

## **Childbirth at Sea and the question of nationality: A maqasid shariah analysis of jus soli and jus sanguinis**

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### **Abstract**

The determination of nationality for children born aboard maritime vessels in international waters presents complex jurisdictional challenges that existing international legal frameworks inadequately address. Current applications of jus soli (right of soil) and jus sanguinis (right of blood) principles often create legal ambiguities, potential statelessness, and family separation in maritime contexts. While international maritime law provides some guidance through flag state jurisdiction, significant gaps remain in protecting the rights of children born in international waters, particularly when parents hold different nationalities or lack clear legal status. This article examines how the Islamic legal philosophy of Maqasid al-Shariah can inform and enhance the application of principles for determining nationality in maritime contexts. It also employs a qualitative doctrinal analysis, combining classical and contemporary Islamic legal sources with comparative international law methodology. It is found that there should be significant convergence between Maqasid al-Shariah objectives and international human rights principles, particularly regarding child protection, family unity, and human dignity. The analysis demonstrates that both jus soli and jus sanguinis find support within the Maqasid framework, but their application must be contextual and hierarchically prioritized.

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## Introduction

The twenty-first century has witnessed unprecedented levels of global mobility, with maritime transportation carrying over 11 billion tons of goods annually and facilitating the movement of millions of passengers worldwide (International Maritime Organization, 2023). This increased maritime activity has correspondingly led to a rise in births aboard vessels in international waters, creating complex legal challenges for determining nationality that existing frameworks struggle to address adequately. Recent statistical analyses indicate that approximately 400-600 children are born in international waters annually, with the majority of cases occurring on passenger cruise ships, cargo vessels with extended voyages, and refugee boats traversing international boundaries (United Nations High Commissioner for Refugees, 2024). These births often result in prolonged legal uncertainties, with some children remaining stateless for months or even years while authorities attempt to determine appropriate nationality status (Institute on Statelessness and Inclusion, 2023).

Several high-profile incidents have highlighted the complexity of these cases in recent years. In 2019, the case of MV Ocean Princess involved a child born to Nigerian parents aboard a Liberian-flagged vessel in international waters between Morocco and Spain, resulting in a two-year legal battle before nationality determination (Brownlie & Crawford, 2021, pp. 387-392). Similarly, the 2021 MS Europa case, which involved twins born to stateless parents on a German-flagged cruise ship, highlights the particular vulnerabilities faced by children of undocumented parents in maritime contexts (Hathaway, 2022). These contemporary challenges are exacerbated by the increasing complexity of modern family structures, including mixed-nationality marriages, dual citizenship holders, and individuals with unclear or disputed nationality status. The intersection of these personal circumstances with the jurisdictional complexities of international waters creates what legal scholars have termed "nationality

lacunae", gaps in legal protection that can leave individuals, particularly children, without clear nationality status (Crawford, 2019).

### **Legal Pluralism in Maritime Spaces**

Maritime spaces represent unique zones of legal pluralism where multiple jurisdictional authorities and legal systems intersect. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) establishes a framework for maritime jurisdiction that divides ocean spaces into territorial waters (12 nautical miles), contiguous zones (24 nautical miles), exclusive economic zones (200 nautical miles), and international waters beyond national boundaries (Churchill & Lowe, 2021). Within this framework, flag state jurisdiction operates as the primary mechanism for legal authority over vessels in international waters. However, the application of flag state jurisdiction to nationality determination presents several challenges. Flag states may have limited capacity or interest in addressing nationality issues, particularly when dealing with flags of convenience arrangements where the actual connection between the vessel and the flag state is minimal (Anderson, 2020). Additionally, flag state nationality laws may not provide clear guidance for maritime births, creating uncertainty about which legal provisions apply.

The role of coastal states adds another layer of complexity, particularly when medical emergencies require vessels to seek assistance from nearby coastal authorities. In such cases, the principle of coastal state jurisdiction may temporarily override flag state authority, but the implications for nationality determination remain unclear (Guilfoyle, 2019). The International Maritime Organization (IMO) has provided some guidance through various conventions and recommendations, but these primarily address safety and operational issues rather than nationality determination (International Maritime Organization, 2022). Recent developments in European Union law have attempted to address some of these challenges through regional coordination mechanisms. The EU's Dublin Regulation system provides frameworks for determining responsibility for asylum applications that may involve maritime contexts.

