemption.³³

There are instances where the apprehension of a suspected murderer may be possible, but the legal jurisdiction to prosecute them is lacking. To illustrate, if a French citizen commits a murder in Germany, they cannot be brought to trial for that crime in Britain, even if they are physically present within the British territory. However, both France and Germany have the option to request the extradition of the individual and seek their return to their respective countries from Britain for prosecution.³⁴ This scenario highlights that while the concept of jurisdiction is closely tied to geographical boundaries, it is not exclusively confined to them. Numerous states possess the authority to pursue legal action for offenses committed beyond their territorial borders. Furthermore, specific individuals, properties, and

³¹ Gonzalo Sánchez de Tagle, "The Objective International Responsibility of States in the Inter-American Human Rights System," *Mexican Law Review* 7, no. 2 (2015): 115–33, [https://doi.org/10.1016/s1870-0578\(16\)30005-1](https://doi.org/10.1016/s1870-0578(16)30005-1).

³² Robert Kolb, *Peremptory International Law (Jus Cogens)*, 2015.

³³ Kolb.

³⁴ Shaw, "International Law 8th Edition."

situations are exempt from territorial jurisdiction, even if they are located or events take place within a particular jurisdiction. For example, diplomats benefit from extensive immunity from the laws of the host country where they are assigned, and some actions by sovereign states cannot be challenged or nullified by foreign courts.³⁵

Jurisdiction is not solely dependent on geographical location. It involves a complex interplay of legal principles, including territorial jurisdiction, which relates to where the crime occurred, and extraterritorial jurisdiction, where a state may assert its authority over offenses committed beyond its borders. Furthermore, various legal doctrines and conventions, such as diplomatic immunity, limit the reach of a state's jurisdiction in certain circumstances.³⁶ The example of a French murderer in Germany who cannot be tried in Britain unless extradited illustrates how jurisdiction is not solely determined by geography but is influenced by international agreements, diplomatic considerations, and the sovereignty of states in the complex web of global legal relations.³⁷

The matter of jurisdiction is inherently intricate, primarily due to the significance of constitutional issues and conflict of laws rules. International law aims to establish regulations concerning the boundaries of a state's exercise of governmental functions. Meanwhile, conflict of laws, also known as private international law, seeks to govern situations involving a foreign element by determining whether a specific country has jurisdiction to address the matter. Additionally, if jurisdiction is established, conflict of laws addresses the question of which country's rules will be applied in resolving the dispute.³⁸ The permission for the exercise of jurisdiction in a particular case under international law marks only the initial phase. The concerned state must also have implemented the necessary domestic measures to effectively exercise such jurisdiction in the relevant circumstances. The bases for jurisdiction differ between international law and conflict of laws rules. In the latter, specific subjects might be regulated based on factors like domicile, but these criteria may not establish jurisdiction in matters governed by international law. While it is not inherently impossible to distinguish between the categories of international law and conflict of laws, the frequent variance in definitions of jurisdiction involved can be a source of confusion.³⁹

In its essence, a state possesses the authority to legally process its citizens for crimes committed abroad, subject to its domestic laws. This encompasses the entire legal procedure, from investigating criminal activities like theft, fraud, or other transgressions to initiating prosecution. It's important to underscore that not all categories of criminal offenses can rely on the shield of human rights protection under the jurisdiction of the nationality principle.⁴⁰

³⁵ Ilona Kickbusch and Austin Liu, "Global Health Diplomacy—Reconstructing Power and Governance," *The Lancet* 399, no. 10341 (2022): 2156–66, [https://doi.org/10.1016/S0140-6736\(22\)00583-9](https://doi.org/10.1016/S0140-6736(22)00583-9).

³⁶ Shaw, "International Law 8th Edition."

³⁷ Shaw.

³⁸ Nobuo Hayashi, *Introduction To International Criminal Law*, *TerAs Law Review: Jurnal Hukum Humaniter Dan HAM*, vol. 4, 2019, <https://doi.org/10.25105/teras-irev.v4i7.5430>.

³⁹ Christian Reus-Smit, *Politik Hukum Internasional*, ed. Derta Sri Widowatie; Irfan M Zaki, Terjemahan (Bandung: Nusamedia, 2015).

⁴⁰ Kei Hannah Brodersen, Nadja Capus, and Damian Rosset, "The Politics of Informality in Criminal Procedures," *International Journal of Law, Crime and Justice* 74, no. June (2023): 100612, <https://doi.org/10.1016/j.ijlcj.2023.100612>.

