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## Diplomatic Protection for Foreign Investment in Public International Law

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### Abstract

*As the establishment of a relationship requires a link between the applicant and the state, the state and those seeking protection should be connected. The concept of legal and political dependence, which allows the state to protect its diplomatic interests, is fundamental to the nature of this relationship. Consequently, the need of nationality served as a fundamental precondition for the implementation of an essential tenet of international law. Furthermore, it is imperative to recognize that the state is powerless to request diplomatic protection on behalf of a citizen who has been harmed, given that the citizen utilized in all domestic remedies as required by the laws of the state that is responsible for the harmful action. Claiming diplomatic protection for an individual becomes illogical if that person has not tried to resolve their issues via the judicial system and established procedures for handling complaints as outlined in the relevant state's domestic legislation. , If the foreign person has exhausted all domestic channels of appeal in an arbitrary or ineffective manner without success, the state is not legally obligated to intervene diplomatically on their behalf. However, if an individual is a citizen of a country that grants diplomatic protection and meets the previously mentioned requirements (such as the requirement to exhaust all domestic channels for resolving grievances), then that country may grant diplomatic protection.him in this case ,so the study highlights all aspects of these procedures among states in accordance with international law*

*Purpose: This review article aims to examine the concept of diplomatic protection for foreign investment in public international law. It explores the purpose, methodology, findings, research, practical and social implications, as well as the originality and value of this topic.*

*Design/ methodology/ approach: Diplomatic protection for foreign investment is examined in this review article using literature, case studies, and legal frameworks. It uses international treaties, judicial rulings, and scientific publications to explain the topic.*

*Findings: Diplomatic protection helps nations protect their people investing abroad, according to the review report. It covers diplomatic protection law, including exhaustion of local remedies, nationality requirements, and diplomatic channels. The article discusses nations and investors' diplomatic protection issues and restrictions.*

*Research, Practical & Social Implications: The review article contributes to the existing body of knowledge by consolidating and analyzing various perspectives on diplomatic protection for foreign investment. It identifies gaps in the literature and suggests areas for further research, such as the impact of diplomatic protection on investment arbitration and the evolving role of non-state actors in this context. The review article discusses the practical implications of diplomatic protection for foreign investment, including the potential for resolving disputes, protecting investor rights, and promoting economic stability.*

*Originality/ Value: This examination of diplomatic protection for foreign investment under public international law is extensive. It synthesizes literature and legal frameworks to help researchers, practitioners, and policymakers comprehend diplomatic protection in foreign investment. The article's appraisal of current breakthroughs, identification of research gaps, and examination of practical and societal ramifications contribute to the continuing discussion on this important issue.*

**Keywords:** Diplomatic Protection; Nationality; Exhaustion; Jurisprudential; Legislation; Conditions

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## **Introduction**

The phenomenon of internationalization and the emergence of the global system into an almost unified community, characterized by the ease of human and capital mobility, the establishment of cooperative relationships among individuals, and the rapid growth of multinational corporations, has significantly transformed the position of the individual and brought them into the foreground of public international law. It is crucial not to disregard this development. The advancement and prosperity of the global economy are predicated upon private endeavors that have evolved into the foundations of business, agriculture, and trade. These initiatives functioned as both the primary driver of economic growth and a fundamental element of cooperation across different levels of government. Legal protection plays an essential role in ensuring the performance of these initiatives' economic, social, and political functions in achieving human well-being.

The effectiveness of ideas, monitoring, and planning is enhanced when they contribute to improving the state of human well-being and security. The advancement in international transportation and communication, along with the need for skilled foreign labour in different countries to facilitate economic growth and growth in industry, has resulted in the migration of millions of people from many nations. These individuals receive compensation for their labour and have a comprehensive array of entitlements. The aforementioned advancements will contribute to the spread of the foreign labour system's ideology by those fighting for the protection of these workers' rights. Labor-exporting countries experience significant financial losses as a result of the outflow of funds via employee remittances and sponsorship abroad. Additionally, these nations face the challenge of losing educated and experienced workers from their home market. (Thomas, J. C. 2002).

Current foreign investments constitute a robust foundation for attaining economic and social goals, as they impart genuine significance to the process of development and provide beneficial conditions for realizing the growth of the economy. As a result, this allows the integration of contemporary technology inside the nation. In besides fostering the emergence of fresh employment prospects and bolstering competitiveness, an extensive variety of technological, administrative, social, and marketing domains play an essential part in effectively interacting with the swiftly shifting global milieu. The United States has enhanced its global standing via the establishment of a network that integrates the economic systems of several nations and cultures, resulting in a competitive global marketplace.