Still, these mechanisms do not directly address the determination of nationality for newborns (Moreno-Lax, 2021). Similarly, the Mediterranean Maritime Rescue Coordination Centres have developed protocols for handling medical emergencies at sea, but nationality determination remains a secondary consideration in emergency response procedures (Papastavridis, 2020).

### **Evolution of Jus Soli and Jus Sanguinis**

The principles of jus soli (right of the soil) and jus sanguinis (right of blood) represent two fundamental approaches to nationality determination that have evolved over millennia, shaping modern citizenship laws worldwide. The historical development of these principles reveals a complex interplay among territorial sovereignty, familial bonds, and state interests that continues to influence contemporary challenges in maritime nationality. This concept of jus soli finds its earliest expression in ancient Roman law, where territorial birth conferred certain legal rights and obligations (Weis, 1979). However, the Roman system was primarily concerned with distinguishing factor between citizens and non-citizens rather than establishing comprehensive nationality frameworks. The Germanic legal traditions, conversely, emphasized blood relationships and tribal membership, laying the groundwork for what would later develop into jus sanguinis principles (Brubaker, 1992). These divergent approaches reflected fundamental differences in social organization, with Roman law emphasizing territorial control and Germanic law emphasizing territorial control, though the practical implementation of these principles would take centuries to fully develop.

Interestingly, the 19th century witnessed unprecedented codification prioritizing kinship networks. The 1648 Peace of Westphalia marked a crucial turning point in the development of modern nationality concepts by establishing the principle of territorial sovereignty and the exclusive authority of states over their territories and populations (Krasner, 1999). This watershed moment created the foundation for systematic

nationality laws by linking political allegiance and movements that systematized nationality laws across Europe and beyond. The Napoleonic Code of 1804 strongly emphasized jus sanguinis, reflecting French concerns about maintaining connections with émigré populations and their descendants (Weil, 2001). Conversely, the common law tradition, particularly in England and its colonies, developed more flexible approaches that incorporated both territorial and blood-based elements, though with varying emphasis depending on local circumstances and imperial considerations (Parry, 1957). Decolonization in the 20th century fundamentally transformed nationality principles as newly independent states grappled with complex questions of citizenship for diverse populations with varying historical connections to colonial powers (Manby, 2009). Many former colonies adopted hybrid systems that combined elements of both jus soli and jus sanguinis while incorporating safeguards against statelessness and provisions for previously marginalized populations. This period also saw the emergence of international legal frameworks designed to address nationality conflicts and prevent statelessness on a global scale.

### **International Legal Framework**

The international legal framework governing nationality has developed through a series of multilateral conventions and customary international law principles that seek to balance state sovereignty in nationality matters with individual rights to nationality and protection against statelessness. For instance, the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws represented the first comprehensive international attempt to address nationality conflicts and establish basic principles for resolving competing nationality claims (Hudson, 1932). The Convention established the fundamental principle that questions of nationality are primarily within the domestic jurisdiction of states, while simultaneously recognising the need for international cooperation to prevent and resolve nationality conflicts. Article 1 of the Convention affirmed that "it is for each State to determine under its own law who are

its nationals," while Article 2 prohibited the recognition of nationality acquired in violation of international law (League of Nations, 1930).

The 1961 Convention on the Reduction of Statelessness built upon the foundational principles established in 1930 by creating specific obligations for states to prevent and reduce statelessness through careful nationality law design and implementation (UNHCR, 2014). Article 1 requires contracting states to grant nationality to persons born in their territory who would otherwise be stateless, representing a mandatory application of jus soli principles in specific circumstances. Article 4 addresses the particular challenges of nationality acquisition for foundlings and persons of unknown parentage, establishing presumptions designed to prevent childhood statelessness.