For instance, in cases of international crimes delineated by the Rome Statute, encompassing four primary categories – Crimes against Humanity, Genocide, War Crimes, and the Crime of Aggression – it is explicitly stipulated that the extraterritorial principle should not be applied. Similarly, for internationally recognized crimes such as terrorism, piracy, and slavery, the principle of territoriality takes precedence. In instances involving these crimes, a state is bound by the obligation to either prosecute or extradite its citizens to an international jurisdiction. While a state holds the prerogative to assert jurisdiction over its nationals, this must be undertaken in accordance with established principles of international law. These principles encompass the values of fairness, respect for the sovereignty of other nations, and adherence to universally acknowledged international norms.⁴¹

According to Shaw, it is acceptable to prosecute one's nationals for crimes committed abroad using their own country's laws, provided that the national is within their home country or through cooperation with the country where the crime was committed or where they fled to.⁴² For instance, if someone commits a murder in the UK and then escapes to the Netherlands, the UK government should not attempt to apprehend the perpetrator by entering the Netherlands and conducting investigations. Instead, they can pursue this through cooperation with the Dutch government to apprehend the suspect. Based on this perspective, the application of this principle to transnational crimes requires a high level of commitment and mutual trust among countries, underpinned by good intentions as the most crucial aspect in the implementation of bilateral agreements. In many cases, the home country faces challenges in securing full protection for its nationals abroad. Take, for example, the situation where some Indonesian migrant workers (TKW) are implicated in murder cases in the countries they work in, such as Saudi Arabia, Malaysia, and other Middle Eastern countries, where they were subsequently executed, even though in some cases, the murders occurred as an act of self-defense against the crimes committed by their employers.⁴³

Principally, Shaw's perspective highlights the importance of international cooperation and trust among nations in handling cases that span borders. This is particularly relevant in situations where a nation may encounter difficulties in ensuring the protection and rights of its citizens abroad. In the context of migrant workers, it underscores the challenges and complexities involved when crimes occur in foreign countries and the need for fair and just treatment of individuals under such circumstances, emphasizing the importance of international cooperation and adherence to human rights principles.⁴⁴

3. The Strengthening Relation Between State to Protect Human Rights in its territory

In the context of nationality, international cooperation between countries is of utmost importance to ensure that legal actions taken regarding their nationals adhere to international standards and to prevent the misuse of the principle of nationality for unfair or internationally unlawful purposes. This collaborative relationship is of paramount importance due to the

⁴¹ Hayashi, *Introduction To International Criminal Law*.

⁴² Shaw, "International Law 8th Edition."

⁴³ Nurvianti and Fathurrahman, "Perlindungan Melalui Notifikasi Konsuler Bagi Pekerja Migran Indonesia Di Arab Saudi (Kasus Eksekusi Mati Tanpa Pemberitahuan)."

⁴⁴ Shaw, "International Law 8th Edition."

foundational principle of non-interference in international relations, particularly with regard to domestic affairs. This principle underpins the sovereignty of nations and their right to govern their internal matters without external interference.⁴⁵ It serves as a safeguard against undue meddling by other countries in a state's internal affairs. In the context of nationality, this principle helps ensure that the legal actions taken concerning a nation's citizens align with international norms and respect the sovereignty of each state.

The significance of the non-interference principle in the application of the nationality principle is evident when addressing less severe or non-serious crimes. While states have the autonomy to define their rules for nationality acquisition, the exercise of diplomatic protection based on nationality falls within the purview of international law. This means that states must cooperate and respect each other's sovereignty when seeking to protect their citizens abroad.⁴⁶ Furthermore, the principle highlights that no state can employ its domestic laws as a justification for breaching an international legal obligation. In summary, international collaboration is essential in maintaining a delicate balance between the principle of nationality and the broader principle of non-interference, preserving the autonomy of states while upholding international legal standards and obligations.

In cases where an individual is unable to bring a claim directly, the individual's State of nationality may have the option to bring a claim on their behalf through the mechanism of diplomatic protection. If a State has treated a foreign citizen in a manner that violates international law, the individual's State of nationality may have the right to initiate legal action on behalf of that individual, utilizing the doctrine of diplomatic protection.⁴⁷ A State retains the right to invoke diplomatic protection for its nationals, whether individuals or corporations, once local remedies have been exhausted. This principle is underscored by legal precedents such as the *Nottebohm Case (Liechtenstein v. Guatemala)* in 1955, and the *Case concerning Barcelona Traction Light and Power Co Ltd (Belgium v. Spain)* in 1970.⁴⁸

The principle of diplomatic protection initially evolved concerning the treatment of foreign nationals by a state. Nevertheless, the International Court has noted that, 'Due to the substantive development of international law over recent decades in respect of the rights it accords to individuals, the scope *ratione materiae* of diplomatic protection is originally limited.'⁴⁹

One form of cooperation that can be implemented to support the enforcement of the nationality principle is bilateral cooperation formulated within extradition agreements between countries. Extradition is the practice through which one state allows the transfer of

⁴⁵ Stephen, "The Role of Perceived Organizational Supports and Management Nationality amid Physical Workplace's Planned Quality Change."

⁴⁶ Assaf Razin, "Understanding National-Government Policies Regarding Globalization : A Trade-Finance Analysis," *Journal of Government and Economics* 8, no. December 2022 (2023): 100060, <https://doi.org/10.1016/j.jge.2023.100060>.