However, the investor's engagement in foreign activities exposes his financial holdings to many dangers. These dangers may be classified into two categories: business-related and non-business-related. Foreign individuals are susceptible to non-commercial risks that are imposed by the public authorities of the host country, either directly or indirectly, leading to the violation of investors' fundamental investment rights. Commercial hazards include the inherent characteristics of a corporation, including financial risks that emerge from variations in market competitiveness and the interplay between supply and demand dynamics. The foreign investor is frequently regarded as a person who lacks citizenship, is not subject to international law, and does not possess international legal standing. The most effective options for safeguarding his interests include the possibility of his nation commencing legal proceedings on his behalf, asserting a breach of its international obligations within the framework of diplomatic ties. One of the key obligations of the state is to address the concerns of investors, necessitating the necessity for the state's behavior to go through changes. Protection may be expressed via

several means, such as the use of official complaints and diplomatic resolutions, which provide individuals an opportunity for seeking redress. (Rodrigo Polanco 2019)

## **Literature Review**

(Habyyev,2023)Explores that in an effort to stimulate the local economy of a given jurisdiction, both established and developing nations actively pursue foreign direct investment (FDI) as a means of introducing fresh prospects in the realms of education, technology, and culture. Investors use this strategy by forming local entities, sometimes necessitating the purchase of assets, and conducting commercial operations inside the host jurisdiction. Consequently, due to the investments made by an investor in the host state, a commercial connection is established between the two parties, which might sometimes be susceptible to disagreements. ,(Ogalagu & Ezekwem, 2023) discussed that in the record of history and in accordance with established customary international law, the safeguarding of investors in governments hosting foreign investments has traditionally fallen under the purview of the investor's home state. In cases when the host state has infringed upon the rights of an investor, it is customary for the investor's home state to advocate for its national and resolve the disagreement with the host state via diplomatic means. The user's text does not provide any information to rewrite in an academic manner. The term used to refer to this kind of safeguard is known as Diplomatic protection. (Elhaw,2023) discusses the analysis of historical issues and analytical opinions regarding the application of international protection conditions to foreign investors outside their homeland

## **Theoretical Framework**

The theoretical construct of diplomatic protection pertains to the fundamental principles of international justice throughout the framework of public

### **First: The concept of Diplomatic Protection in International Law**

#### **The concept of diplomatic in the International Law Commission 2006**

The legal concept of diplomatic protection should have a comprehensive set of legal principles and proven case law, making it an appropriate candidate for formal codification by the Commission that is directly linked to state responsibility. The Commission in question has had an analogous path of international codification with regard to the issue of international responsibility. The topic at hand is intimately linked to the notion of global accountability. In the aforementioned research (1), it is noted that in the year 1956, Garcia Amadou of Cuba was appointed as the Special Rapporteur for the International Law Commission. Through his term, he focused on the analysis of crucial legislations regarding the accountability of states for the infliction of injury on individuals and their assets from other countries. Significantly, the scope of his work centered on the highly contentious matter of diplomatic protection, which had not yet garnered unanimous agreement among relevant parties. Roberto Ago, subsequent Special Rapporteur from Italy, made the deliberate decision to direct his study towards the secondary rules of state responsibility, as opposed to examining the basic rules that pertain to behavior or the lack thereof in terms of responsibility. The use of this methodology allowed him to examine the structure of state responsibility, with particular emphasis on subjects such as the assignment of behavior to the state, the invocation of state responsibility, and the consequences of illegal actions.

The Prior Covenant and its adherents saw restricted progress, often characterized by uncertainty, until 1996. It was at this time that a set of created articles finished and underwent their first reading, marking a significant turning point. In the year 2001, the Commission, headed by Special Rapporteur James Crawford from Australia, proceeded to formally approve drafted issues at the second reading. Through the current context of the articles being examined, it is possible to initiate claims that comply with the laws that govern nationality (Woods, 1999).

A comprehensive review of domestic measures should be conducted while taking into account the provisions of these laws, which protect the assignment of responsibility to the state and the provision of redress to foreign individuals for globally wrongful actions. The Commission's attempts at addressing the issue of diplomatic protection had proven to be ineffective, prompting them to undertake preparations for a review of the formulated measures concerning state responsibility. In the year 1996, the General Assembly sent an invitation to the International Law Commission to carry out a thorough investigation of the subject matter of diplomatic protection, in the year 1997, the prestigious role of Special Advocate was conferred to Mohamed Bennouna, a native of Morocco. After the departure of Bennouna, the role of Special Rapporteur was assumed by John Dugard, a highly regarded individual hailing from South Africa. The committee received a cumulative of seven reports from the previously indicated sources (DiMascio and Pauwelyn, 2008).