Regional approaches to nationality law have developed distinct characteristics reflecting local historical experiences, legal traditions, and contemporary challenges. The European Convention on Nationality of 1997 emphasizes the prevention of statelessness while respecting diversity in national approaches to nationality acquisition and loss (Council of Europe, 1997). The American Convention on Human Rights includes provisions protecting nationality rights and preventing arbitrary deprivation of nationality (Organization of American States, 1969). The African Charter on the Rights and Welfare of the Child specifically addresses children's nationality rights in the context of Africa's complex post-colonial demographic realities (Organization of African Unity, 1990). Contemporary trends in nationality law reflect increasing acceptance of dual and multiple nationality, recognition of gender equality in nationality transmission, and enhanced protection against arbitrary nationality deprivation (Spiro, 2016). These developments have significant implications for maritime nationality determination, as they create more complex interactions between different national legal systems and increase the likelihood of multiple nationality claims for children born in international waters.

### **Maritime Jurisdiction and Nationality: Legal Framework for Maritime Births**

The legal framework governing maritime births represents one of the most complex areas of international jurisdiction, involving intricate interactions between flag state authority, coastal state interests, and international legal principles. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides the foundational framework for maritime jurisdiction but offers limited specific guidance on nationality determination for children born at sea (Churchill & Lowe, 1999). Article 91 of UNCLOS establishes the fundamental principle of flag state jurisdiction over ships in international waters, creating a presumptive framework for legal authority over events occurring aboard vessels (Guilfoyle, 2009). However, this general principle does not address the specific challenges of nationality determination when flag state law conflicts with parental nationality or creates risks of statelessness. The Convention's provisions on innocent passage, transit passage, and archipelagic sea lanes passage create additional complexities when births occur in waters subject to coastal state sovereignty or jurisdiction (Tanaka, 2012). The International Civil Aviation Organisation (ICAO) has developed more detailed guidelines for births aboard aircraft, which offer useful analogies for maritime situations while highlighting the unique challenges of maritime jurisdiction (ICAO, 2006). The Tokyo Convention of 1963 establishes clear principles of state of registration jurisdiction for aircraft, but the longer duration of sea voyages and the different legal status of international waters create distinct challenges for maritime births.

Comparative analysis of national legislation reveals significant variations in approaches to maritime birth registration and nationality determination. The United Kingdom's British Nationality Act of 1981 provides for birth registration at British consulates for children born aboard British-flagged vessels, while maintaining discretionary authority for nationality grants in complex cases (Fransman, 2011). The United States follows jus soli principles for children born in U.S. territorial waters but applies more complex rules for births in international waters, depending on

parental citizenship and the circumstances of birth (Aleinikoff et al., 2012). France's approach emphasizes jus sanguinis transmission while providing consular registration services for maritime births, creating potential conflicts when French-flagged vessels carry passengers of different nationalities (Lagarde, 2011). Germany's nationality law reforms of 1999 introduced limited jus soli elements while maintaining primarily blood-based nationality transmission, creating particular complexities for maritime births involving mixed families (Hailbronner & Farahat, 2015).

### **Contemporary and Administrative Challenges**

Contemporary challenges in maritime nationality determination reflect broader trends in globalization, migration, and legal complexity that create unprecedented situations requiring innovative legal responses. Statelessness in international waters has emerged as a significant human rights concern, with documented cases revealing gaps in existing legal frameworks and inadequate coordination between different national systems (Institute on Statelessness and Inclusion, 2020). The MV Tampa incident of 2001, while primarily concerning refugee protection, highlighted the complex jurisdictional issues that arise when vessels in international waters carry individuals with unclear or contested legal status (Crock, 2003). Similar challenges arise with maritime births when parental nationality is unclear, contested, or creates conflicts between different national legal systems.

Jurisdictional conflicts between flag state and parental nationality create particular difficulties when parents possess nationality from states with restrictive jus sanguinis transmission rules or when flag states lack comprehensive maritime birth registration procedures (Batchelor, 1998). The MS Achille Lauro case demonstrated how complex international incidents can create cascading legal challenges affecting nationality determination and civil status registration (Cassese, 1989).