⁴⁷ Oshoma Aduku, "State Diplomatic Protection for Citizens With Dual Nationality (Case Study of Nnamdi Kanu, Nigerian and British National)," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3880777>.

⁴⁸ Shaw, "International Law 8th Edition."

⁴⁹ S Surwandono and Ariyanto Nugroho, "Mengevaluasi Kebijakan Diplomasi Perlindungan WNI Melalui Paradigma 'Duty of Care' [Evaluating Indonesia's Diplomacy Policy for The Protection of Indonesian Citizens Abroad Through The 'Duty of Care' Paradigm]," *Jurnal Politika Dinamika Masalah Politik Dalam Negeri Dan Hubungan Internasional* 13, no. 2 (2023): 260–75, <https://doi.org/10.22212/jp.v13i2.3499>.

suspected or convicted criminals who have sought refuge in its territory to another state, typically for the purpose of facing legal proceedings or serving a sentence in the latter state.⁵⁰ Commonly, general principles governing extradition are often derived from existing treaties on the subject. For instance, the principle of double criminality is commonly included, meaning that the crime in question should be considered a criminal offense in both states involved. Another principle is that of specialty, which stipulates that a person surrendered through extradition may be tried and punished solely for the offense for which the extradition was originally sought and granted.⁵¹ As mentioned earlier, many treaties that outline various grounds for the exercise of jurisdiction often stipulate that states, in whose territory the alleged offender is present, must either prosecute or extradite that individual. Furthermore, numerous treaties include provisions for the automatic incorporation of the offense in question into existing bilateral extradition treaties between states that are parties to such agreements.⁵² Many states typically refrain from extraditing their nationals to another state, especially when the extraditing state possesses extensive powers to prosecute its nationals for offenses committed abroad. Additionally, it's important to acknowledge the relevance of human rights law in this context. Extradition to a state where there is a risk of torture or inhumane treatment of the individual should be carefully considered, and human rights considerations often play a significant role in extradition decisions.⁵³

The concept of diplomatic protection originally arose in the context of a state's treatment of foreign nationals. Nevertheless, the International Court has observed that, owing to the significant development of international law over recent decades in terms of the rights afforded to individuals, the substantive scope of diplomatic protection, initially constrained, has broadened. This expansion is reflective of the evolving recognition of individual rights on the international stage.⁵⁴

In this context, one practical means of supporting the enforcement of the nationality principle is the establishment of bilateral cooperation through extradition agreements between countries. Extradition is a process that allows one state to transfer suspected or convicted criminals who have sought refuge in their territory to another state for legal proceedings. This practice is rooted in bilateral treaty law and is not considered a customary obligation for states.

Extradition agreements frequently include essential principles like double criminality, requiring that the alleged offense be considered a crime in both states involved, and the principle of specialty, which restricts the prosecution and punishment of the extradited person to the specific offense for which extradition was sought and granted. While political crimes

⁵⁰ Aduku, "State Diplomatic Protection for Citizens With Dual Nationality (Case Study of Nnamdi Kanu, Nigerian and British National)."

⁵¹ Pérez-León Acevedo, "The Close Relationship between Serious Human Rights Violations and Crimes against Humanity: International Criminalization of Serious Abuses."

⁵² Kickbusch and Liu, "Global Health Diplomacy—Reconstructing Power and Governance."

⁵³ Cantú Rivera, "Developments in Extraterritoriality and Soft Law: Towards New Measures to Hold Corporations Accountable for Their Human Rights Performance?"

⁵⁴ Surwandono and Nugroho, "Mengevaluasi Kebijakan Diplomas Perlindungan WNI Melalui Paradigma 'Duty of Care' [Evaluating Indonesia's Diplomacy Policy for The Protection of Indonesian Citizens Abroad Through The 'Duty of Care' Paradigm]."

are commonly excluded from extradition, this exclusion usually does not extend to terrorist activities. Many treaties that delineate multiple jurisdictional bases often stipulate that states, in whose territory the alleged offender is present, must either prosecute or extradite that individual.

Additionally, some treaties automatically include the specified offense within existing bilateral extradition agreements between the parties. Many states do not permit the extradition of their nationals to other states, except in cases where the state possesses broad authority to prosecute its nationals for offenses committed abroad. Moreover, it's essential to acknowledge the relevance of human rights law in the extradition process, particularly when considering extradition to a state known for its potential use of torture or inhumane treatment.

D. CONCLUSION

The enforcement of the principle of nationality in international law is closely linked to a state's commitment to respect the rights of individuals, including providing protection to its citizens. Thus, states must exert all efforts in fulfilling this obligation. One way to do this is by enhancing cooperation in providing such protection, and one of the means is through the implementation of extradition agreements between nations. Upholding the principle of nationality in international legal frameworks involves a nation's dedication to safeguarding the rights of its citizens, necessitating comprehensive efforts from the state. Strengthening collaborative efforts to ensure this protection is vital, and the utilization of extradition agreements between countries stands as a significant measure in achieving this objective.

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