In the year 2006, a set related to diplomatic protection was implemented. In the Barcelona Traction case, the International Court of Justice established the principle that states are obligated to provide diplomatic protection for their nationals who suffered violations of peremptory norms of international law. The idea was eventually rejected by the Commission on the initial reading. The suggestion presented by the Special Rapporteur, with the objective of recognizing the responsibilities of nations, did not get acceptance.

Subsequently, the representative from Italy presented a proposal pertaining to the establishment of a provision for consular assistance. The authors noticed that the first iteration of Article 1 had customary terminology that provided a comprehensive account of diplomatic protection, including in instances when a country has conferred citizenship upon one of its own inhabitants. Due to the Italian government's perspective, the concept of diplomatic protection implies that a state that exercises such protection has a right to it, but a state that participates in internationally unfair action also owns a right to diplomatic protection.

According to the claim made by the Italian ambassador, there have been situations of non-compliance with international norms. Diplomatic protection and diplomatic action, when combined with other peaceful methods of conflict resolution, are important in situations when a nation claims to have suffered violations of its own rights and the rights of its citizens as a result of illegal behavior. The creation of these measures is not considered to be within the jurisdiction of the Commission (Dolzer et al., 2022).

The Italian government recently presented a proposition to the Commission, requiring a reevaluation of the issue and the establishment of a legislative necessity for nations to partake in diplomatic protection in cases when a person experiences a significant violation of human rights, based on domestic advancements. Furthermore, the idea recommends the imposition of a requirement on governments to include such a provision in their domestic law in order to ensure the enforcement of this right. The Italian Government provided clarification that the aforementioned proposal was presented in conformity with the appropriate law, which wasn't meant to formalise it. As a result, the Commission is required to engage in further debates about the issue. The Austrian provide seems to have had a narrower focus, since it appears that

the Commission's attention was only focused towards a single aspect of diplomatic protection, specifically the right of a state to begin certain claims (Woods,1999).

The legal framework related to diplomatic protection covers the requirements that determine a state's duty to recognize and allow interventions by another state. A potential enhancement to Article 21 of the Draft might include the addition of a supplemental element, referred to as the second inclusion. This provision would emphasize that a State has a duty to recognize an invocation of diplomatic protection in accordance with the established processes mentioned in the articles. It is important to recognize that diplomatic protection concerns the provision of recompense for damage committed against individuals.

The aforementioned assertion indicates that the state is continuously susceptible to direct adverse effects, while the extent of its assertion may be altered by situations outside its immediate causality. The act of causing damage to an individual mostly functions as a tactic used by nation-states. The current condition of individuals within the context of international law, particularly with foreigners and human rights norms, requires an established process in the development of supplemental laws for protection. These laws are closely connected to basic principles. Contrary with traditional practices, this did not suggest that the utilization of governmental authority should only prioritize the safeguarding of individual rights. The preliminary analysis confirmed the legal duty of a nation to provide diplomatic security, a matter that hadn't been anticipated to be discussed at this specific moment. Similarly, it is important to analyze the violation of the rights of the Sami people in relation to their national status, since the latter is not necessarily bound by any legal obligations (Gal-Or, 2005).

### **Second: The concept of diplomatic protection in the international courts**

The Permanent Court of International Justice established in the case of *Mavromatis*, "Mavromatis," that it is a fundamental tenet of international law that any state is entitled to protect its citizens and seek redress for any harm they may have suffered as a result of actions committed by other states in violation of international law. If a state is unable to negotiate a satisfying agreement via international legal means, it has the ability to guarantee that its population conform to the norms of international law. If a state initiates a lawsuit before an international court on behalf of one of its citizens, the court will only direct the claim for compensation to the state that launched the case. The result made by the Permanent Court of International Justice in the *Mavromatis* case concerning diplomatic protection as a state right was supported by the International Court of Justice in the *Notonbum* case on June 4, 1955. According to the court, diplomatic protection is a legal mechanism for safeguarding a state's rights and relates to the idea of the state's exclusive right. This view demonstrates that the right of the state offering redress to use diplomatic protection is a separate right. As a result, when a state intervenes to protect a person of its nationality, the prior connection between that state and the responsible state ends, and a new relationship is formed between the wounded state and the state that did the unlawful act. The battle moves from an internal to an international scale, enabling the damaged state to exercise complete authority (DiMascio and Pauwelyn, 2008).