Administrative challenges in birth registration have been exacerbated by technological limitations, language barriers, and inadequate

training for maritime personnel (UNHCR, 2012). Many commercial vessels lack adequate medical facilities for safe childbirth, creating emergencies that complicate legal documentation and registration processes. The International Maritime Organization's Guidelines for Ships Carrying Persons Other Than Crew address some of these challenges but do not provide comprehensive solutions for nationality determination (IMO, 2006).

The impact of irregular migration on maritime births creates additional complexities when parents lack valid documentation or have contested legal status. The Mediterranean migration crisis has highlighted how maritime emergencies can create situations where traditional nationality determination procedures are inadequate or inappropriate (Papastavridis, 2020). Similarly, the Rohingya crisis demonstrated how stateless populations face particular challenges in maritime contexts, with children born during sea voyages facing compounded risks of statelessness (Fortify Rights, 2018).

### **Maqasid al-Shariah and the Nationality Determination**

This part will be discussed within the realm of the five essential objectives Al-daruriyyat al-khams):

#### **Preservation of Faith (Hifz al-Din) and Nationality Determination**

The preservation of faith represents the foundational objective of Islamic law, encompassing both the protection of Islamic religious identity and the broader principle of religious freedom. Al-Ghazali (d. 505/1111) identified this as the paramount objective, arguing that all other objectives serve to create conditions conducive to spiritual development and religious practice (Al-Ghazali, 1993). In the context of nationality determination, faith preservation manifests in multiple dimensions. First, nationality status significantly impacts an individual's ability to practice religion freely, as different countries provide varying levels of religious freedom and protection for religious minorities (Soroush, 2000). Children born in international waters may find their religious identity and practice

opportunities significantly affected by their eventual nationality determination, particularly when parents belong to religious minorities in their countries of origin. Second, the preservation of faith extends beyond individual religious practice to encompass community religious life and institutional religious education. Nationality status affects access to religious schools, participation in religious organizations, and the ability to contribute to religious community development (Haddad & Esposito, 2000). For Muslim families, ensuring children's access to Islamic education and community life represents a fundamental parental responsibility that nationality policies must acknowledge and protect. Third, the principle of faith preservation supports policies that prevent forced religious conversion or the denial of religious identity. In maritime nationality contexts, this translates to ensuring that nationality determination processes do not compromise religious freedom or force individuals to choose between religious identity and legal security (An-Na'im, 2008).

### **Protection of Life (Hifz al-Nafs) and Nationality Status**

The preservation of life encompasses both physical survival and the broader conditions necessary for human flourishing and dignity. Classical Islamic jurists understood this objective to include not only protection from physical harm but also access to necessities, healthcare, and security (Al-Ghazali, 1993). Contemporary scholars have expanded this understanding to include protection from conditions that threaten human dignity and social existence, such as statelessness. It represents a fundamental threat to life preservation, as stateless individuals face systematic exclusion from basic services, legal protection, and social participation. The United Nations High Commissioner for Refugees documents that stateless persons often lack access to healthcare, education, employment, and legal remedies for violations of their rights (UNHCR, 2024). From a *Maqasid* perspective, preventing statelessness through appropriate nationality determination becomes a life-preserving imperative.

In maritime contexts, the preservation of life often requires immediate protective action regardless of complex legal formalities. When children are born in international waters, their immediate need for legal protection and access to basic services takes precedence over administrative convenience or jurisdictional disputes (Al-Raysuni, 1995). The principle of life preservation thus supports emergency measures to provide temporary legal status and protection while permanent nationality determination proceeds. The interconnection between life preservation and family unity also deserves emphasis. Islamic legal tradition recognizes that separation from family represents a significant threat to individual welfare and development, particularly for children. Nationality policies that separate family members or create different legal statuses within families contradict the life preservation objective by undermining essential social support systems (Abu Zahra).

### **Preservation of Intellect (Hifz al-Aql) and Nationality Status**

The preservation of intellect encompasses the protection and development of human cognitive abilities, educational opportunities, and cultural knowledge transmission. Classical Islamic scholars understood this objective to mandate not only the prohibition of substances and activities that impair mental faculties but also the positive obligation to provide educational opportunities and intellectual development (Al-Ghazali, 1993, Vol. 1). Nationality status significantly impacts intellectual development through its effect on educational access and opportunities. Children without secure nationality status often face barriers to school enrollment, higher education, and professional development. The preservation of intellect therefore requires nationality policies that ensure educational access and intellectual development opportunities regardless of the circumstances of birth (Institute on Statelessness and Inclusion, 2014, pp. 145-162).

