



Universiteit
Leiden
The Netherlands

Active personality and non-extradition of nationals in international criminal law at the dawn of the twenty-first century : adapting key functions of nationality to the requirements of International Criminal Justice

Deen-Racsmány, Z.

Citation

Deen-Racsmány, Z. (2007, June 20). *Active personality and non-extradition of nationals in international criminal law at the dawn of the twenty-first century : adapting key functions of nationality to the requirements of International Criminal Justice*. LUP Dissertations. Leiden University Press, Leiden. Retrieved from <https://hdl.handle.net/1887/12098>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/12098>

Note: To cite this publication please use the final published version (if applicable).

Index

- active personality principle
 - allegiance, role of | 3, 25, 27, 28, 34, 35, 38
 - criticism | 189, 200
 - dual nationals, application to | 22, 23, 25-28, 38, 39, 217
 - impact on international criminal justice | 3, 10, 25, 34, 37, 215
 - shortcomings | 3, 58, 107, 216
 - ICC | 4, 22-39, 41, 215, 216, 217-218
 - ICTR | 7, 11, 216
 - justifications | 3, 6, 25
 - naturalized persons, application to | 6, 22, 28-31, 23, 34, 36, 37, 38-39, 217
 - non-extradition of nationals, relation to | 25, 27, 28, 29, 33, 39, 55, 57, 66, 75-80, 189
 - principle of extraterritorial criminal jurisdiction | 3, 6, 25, 187, 188, 200, 201, 203, 204, 205
 - refugees, applicability to | 22-23, 24, 35-38, 39, 217, 218
 - residents, applicability to | 23
 - right | 32-34, 204-209, 218
 - *Lotus* | 204-205
 - obligation | 200-203, 218
 - stateless persons, application to | 23, 32-34, 36-38, 39, 194, 203, 206, 217, 218
- aut dedere aut judicare*
 - common crimes | 55, 66, 75-80, 123, 124, 135-137, 145, 200-203, 214, 216, 218
 - customary international law | 56-57, 217
 - international crimes | 55-56, 66, 216
 - *jus cogens* 57
 - treaty law | 55-57, 59, 75-80, 123, 124, 135-137, 145, 216, 217
- citizenship – *see* nationality
- compulsory prosecution, principle of | 58, 217
- constitution
 - amendment, necessity of | 61-62, 79, 87, 92, 93, 94, 95, 118-153, 156-180, 221
 - exceptional enactment (Finland) | 141, 151, 160, 169
 - provisions prohibiting the extradition of nationals | 49
 - EAW, relation to | 118-153, 156-180, 220, 221
 - ICC, relation to | 59-62, 87, 119, 130-131, 156-180, 220, 221
 - prohibition on deportation | 49, 138, 142, 150, 178
 - right to remain on national territory | 59, 125-130, 138, 142-143 – *see also* prohibition on deportation
 - rule of law | 130-135, 140, 172-175
 - international obligations | 125-130, 140, 169-171
 - limitations on the essence of right imposed by other constitutional provision(s) | 125-130, 140, 167-168
 - *versus* domestic statute | 135-137, 140
- dual criminality | 74-75, 157, 172, 174 – *see also* EAW → Article 2
 - qualified | 75-78, 80, 81, 84
 - simple | 75, 81, 84, 89-92, 96, 97, 99, 101, 103-105, 109, 110, 113-115
- EAW
 - Article 2 | 75, 89, 92, 99, 101, 115, 149, 151, 162, 172, 174
 - Article 4(4) | 108
 - Article 4(6) | 88-89, 101-102, 104, 125-130, 130-135, 137-139, 159, 184-185
 - Article 4(7) | 107-108, 133-134
 - Article 5(3) | 89, 96-97, 112, 123, 124, 125, 135-137, 145, 159, 185
 - conforming interpretation, EU law principle of | 139, 147-149, 152, 169
 - dual criminality, abolition of – *see* EAW → Article 2

- domestic implementation | 79, 94-95, 97-100, 102-106, 108, 114-116, 31120, 125-139, 141-142, 162-164, 167-168, 169, 171, 172-175, 175-176, 177, 178, 198
 - EU citizenship, role of | 121-122, 129-130, 132
 - framework decision, nature of | 103, 146-147
 - surrender
 - of nationals and residents | 156-180, 220, 221
 - *versus* extradition | 119-122, 125-130, 138, 140, 162-167
- Extradition**
- exceptions | 79, 121 – *see also* non-extradition of nationals
 - no general obligation under customary international law | 47, 73, 157, 186
 - nationality exception – *see* non-extradition of nationals
 - purpose | 2, 124, 176-177
 - reciprocity | 79, 187, 197, 219
 - treaty requirement | 47, 103
 - UN Model Treaty on Extradition | 31, 64, 191
 - *versus* surrender | 60-61, 119, 120-121, 125-130, 138, 140, 162-167
- extraterritorial jurisdiction**
- active personality principle – *see* identical main entry
 - expansion of | 6, 7, 72, 219
 - nationality principle – *see* active personality principle
 - passive personality principle | 2, 25, 35, 57
 - universal jurisdiction | 6, 31, 32, 35, 57
- international cooperation in criminal matters**
– *see* extradition; mutual assistance; mutual recognition of foreign sentences; transfer of proceedings; transfer of
- models
 - horizontal
 - ICC state cooperation regime | 165-166
 - traditional model | 60, 165-166
 - vertical
 - ICC state cooperation regime | 60, 165-166
 - ICTR and ICTY | 60, 165-166
- ICC**
- complementarity, principle of | 28, 61, 66, 161, 162, 174, 216
 - establishment by treaty, consequences of | 7, 34, 38, 164, 165-167
 - jurisdiction over nationals of third parties | 22, 26-27, 30-31
 - legal status | 165-166
 - ICTY, ICTR *versus* ICC – *see* establishment by treaty, consequences of
 - nationality, relevance of | 22-39, 59, 215, 218
 - Rome Statute
 - Article 1 – *see* complementarity
 - Article 12 | 22, 26, 34, 39, 59, 215, 218
 - Article 17 – *see* complementarity
 - Articles 86-89 | 61, 157
 - Article 98 | 62-66
 - Article 102 | 60-61, 156-159
 - state cooperation | 8, 59-66, 86-87, 156-180
 - surrender (of nationals) to | 7, 8, 11-13, 39, 87, 156-180, 216, 220, 221
 - *versus* extradition | 162-167
- International criminal law** – *see also* transnational criminal law
- branch of public international law 2, | 16, 17
 - horizontal | 5-6, 10-11, 17
 - notion | 4-6
 - sources of | 16-17
 - vertical | 5-6
- international(ized) criminal courts and tribunals** | 7-8, 11-14, 156-180
- maximum legal certainty, principle of** | 87, 133, 145, 148
- mutual recognition of foreign sentences**
- applicability to | 80-82, 193
 - dual criminality | 80-82
- nationality**
- bilateral immunity agreements, relevance under | 64-66, 67
 - change of – *see* naturalization
 - changing role of | 6
 - concept of | 1, 23-24, 187, 188,
 - dual nationality – *see* multiple nationality
 - *jus sanguinis* | 23
 - *jus soli* | 23
 - lack of – *see* stateless persons
 - material date | 28-31, 47-52, 218