### **Third: The Conditions of Exercising Diplomatic Protections for foreign investors**

#### **Nationality**

#### **The concept of nationality in International Court of Justice**

A sovereign entity has the authority to set the regulations and requirements governing the process by which non-citizens may obtain its citizenship. International law does not hinder the

process by which aliens obtain the nationality of a state. However, in situations where the state of nationality of an injured person activities diplomatic protection, international law requires that the connection or affiliation with the state authorized to exercise diplomatic protection must be robust, effective, and substantial. The International Court of Justice, in its significant ruling on April 6, 1955, confirmed this fact in relation to the dispute between the States of Liechtenstein and Guatemala, often known as the Notbhom case. (Tarcisio Gazzini ,2021)

In 1951, Liechtenstein initiated legal proceedings against Guatemala at the International Court of Justice. The justification for this course of action originated from the alleged violation of international law by Guatemala in its treatment of Frederic Notbehma, a citizen of Liechtenstein. Guatemala filed an appeal against the case's enrollment, which included a challenge to the nationality of Mr. Notbehma. The individual shown in the aforementioned publication was born in Hamburg in the year 1881, so suggesting his status as a citizen of Germany.

In 1905, he moved to Guatemala, where he laid the foundation for his primary commercial endeavors. Subsequently, he actively participated in the operations of Notbhu Hermanos, an enterprise established by a group of his siblings during the period spanning from 1912 to 1935, eventually assuming authority of the organization. The individual in issue maintained enduring professional connections with Germany throughout his lifetime. In 1939, the individual departed from Guatemala and embarked on a journey to Hamburg, ultimately establishing residence in Liechtenstein. After the commencement of World War II, the legal representative of the applicant submitted an application for naturalization in Liechtenstein, emphasizing the need for prompt initiation of the citizenship proceedings. In 1939, the individual had a formal swearing-in ceremony and was subsequently granted a certificate of citizenship, signifying their attainment of permanent resident status in Guatemala. Nautihma was apprehended and incarcerated on charges of affiliating with a hostile nation, as per the request made by the United States of America in Guatemala. Consequently, Guatemala expelled him from its jurisdiction and confiscated his assets inside its borders (Van Aaken, 2009).

On December 17, 1951, the government of Liechtenstein submitted a unilateral application to the International Court of Justice, attempting to use the right of diplomatic protection on behalf of an individual named "Nutbhu," allegedly asserting their nationality. Nevertheless, the Court reached the conclusion that the available evidence was inadequate in establishing an appropriate and substantial connection between Nutbhu and the State of Liechtenstein. As a result, the Court issued a decision that diplomatic protection against Guatemala could not be extended in this particular case due to the lack of a strong and authentic connection between Nutbhu and its purported State. Thus, the International Court of Justice has provided clarification that the need of nationality is essential for diplomatic protection by States, while it is not the only determining factor. Establishing an actual connection between the State and the person is of utmost importance. The Court has established some criteria for determining effective nationality, emphasizing that an individual's regular location and family connections are indicative of their primary interests (Weiler, 2003).

The previous argument emphasizes the importance of the aforementioned justification in protecting moral entities that are deemed "firm," even in the absence of an explicit law addressing the protection of individual human beings. Thus, if a legal entity does not meet the necessary requirements for inclusion inside the framework of a sovereign nation-state, it might be reasons for rejecting the request for diplomatic protection. However, it is apparent that the characteristics of formal association differ in comparison to those of an individual's personal circumstances. Individual membership is determined by familial connections, active participation in

public affairs, and a proven commitment to national loyalty. On the other hand, the domicile and primary location of operations are the primary elements of association that are underscored and formed throughout the framework of legal organizations (Thomas, 2002).

### **Nationality in the 2006 International Law Commission**

Scholars have developed a consensus that the concept of nationality holds significance in the internal jurisdiction of a state, as it relates to the legal system that determines the affiliation of individuals and contributes to the formation of the state entity. Consequently, it is generally recognized that each state should possess the freedom to construct its own populace and confer national status upon individuals at its discretion. The point of view in question has been addressed by the International Court of Justice via its advisory opinions and judgements. Nevertheless, the unrestricted authority granted to governments in controlling nationality has proven to be detrimental to progress within the global community. Similar to the impacts seen inside domestic cultures, this approach has influenced the nationalities of persons, businesses, and other entities engaged in international interactions (Vandevelde, 2010).

The 2006 International Law Commission's draught rules on diplomatic protection set significant emphasis on the nationality requirement within the framework of diplomatic protection. Article III of the draught specifically states that "the State utilizing diplomatic protection is the State of nationality." In addition, in its definition of the term "State of nationality," Article IV of the draught considers that "for the purposes of diplomatic protection of individuals, the State of nationality relates to a State whose nationality the individual looking for protection acquired through birth, heritage, naturalization, state succession, or any other means that align with international law." The International Court of Justice, in the *Nottebohm* case, affirmed the existence of a condition for States seeking to exercise diplomatic protection over an individual. This condition necessitates the establishment of a "effective relationship" between the State and the person in question. It is important to note that the factors outlined that qualify for the granting of nationality are not exhaustive, but rather provide examples.