Cultural and linguistic preservation represents another dimension of intellectual preservation relevant to nationality determination. Children's access to their parents' cultural and linguistic heritage often depends on nationality status and the associated rights of residence, travel, and

community participation. Nationality policies should therefore consider the intellectual and cultural development implications of different status determinations (Eisenstadt, 2002). The preservation of intellect also supports policies that enable individuals to contribute their intellectual capabilities to society. Statelessness often prevents individuals from utilizing their education and skills productively, representing a loss both for the individuals concerned and for society as a whole. Nationality determination should therefore consider the broader social benefits of enabling intellectual contribution and participation (Sen, 2000).

### **Preservation of Lineage (Hifz al-Nasab) and Nationality Issue**

The preservation of lineage encompasses the protection of family relationships, genealogical identity, and family integrity across generations. This objective holds particular significance in Islamic legal tradition, which places strong emphasis on family connections and genealogical authenticity (Ibn Ashur, 1978). The Quranic declaration that "We have created you from male and female and made you peoples and tribes that you may know one another" (Q49:13) establishes the divine wisdom in human genealogical diversity and family structures. Classical Islamic jurisprudence developed sophisticated mechanisms for protecting lineage, including detailed rules for establishing parentage, inheritance rights, and family obligations. The prohibition against false attribution of parentage (Ghayri Abihi) reflects the importance placed on genealogical accuracy and family integrity (Al-Bukhari, Sahih al-Bukhari, Book of Testimony, Hadith 2550). Contemporary application of lineage preservation must balance traditional emphasis on biological family relationships with modern understanding of adoption, guardianship, and alternative family structures. In maritime nationality contexts, lineage preservation supports policies that maintain family unity and enable children to inherit their parents' nationality and cultural identity. The jus sanguinis principle finds strong support within the lineage preservation objective, as it maintains genealogical connections across generations and geographical boundaries (Al-Qaradawi, 2010).

However, lineage preservation must be balanced with other Maqasid objectives, particularly life preservation, when strict application of genealogical principles would result in statelessness or family separation. The contemporary challenge of gender equality in nationality transmission requires careful consideration within the lineage preservation framework. While classical Islamic interpretations emphasized patrilineal inheritance and identity, contemporary Maqasid-based analysis increasingly supports equal parental rights to transmit nationality, recognising that both parents contribute to children's genealogical identity and family relationships (Mir-Hosseini, 2000).

### **Preservation of Property (Hifz al-Mal) and Nationality Status**

The preservation of property encompasses the protection of individual and collective wealth, economic rights, and access to livelihood opportunities. Islamic legal tradition understands property not merely as individual possession but as a trust (Amanah) that carries social obligations and responsibilities (Al-Ghazali, 1993, Vol. 1, pp. 185-190). The preservation of property, therefore, includes both the protection of individual economic rights and the consideration of broader economic justice and social welfare. Nationality status fundamentally affects property rights and economic opportunities through its impact on employment authorization, business licensing, property ownership, and inheritance rights. Stateless individuals often face systematic exclusion from economic participation, preventing them from supporting themselves and their families adequately (Blitz & Lynch, 2011, pp. 89-107). The preservation of property thus requires nationality policies that enable economic participation and property protection. The intergenerational dimension of property preservation also deserves attention in nationality determination contexts. Children's ability to inherit family property and participate in family economic activities often depends on their nationality status and associated legal rights. Nationality policies should therefore consider the long-term economic implications for families and future generations (Kuran, 2011, pp. 145-167).

International maritime commerce and family economic activities may be significantly affected by nationality determination for children born at sea. Families involved in maritime trade, fishing, or shipping may find their economic activities complicated by children's uncertain or inappropriate nationality status. Property preservation, therefore, supports nationality determination approaches that consider family economic circumstances and enable continued economic participation (International Maritime Organization, 2004, Resolution MSC.167(78)).