- multiple nationality | 6
 - dominant nationality, principle of | 25-28, 40
 - equality, principle of | 26-28, 40-41
- re-extradition, relevance for | 63
 - SOFAs, relevance under | 63
- nationality exception – *see* non-extradition of nationals
- nationality principle – *see* active personality principle
- naturalization
 - abuse | 9, 31, 44-48, 52-59, 66
 - date relative to date of commission of crime | 31, 47-52
 - date relative to date of extradition (request) | 31, 47-52
- ne bis in idem*, principle of | 46, 58-59, 77, 109, 111, 134, 140, 161, 173
- non-extradition of nationals
 - allegiance, role of | 25, 71, 188
 - condition of return | 52-53, 88-89, 101-102, 104, 125-130, 130-135, 137-139, 145, 175-177, 198, 202-203, 207, 211, 212, 213-214
 - constitutional prohibition | 49, 60-62, 79, 87, 91-95, 107, 115, 118-153, 156-180, 220
 - criticism | 8-10, 188, 219
 - dual criminality, relevance of | 89-92, 115, 172-174, 187 – *see also* identical main entry
 - dual nationals, application to | 25-28
 - EAW | 70-116, 156-180, 184-186, 198, 220, 221
 - ICC | 11-13, 59-66, 67, 87, 156-180, 220, 221
 - ICTY and ICTR | 11-13, 60
 - justifications | 71, 188
 - national sentiments, role of | 10, 71, 221, 223
 - naturalized persons, application to | 29-31, 220, 221
 - obligation to prosecute domestically – *see aut dedere aud judicare*
 - origins | 2-3, 75-76, 188
 - refugees, applicability to | 35-38
 - relation to *non-refoulement* | 35-38
 - residents, applicability to | 33, 221
 - customary international law, status under | 189-199
 - limits | 209-212
 - maximum legal certainty, relation to – *see* maximum legal certainty
- stateless persons, applicability to | 33, 194, 203, 206
- status under customary international law | 47, 157
- (non)-surrender of nationals | 59-66, 67, 156-180
- UN Model Treaty on Extradition | 191-192
- impact on international criminal justice | 3, 10, 44-62, 66-67, 187, 219, 219-220, 221-222 → *see also* active personality principle → impact on international criminal justice
- non-retroactivity, principle of | 30, 31, 131, 134, 140, 148, 172, 173, 174, 218
- Nordic Arrest Warrant
 - dual criminality | 149
 - surrender of nationals and residents | 149-152
 - *versus* European Arrest Warrant | 149-152, 153
- nullum crimen sine lege* – *see* non-retroactivity, principle of
- prohibition of analogy | 41
- refugees
 - asylum, bond of | 35-38, 39
 - extradition of – *see* non-extradition of nationals → refugees, applicability to
 - jurisdiction over – *see* active personality → refugees, applicability to
 - *non-refoulement* | 35-38
 - validity of nationality for international purposes | 22-23, 35-38
- rehabilitation
 - justification for refusal of extradition of residents | 182, 184, 185, 192-194, 199, 205, 207, 209-211, 212, 214 – *see also* non-extradition of nationals → residents, applicability to
 - role under criminal law theory | 183, 223
- residency – *see* active personality principle; EAW; mutual recognition of foreign sentences; non-extradition of nationals; transfer of prisoners, transfer of proceedings
 - relevance to other fields of cooperation in criminal matters | 80-86
- surrender – *see* EAW; extradition; ICC; non-extradition of nationals; Nordic Arrest Warrant

-
- territorial principle
 - *Lotus case* | 204
 - predominance of | 3, 204-205
 - transfer of prisoners
 - alternative to non-extradition | 183, 198, 212
 - applicability to non-nationals | 84-86, 194-196, 211, 212, 222
 - conversion of sentences | 92, 99, 110, 111, 113, 213
 - direct enforcement | 110, 213
 - dual criminality | 84-86
 - UN Model Treaty on Transfer of Foreign Prisoners | 195, 214
 - transfer of proceedings | 219
 - applicability to non-nationals | 82-84, 192-193 222
 - dual criminality | 82-84
 - UN Model Treaty on Transfer of Proceedings in Criminal Matters | 192
 - transnational criminal law | 5, 11 – *see also* international criminal law