These factors commonly employed by most States include the right of blood, the right of territory, naturalization, as well as the succession and succession of States. However, the mentioned factors do not encompass the marriage of an alien. The justification provided by the Commission is based on the assertion that marriage alone is usually insufficient to confer nationality. Instead, the acquisition of citizenship through naturalization necessitates the fulfillment of a residency period. In cases where marriage to a national automatically leads to the acquisition of the other spouse's nationality, problems may arise with regard to the compatibility of this nationality acquisition with international law (Brower et al., 2002).

The result of this article emphasizes the importance of ensuring that the process of acquiring nationality is in compliance with the norms and standards set out by international law. While it is indeed accurate that a state retains the jurisdiction to establish the persons it acknowledges as its citizens, this ability is not unlimited. As per the provisions outlined in Article 1 of the 1930 Hague Convention on Questions Relating to Conflict of Laws in the Field of Nationality, it is obligatory upon each sovereign state to create its own set of criteria for the purpose of ascertaining an individual's nationality. The numerical value supplied by the user is 18. Nevertheless, the use of this liberty is subject to the recognition by other states that it aligns with international accords, customary international law, and widely accepted legal concepts pertaining to nationality. The violation of international law in any acquisition of nationality will have a direct influence on its suitability for diplomatic protection. As a result, the state in question

retains the prerogative to challenge the citizenship status of those persons in a way that contravenes established norms of international law.

On the other hand, the burden of proof for the acquisition of nationality in contravention of international law is with the State that challenges the nationality status of the person in question. The responsibility of providing evidence is ascribed to the recognition that the State, which grants nationality, should have some discretion in deciding who receives it. Additionally, there is a presumption that supports the validity of the State's decision to award nationality. In the event that a woman unintentionally gets her husband's nationality upon marriage, it is expected that her original state of nationality will provide diplomatic protection to her. Nevertheless, it is essential to recognize that in such circumstances, the acquisition of a new citizenship has led to the loss of the individual's prior nationality (Thomas, 2002).

### **Prior exhaustion condition of the internal asylum means**

#### **The concept in accordance with the International Court of Justice**

The concept of exhaustion according to the Court of Justice of a State damaged foreign investment, before seeking diplomatic protection, is required first to address the legal avenues available, through resorting to the jurisdiction of the state that has been affected by its own investment, a pillar affirmed by the International Court of Justice that judicial means must be exhausted in the state of investment before the investor resorts to its own state for diplomatic protection, a mere judgement that is a well-established element of international law.

The most significant obstacle to the exercise of diplomatic protection may be the diversity of a (Calvo) clause according to which a damaged person has a right to his or her diplomatic protection before the responsible State, particularly in compromise agreements; nevertheless, most of the regulations of international jurisdiction tend to deny all the effect of this condition as a State, when considering an individual asserts on the basis of diplomatic protection, exercises an international right for the individual and is not exercising a right on his or her behalf, and consequently does not have the right to be dismissed by the individual; the fact that the system of diplomatic protection is based on the crucial principle of the freedom of the State to exercise diplomatic protection is also considered an impediment to the exercise of diplomatic protection; the State has the control to initiate proceedings in any way suitable to its interests; the absence of a role in the use of diplomatic protection by the individual via his or her State threatens the interests of the injured individual; political considerations interfere and lead to conciliation between the State of the individual and the responsible State; the State may disregard to seek and strengthen the case in such a way that affects the individual interest (Salacuse, 2015).

The diplomatic protection system, which is a recognized legal system, can be used by foreign investors to seek remedies before the International Court of Justice. However, both the investor and the state to which they belong often opt to pursue direct determination or arbitration instead. The regime of diplomatic protection in investment disputes is only envisaged in two particular circumstances.

1. When investment disputes are settled before the national jurisdiction of the host state, the issuer is unjust in respect of the rights of the foreign investor, although it has not contributed to the damage suffered by him and for which he has claimed compensation and its removal before that court, which he has resorted to under an investment contract or agreement (Mann and von Moltke, 2005).



2. The host state of the investment shall prevent the enforcement of the arbitrators ruling in a dispute between them and the foreign investor.

### **The concept in accordance with 2006 legislation**

Article 14 of the 2006 Diplomatic Protection Act defines the exhaustion rule as follows:

- A state may not bring an international claim in respect of damage to a national or another person referred to in draught article 8 before that person has exhausted all domestic remedies, subject to the draught article
- Local remedies shall mean legal remedies available to a damaged person before the courts, tribunals, or administrative bodies, whether ordinary or special, of the state alleged to be responsible for the injury.

Article 15 of the same legislation also provides that "domestic remedies shall be exhausted in the case of an international claim or request for an interpretative judgement relating primarily to the claim on the basis of an injury to a national or other person referred to in article (8) of this legislation.

Article 16 of the same legislation also provides for exceptions to the exhaustion of local remedies rule; it provides that domestic remedies need not be exhausted in the following cases:

Where local remedies do not provide any reasonable possibility of effective redress.