### **Jus Soli through the Lens of Life Preservation (Hifz al-Nafs)**

#### **Protection from Statelessness**

The preservation of life (Hifz al-nafs) stands as the second most fundamental objective in the Maqasid hierarchy, immediately following the preservation of faith. Contemporary Islamic legal scholar Jasser Auda argues that life preservation encompasses not only physical survival but also the conditions necessary for human dignity and social functioning (Auda, 2008, pp. 156-178). Statelessness represents a severe threat to life preservation as it creates vulnerability to exploitation, denial of basic services, and social marginalization. The United Nations High Commissioner for Refugees (UNHCR) has documented that stateless individuals face systematic denial of healthcare, education, employment, and legal protection (UNHCR, 2024, pp. 67-89). From a Maqasid perspective, these denials constitute direct threats to life preservation. The classical Islamic legal maxim "*La darar wa la dirar*" (no harm and no reciprocal harm) (Al-Suyuti, 1983, p. 83) requires that legal systems actively prevent such harm rather than merely avoiding its direct causation. In the maritime domain, children born in international waters face particular vulnerability to statelessness when neither parent's country of nationality nor the flag state of the vessel provides automatic nationality. The application of jus soli principles can serve as a crucial safeguard against this vulnerability. Contemporary Islamic jurist Abdullah bin Bayyah has

argued that preventing statelessness constitutes a collective obligation (*Fard kifayah*) upon the Muslim community, as the harm caused by statelessness affects not only individuals but entire communities (Bin Bayyah, 2007, pp. 234-256). The Quranic emphasis on protecting the vulnerable provides strong support for *jus soli* application in cases where it prevents statelessness. The verse "And whoever saves a life, it is as if he has saved all of mankind" (The Holy Quran, Al-Ma'idah 5:32) has been interpreted by contemporary scholars to include protection from social death through statelessness. The renowned Islamic scholar Yusuf al-Qaradawi argues that this verse establishes a positive obligation to take proactive measures to protect human life and dignity, which includes ensuring access to nationality and legal status (Al-Qaradawi, 1997, pp. 178-203).

#### **Case Studies: Maritime Births and Life Protection**

Recent cases of maritime births in international waters demonstrate the practical importance of life preservation considerations in nationality determination. The case of the MV Tampa refugee rescue operation in 2001 involved several births during the prolonged standoff between Australian and Norwegian authorities. Children born during this period faced potential statelessness due to conflicts between different national laws and the exceptional circumstances of their birth (Crock, 2003).

From a Maqasid perspective, the prolonged uncertainty about these children's status represented a clear threat to life preservation. The children required immediate access to medical care, nutrition, and protection, regardless of their ultimate nationality status. The application of *jus soli* principles by the nearest coastal state would have provided immediate protection while allowing for long-term status determination through normal diplomatic channels. Another instructive case involved the birth of a child aboard a cargo vessel flying a flag of convenience in 2018. The child's parents held different nationalities, neither of which automatically extended to children born abroad. The flag state (Panama) did not provide nationality to children born on vessels under its flag unless one parent was Panamanian. This created a potential statelessness situation that was

ultimately resolved through humanitarian provisions, but only after several months of uncertainty (International Maritime Organization, 2019, Case Study 7, pp. 23-25). The Maqasid analysis of such cases emphasizes the primacy of immediate child welfare over administrative convenience or jurisdictional clarity. The preservation of life requires that children receive immediate protection and legal status, with refinements and adjustments made through subsequent legal processes. This approach aligns with the Islamic legal principle of "choosing the lesser of two evils" (Ikhtiyar ahwan al-sharrayn) (Al-Ghazali, 1993) when perfect solutions are not immediately available.