- i. If there is undue delay in the process of redress, it shall be attributed to the state alleged to be responsible (Sornarajah, 2021).
- ii. If there is no valid link between the injured individual and the allegedly responsible state or the circumstances of the proceeding otherwise render local remedies unreasonable,
- iii. If the state alleged to be responsible waives the requirement of exhaustion of local remedies.

On the other hand, the inclusion of the articles pertaining to diplomatic protection was initially seen as an issue falling within the scope of the examination on state responsibility. In fact, the inaugural Special Rapporteur, Garcia Amador, incorporated several draught articles on this matter in his reports spanning from 1956 to 1961. The subsequent establishment of state responsibility failed to sufficiently address the issue of diplomatic protection. The final draught articles on this topic clearly called for the Commission to independently and comprehensively address the two key aspects of diplomatic protection: the nationality of claims and the requirement to exhaust regional remedies (Falsafi, 2006).

The issue of diplomatic protection relates to the treatment of individuals from foreign nations. However, the current draught articles do not make an effort to deal with the basic rules concerning this subject matter. These regulations include the treatment of foreigners and their belongings, the breach of which leads to legal responsibility towards the nation of the injured individual's nationality. However, the most recent draught articles mainly focus on secondary regulations, specifically those related to the prerequisites for filing a claim for diplomatic protection. These regulations typically encompass the guidelines governing the approval of claims. Article (44) of the draught articles on state responsibility stipulates that "the invocation of a state's responsibility is not permissible." If the request does not adhere to the relevant regulations regarding the nationality of the claims, If the assertion is governed by the principle of the exhaustion of home remedies, and if all viable and effective domestic remedies have not been completely used.

## **Conditions of applying prior exhaustion**

### **Actual existence of the appeal**

The principle that internal means of asylum must be exhausted by the injured alien without success in reforming the necessity for his state to exercise diplomatic protection on his behalf is not absolute; rather, it follows from international action that there are restrictions and conditions that must be met in order to be applicable and to be followed through:

The possibility of a discretionary relationship between the individual seeking protection and the state being accused, especially the individual responsible for causing harm to the former, is a matter of assessment. This connection might appear through the individual seeking protection residing or being present in the accused state, through their own choice for purposes of attendance or employment, or through engaging in any voluntary activities that would have exposed them to the jurisdiction of the legal system of that state. Furthermore, the existence of investments made by the individual seeking protection in the accused state may also be taken into account (Kobrin, 2005).

The maintenance that was required was a direct result of the actions of the foreigner. It is essential to note that this criterion only applies in instances when the claim concentrates on repairing harm done to people, rather than harm done to their respective states.

The internal mechanisms for seeking refuge are characterized by their accessibility, adequacy, efficiency, and fairness, instilling the victim with a sense of confidence in their capacity to seek redress and fostering hope for a favorable outcome. In the event that there is no international agreement between the States involved in the dispute, the State that suffered the harm has the option to explicitly eliminate this principle. The injured State can seek international protection against the State responsible for the harm without being required to first exhaust domestic remedies available in the responsible State.

### **The appeal must be effective and fair (Peterson et al., 2004)**

In the case that a victim seeks legal redress, it is essential that they carefully fulfill all necessary judicial procedures at every hierarchical stage. The alien entity that has suffered harm must provide a thorough and well-supported set of fundamental justifications to support their argument before the relevant adjudicative body. The introduction of judicial processes that need the comprehensive utilization of domestic courts, including both ordinary and administrative courts, is an essential requirement for States aspiring to embrace such a system. In the circumstance in which the injured alien is unsuccessful in obtaining their just claim, it is incumbent upon them to initiate an appeal of the first judicial ruling. Further legal procedures, such as appeals to the cassation court, need a thorough examination until an official judgement or ruling mandating restitution for the inflicted injury is rendered. If an injured person fails to exhaust all possible legal remedies inside the state responsible for the injury, the pursuit of legal action before international courts would be considered inadmissible for non-compliance with the need of exhausting domestic remedies (Gazzini, 2009).

According to the Court of Arbitration (English-Greek), in the *Impatilos* case, it was determined that it is not accurate to deduce that the appeal becomes unlawful if the available possibilities in the original instance are not adequately used. The use of this erroneous notion should not serve as a method for persons to exempt themselves from the need to fully explore domestic legal options.

Nevertheless, it is essential that local measures display the requisite effectiveness and adequacy to tackle the damage, as acknowledged at an international level. It includes the need to ensure that domestic legal procedures conform to international law and has the ability to effectively deal with the harm in accordance with the principles of international justice.