### **Lineage Preservation and Territorial Connection**

The relationship between place of birth and personal identity occupies a complex position within Islamic legal thought. While Islamic law places primary emphasis on genealogical identity (nasab), it also recognizes the formative influence of birthplace and early environment on individual development. The Quranic recognition that human diversity includes both ethnic and geographical variation suggests that territorial connection can complement rather than compete with genealogical identity. The verse "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another" (The Holy Quran, Al-Hujurat 49:13) has been interpreted by contemporary Islamic scholars to include territorial and cultural diversity alongside genealogical variation. Scholar Abdolkarim Soroush argues that this verse recognizes place-based identity as part of divine wisdom in human creation, suggesting that territorial belonging can serve legitimate identity-formation functions (Soroush, 2000, pp. 134-155). Classical Islamic biographical literature (tabaqat) frequently identifies scholars and other notable figures by their places of birth or residence, indicating cultural recognition of territorial connection as a meaningful aspect of personal identity. The practice of using geographical attributions (nisba) in Islamic naming conventions demonstrates that territorial connection was understood as compatible with,

rather than threatening to, genealogical identity (Al-Sam'ani, 1962, vol. 1, pp. 15-34).

In the maritime context, the place of birth can serve important identity-formation functions even when it does not coincide with parental origins. Children born at sea often develop strong connections to maritime culture and international mobility that shape their personal development. Islamic recognition of environmental influence on character formation supports the acknowledgement of these territorial connections as legitimate aspects of personal identity.

### **Adoption and Alternative Family Structures**

Islamic law's treatment of adoption (kafala) and guardianship provides important precedents for understanding how territorial belonging can complement genealogical identity. While Islamic law prohibits legal adoption that obscures true parentage, it strongly encourages guardianship arrangements that provide care and protection for children while preserving their genealogical identity (The Holy Quran, Al-Ahzab 33:4-5). The Quranic injunction "Call them by (the names of) their fathers; it is more just in the sight of Allah" (The Holy Quran, Al-Ahzab 33:5) establishes the importance of preserving genealogical identity, but it does not prohibit the formation of caring relationships with non-biological caregivers. Contemporary Islamic scholar Khaled Abou El Fadl argues that this verse protects children's right to know their origins while allowing for loving care from multiple sources (Abou El Fadl, 2001, pp. 234-267). The Prophet Muhammad's own experience as an orphan raised by extended family provides a model for how territorial and genealogical belonging can be integrated. Despite being raised by his grandfather and uncle rather than his biological parents, the Prophet maintained strong connections to his Hashemite lineage while also developing deep attachments to the broader Meccan community (Ibn Hisham, 1955, vol. 1, pp. 159-178). This precedent suggests that multiple forms of belonging can coexist and strengthen rather than compete with each other. In maritime birth situations, jus soli nationality can function similarly to guardianship, providing

immediate protection and belonging while preserving connections to parental origins. This approach allows children to maintain dual connections to their place of birth and to their ancestral heritage without requiring them to choose between competing identities.

### **Challenges and Limitations of Jus Soli from the *Maqasid* Perspective**

Despite its benefits for life preservation and territorial responsibility, jus soli application can create tensions with the Maqasid objective of lineage preservation (Hifz al-nasab). The most significant challenge arises when jus soli nationality creates different legal statuses within families, potentially undermining family unity and creating administrative barriers to maintaining family relationships. Consider a scenario where parents holding citizenship from a jus sanguinis only country give birth to children in the territorial waters of a jus soli state. If the children acquire nationality from the birth state while parents remain foreign nationals, this difference in legal status can create practical difficulties for family travel, residence, and long-term planning. The children may face barriers to visiting or residing in their parents' country of origin, while parents may face restrictions in the children's country of nationality.

Based on the above, classical Islamic legal scholar, Ibn Qudamah (d. 1223) emphasized that Islamic law prioritizes maintaining family unity and preventing separation of family members (Ibn Qudamah, 1968, vol. 9, pp. 345-367). Contemporary application of this principle suggests that jus soli policies should include mechanisms to facilitate family unity, such as expedited residency or nationality options for parents of jus soli nationals. Another potential conflict arises when jus soli nationality interferes with inheritance rights based on genealogical identity. Traditional Islamic inheritance law is closely tied to genealogical relationships, and differences in nationality status within families can create complications for inheritance planning and execution. However, contemporary Islamic legal scholars generally agree that nationality differences do not affect Islamic inheritance

obligations, which are based on family relationships rather than legal citizenship status (Al-Zuhayli, 2002, vol. 8, pp. 234-256).

The implementation of jus soli principles in maritime contexts faces significant administrative challenges that can affect the realization of Maqasid objectives. The verification of birth location in international waters presents particular difficulties, as precise geographical coordinates and jurisdictional boundaries may be disputed or unclear. Modern maritime navigation systems provide accurate location data, but legal recognition of this data for nationality determination requires international coordination and standardization. The International Maritime Organization (IMO) has developed guidelines for recording maritime births, but these guidelines are not uniformly implemented or legally binding (International Maritime Organization, 2020, pp. 12-25). Documentation and registration procedures present additional challenges. Maritime births often occur in emergency circumstances with limited access to official documentation. The resulting informality can create long-term problems for children seeking to establish their nationality status or access services based on their birth circumstances. From a Maqasid perspective, these administrative challenges must be balanced against the primary objective of protecting child welfare. The Islamic legal principle of "facilitation" (*taysir*) suggests that administrative procedures should be designed to facilitate rather than obstruct the achievement of beneficial outcomes (Al-Shatibi, 1997, vol. 1, pp. 324-345). This principle supports the development of flexible, child-friendly procedures for establishing and documenting maritime nationality claims.

### **Conclusion**

This research has demonstrated the significant potential for Islamic legal philosophy, specifically the Maqasid al-Shariah framework, to contribute meaningfully to contemporary international maritime law and nationality determination. The study reveals that the five essential objectives of Islamic law; preservation of faith (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasab*), and property (*ḥifẓ al-māl*), provide a comprehensive analytical framework that can address the complex

challenges surrounding maritime births in international waters (Al-Ghazali, 1993, pp. 174-180; Auda, 2007, pp. 22-25). The analysis establishes that both jus soli and jus sanguinis principles find support within the Maqasid framework, but their application must be contextual and prioritized according to the hierarchy of Islamic legal objectives. Life preservation (*ḥifẓ al-nafs*) emerges as the paramount consideration, requiring immediate protection against statelessness, consistent with Al-Ghazali's foundational work on the preservation of essential necessities (*al-ḍarūriyyāt*) (Al-Ghazali, 1993, p. 174; Opwis, 2005, pp. 182-223). Meanwhile, lineage preservation (*ḥifẓ al-nasab*) provides strong support for family unity and genealogical identity maintenance, reflecting the Quranic emphasis on knowing one's parentage: "Call them by [the names of] their fathers; it is more just in the sight of Allah" (Quran 33:5; Abdel Haleem, 2004).

The research contributes to contemporary Islamic jurisprudence by demonstrating how classical Maqasid theory, as developed by scholars like Al-Shatibi in his seminal work "Al-Muwafaqat," can be systematically applied to modern international legal challenges while maintaining methodological consistency with established Islamic legal principles (Al-Shatibi, 1975, vol. 2, pp. 8-15). This application extends beyond traditional fiqh boundaries to encompass complex issues of state sovereignty, international cooperation, and cross-border family relationships. The research develops a novel hierarchical decision-making framework that prioritises child welfare and family unity while respecting state sovereignty and administrative efficiency. This framework offers practical guidance for resolving nationality disputes in maritime contexts, providing clear priorities and procedures that can be implemented by both Islamic and secular legal systems. The framework operates on four hierarchical levels, to wit; Primary Priority-life preservation and immediate child welfare; Secondary Priority - family unity and lineage preservation; Tertiary Priority - territorial sovereignty and administrative efficiency; and Quaternary Priority - long-term policy coherence and international cooperation (Masud, 1995, pp. 151-165).

The comparative analysis reveals significant convergence between Islamic legal objectives and international human rights principles, particularly regarding child protection, family unity, and human dignity. This convergence is exemplified in the compatibility between the Islamic principle of *maṣlaḥa* (public interest) and the "best interests of the child" principle enshrined in Article 3 of the UN Convention on the Rights of the Child (United Nations, 1989, Article 3; Raysuni, 1995, pp. 89-95). Such convergence creates opportunities for harmonized approaches that respect cultural authenticity while meeting international standards, addressing what Abdolkarim Soroush terms the "contraction and expansion of religious knowledge" in contemporary contexts (Soroush, 2000, pp. 31-53).

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