Nevertheless, if the injured alien is eligible for and effectively utilizes local methods of exhaustion, as regulated by the domestic law of the host state, to secure compensation and redress for the incurred injury, the responsibility for the failure to exhaust such remedies lies with the injured alien rather than the respondent state. Under such conditions, the damaged extraterrestrial entity's government fails to seek diplomatic protection on their behalf within the framework of international jurisdiction.

The application of the concept of exhaustion of local remedies is restricted to situations where the requesting state is responsible for causing indirect damage or injury to one of its own citizens, as stated in Article 14, paragraph 3. On the other hand, this concept is not applicable in cases when the state making the claim is directly affected by the harmful consequences of an unlawful action performed by another state. In such circumstances, the state making the claim holds an independent basis for initiating an international claim (Lowenfeld, 2003).

### **Full Exercise of Appeal**

The concept of appeal includes the capacity of persons to pursue an appeal of judgements made by subordinate courts via the Supreme Court. The presence of this characteristic is ubiquitous across all legal systems, and the framework for accessing the appeals procedure is well-organized. At the outset, it should be noted that Magistrate Courts display a restricted extent of judicial authority. This is followed by criminal judges, courts with comprehensive jurisdiction (often referred to as the Chamber, Section, or Supreme Court), and ultimately the Court of Judicial Appeal, which is commonly known as the Supreme Court of Casation. Usually, the determinations rendered by the International Court of Justice are not accessible to appeal due to the absence of an analogous appeal or cassation court within the realm of international law. However, it is important to acknowledge that there is a possibility to seek a case review in situations when there are particular circumstances that have significant effects on the relevant subject matter. The enforceability of the decisions rendered by the International Court of Justice necessitates its proper establishment in conformity with the stipulations of international law.

According to Article 95 of the 1945 Charter of the United Nations, in circumstances where one of the parties engaged in a legal dispute fails to comply with a ruling issued by the International Court of Justice, the opposing party has the option to approach the Security Council. If the Security Council deems it appropriate, it may provide recommendations or determine the necessary measures to ensure the implementation of the aforementioned judgement (Kobrin, 2005).

### **Fourth: Clean hands condition**

#### **The concept of clean hands**

#### **Clean hands in the International Law Commission Project, 2006**

The initial declaration of the International Law Commission especially emphasizes the responsibility of persons and legal entities resident in foreign areas to abide by with the laws of the host State and abstain from intervening in its political affairs. The adherence to this requirement is of the utmost significance for the host State in order to perform its duty of providing

diplomatic protection to the person or organization. However, it is important to keep in mind that a State is unable to engage in diplomatic protection of its citizens unless their acts within the host State are seen to be without justification. This stipulation complies with recognized principles in international law, which posit that a person may only be eligible for diplomatic protection if they have refrained from engaging in any illegal conduct (Laviec, 1985).

In order to initiate a claim of diplomatic protection on behalf of an injured individual, it is necessary for the State to provide proof that it did not contribute to the injury through the individual's conduct. If the individual's conduct infringed the laws and regulations of their residing State, this condition cannot be met, leading to the inadmissibility of compensation for the injury. This concept, also known as the "clean hands" concept, is recognized in the context of international response.

The clean hands principle holds significant importance throughout the realm of international law, necessitating careful consideration when there is evidence suggesting that the complainant State has not acted in good faith and has approached the Court with questionable conduct. It is absurd to entertain the notion that a State, whose national was actively defending it on substantive grounds, would have played a role in causing harm through wrongful behavior (Mann and Soloway, 2002).

### **Clean hands in the international judiciary**

The clean hands theory contends that in order for an alien's claim to be considered legitimate, their hands must be devoid of contamination or filth that may have caused the harm at issue. This tendency has been seen in cases of neglect, lack of understanding, and a lack of preventative measures. Another example is a breach of a foreign country's domestic statute. Another type of such conduct is the violation of international legal rules, such as the failure to maintain the nation's neutrality. Slavery in a particular location, acts of terrorism, and challenges to the security and integrity of international prosecution are all fascinating instances. For example, if the foreign individual's finances were confiscated as a result of their violation of the neutral country's citizens' obligations in support of a warring nation, involvement in an internal uprising, or participation in a plot to overthrow the government, it would be unreasonable for the foreign individual to seek protection from their own country in order to recover the confiscated funds.

The foreign person should have taken measures to protect themselves from the start and desist from such activities by abiding by the laws of the host nation in return for their compliance with those laws. If the foreign person had fulfilled their commitments, their money would not have been taken, and they would not have needed protection from their own nation. The lack of a need of good conduct as a factor for the exercise of diplomatic protection is a further trend witnessed in the area of international jurisdiction. Rather, the existence or lack of good behavior influences the efficiency of such protection. It has been noticed that when a state's people are injured, it engages in diplomatic intervention. If an alien entity fails to meet its tax duties or disseminates deceptive information about its commercial activities, the jurisdiction in which it has made investments retains the right to take its financial belongings (Lorfin, 2021).

### **Limitation**

The limitations of this paper may be addressed in other research endeavors. The aforementioned requirements provide a multifaceted role for the home state that goes beyond the

conventional tasks of creating norms and safeguarding national investors and investments. Additionally, researchers may explore the potential of research competence development in these facilities for future scholarly inquiry. Furthermore, the implementation of these additional obligations has the potential to foster greater cooperation between the home state and the host state, elevate the level of accountability for foreign investors, and ultimately improve the credibility of foreign investment legislation. Future study may focus on exploring the function of government incentives and financing resources in regulating relationships between states. In recent times, a limited number of investment treaties have included provisions that provide the home state a more proactive role. While the prevalence of such accords remains limited, it is feasible to see a discernible pattern. States are increasingly being called upon to assume a role that extends beyond their traditional function of protection and instead contribute to the reform of the investment treaty framework. This function is increasingly being recognized in domains where safeguarding the public interest is of utmost significance, including environmental preservation, anti-corruption efforts, and the accountability of multinational corporations. However, drawing inspiration from the terminology used in the prestigious Oscar honors of the film industry, it is quite unlikely that the home state would ever get recognition for its prominent contributions. The responsibility for this will continue to lie on the host state and foreign investors. However, it is possible that the home state may eventually be nominated for a supporting role.

## **Conclusions**

Logically, between the state and the applicant for protection, there must be an association that connects the individual to the state. Such an association is based primarily on the notion of legal and political subordination that justifies diplomatic protection by the state. Hence, the requirement of nationality is an obvious and fundamental requirement in the application of an important principle of international law, namely, that protection assumes citizenship and that citizenship arranges diplomatic protection. The exercise of diplomatic protection is freely decided by the state and the means it deems appropriate; it is therefore difficult to determine the reasons for the state's decision to exercise its diplomatic protection and the criteria it sets for interpreting its domestic laws, particularly since international action does not regulate the rule of national attribution of nationality in a decisive manner.

The legal means for determining the nationality of a natural person are different from that of a moral person; in the first case, the state determines the nationality of a natural person by the law by which it indicates who is its national and who is not, whereas in the case of a moral person, nationality is based on attribution controls, which the state chooses as a headquarters or as the rule of the place of activity. The requirement of exhaustion of domestic means of appeal or litigation to remedy the injury in the jurisprudence of international law is the conduct of an injured alien, whether a private natural or moral person, by all means provided by the law of the host state for reparation before resorting to his or her state to adopt his or her claim for diplomatic protection on his or her behalf.

Respect for the principle of non-interference in the internal affairs of states is a justification for the operation of the rule that domestic remedies must be exhausted; the operation of the rule avoids diplomatic interference by states in other internal affairs under the cover of diplomatic protection. It became clear to the researcher that there were international legal rules governing the conduct of the respondent state, whether by bodies or individuals, against aliens present in its national territory, and that one of those rules was an internationally wrongful act

of the state and entailed international responsibility for the violation of international law, all before the injured alien made any attempt to resort to national means of litigation to claim damage from that wrongful act.

The researcher recommends that the reports of the International Law Commission of the United Nations on diplomatic protection be given effect because they do not live up to the aspirations of states. The States implementing the United Nations have used them as a means of passing individual decisions in order to impose sanctions on other States that are unable to protect the rights of their nationals at home. How can they, in turn, claim the protection of their nationals abroad?

The researcher recommends that states review their national legislation and international relations in order to serve their interests on the basis of current international realities. There is a deviation by some states from the original rules of pluralistic political and diplomatic action and their departure from the international consensus on diplomatic protection as a tool for the defence of human rights and freedoms as set forth in international instruments and as customary.

The searcher recommends the establishment of a special regime of diplomatic protection through an international convention for this purpose and under the auspices of the United Nations Organization; the rules governing diplomatic protection remain customary, most of which have not been established.

The searcher recommends that the principle of international exhaustion should be adopted by the international community because of its positive effects; there are grounds and great importance for the application of this principle and its requirements before resorting to the operation of the regime of diplomatic protection as a customary and well-established norm of general international law. The exercise of diplomatic protection must be protected by lawful means, which is the procedure used by the state of nationality of the person to secure the protection of that person and to obtain reparation for the internationally wrongful act that he or she has suffered and for his or her interests in the host state.

It became clear to the researcher that there were international legal rules governing the conduct of the respondent state, whether by bodies or individuals, against aliens present in its national territory, and that one of those rules was an internationally wrongful act of the state and entailed international responsibility for the violation of international law, all before the injured alien made any attempt to resort to national means of litigation to claim damage from that wrongful act

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