

# THE PRINCIPLE OF SPECIALTY IN EXTRADITION PROCESS: BALANCING THE RIGHTS OF THE EXTRADITED INDIVIDUAL AND THE STATE'S RIGHT TO PUNISH

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## Abstract:

*The extradition process is considered one of the most important procedural mechanisms established by international criminal law to combat the phenomenon of impunity and strengthen the state's right to impose punishment, thus upholding criminal justice as a whole. The accused person subject to extradition retains the right to a fair trial, which necessitates ensuring that the extradition procedures are accompanied by all the guarantees that protect the accused from any abuse or arbitrary actions by the requesting state. Among these guarantees are the principles of international complementarity, international cooperation in crime prevention, the principle of non-impunity for criminals, and the principle of specificity. The principle of specificity is one of the most important procedural and objective guarantees that protect the accused from manipulation that the requesting state may resort to in order to circumvent the objective prohibition imposed on certain crimes subject to extradition, such as political and military crimes. However, certain exceptions prevent the application of this rule in its entirety, in order to enhance the state's right to impose punishment.*

**Keywords:** Principle of specificity, extradition, extradition agreement, state's right to impose punishment, guarantees for the accused.

## INTRODUCTION:

International cooperation in combating crime is an inevitable necessity prompted by the increasing number of transnational crimes and their threat to the security and safety of all nations. Consequently, numerous agreements and treaties have been established, outlining preventive and punitive measures to apprehend criminals and prevent them from escaping punishment. One of the most prominent measures devised is the procedure of "extradition."

Extradition, being a fundamental procedural mechanism embraced by both international and domestic criminal law, aims to curb the spread of impunity and reinforce the state's right to impose punishment, thereby solidifying the principles of criminal justice as a whole. However, even in the context of extradition, the accused person subject to extradition retains the right to a fair trial. This necessitates the implementation of comprehensive safeguards to protect the accused from any abuse or arbitrary actions that the requesting state may impose.

Consequently, a set of customary principles emerged to regulate the process of extradition, which were soon codified in various international instruments, serving as general principles of law governing extradition procedures. These principles ensure complete immunity for the accused from any arbitrary actions on one hand, while empowering the state to further enhance its right to impose punishment on the other.

Among these principles are the principle of international complementarity, the principle of international cooperation in crime prevention, the principle of preventing criminals from evading punishment, and the principle of specificity. The principle of specificity, in particular, is one of the most important procedural and objective safeguards that protect the accused from manipulation that the requesting state may resort to in order to circumvent the objective prohibition imposed on certain crimes subject to extradition.



Based on the fact that certain crimes have been excluded by international agreements and national laws, such as the Algerian Code of Criminal Procedure, from the scope of extradition rules, such as political crimes and military crimes, certain international practices have shown that extradition requests may be based on crimes falling within the permissible scope of extradition rules, but only formally. In such cases, the requesting state seeks to apprehend the accused solely for the purpose of prosecuting them for crimes other than those specified in the extradition request. As a result of the development of international agreements and practices in this field, a principle called the principle of specificity has emerged. This principle aims to prevent such behaviors in order to ensure the accused's right to protection from any abuse, while also considering certain exceptions that hinder the application of this principle in its entirety, in a step to enhance the state's right to impose punishment. Given the importance of this principle in the field of legal texts governing the issue of extradition as a guarantee for a fair trial for the accused and as a reinforcement of the state's right to impose punishment, and considering that specialized legal studies on this principle are somewhat scarce, the question arises urgently about the extent to which the international community has succeeded in striking a balance between preserving the rights and freedoms of individuals and securing the principle of not allowing criminals to escape punishment, in light of the dedication to the principle of specificity.

The main problem of this research is derived from the aforementioned, and it gives rise to several secondary questions that we attempt to address through this study. The most prominent among them are:

1. What is meant by the principle of specificity within the framework of extraditing criminals?
2. What is the legal basis from which it derives?
3. To what extent does it contradict the will of the states involved in extradition agreements?
4. What guarantees does it provide to the person subject to extradition?

To answer these issues, we will adopt an analytical approach to study the relevant legal texts concerning the principle of specificity, particularly in light of the Algerian Code of Criminal Procedure and the international agreements ratified by Algeria. However, this does not preclude occasional integration of a comparative approach to simulate practices in foreign countries in this field. This will be done by initially examining the immunity offered to the accused sought for extradition (Section One), and then delving into the exceptions that enhance the state's right to impose punishment (Section Two).

#### **I- The Principle of Specificity as Immunity for the Accused Subject to Extradition**

The significance of the principle of specificity lies in its status as one of the most important safeguards established to protect the person sought for extradition. This is due to the extension of the principle's effect to the post-extradition stage, elevating it to the level of immunity granted to the surrendered person. Consequently, they are exempted from certain criminal proceedings, despite being present within the territory of the state and subject to its jurisdiction.

From this standpoint, several questions arise regarding the concept of this principle and its foundation and the extent of its incorporation in international instruments and domestic legislation of countries

##### **1. The Concept of the Principle of Specificity in International Criminal Law**

Referring to various legal texts drafted in the Arabic language, it becomes evident that there is variation in the terminology used to refer to this principle. Some employ the term "Principle of Specificity," while others use the term "Principle of Speciality." In general, both terms correspond to the French term "Principe de spécialité."<sup>1</sup>

As for its definition, the principle of specificity is understood as "The requesting state is prohibited from prosecuting or punishing the extradited individual for any offenses other than those explicitly

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<sup>1</sup>We find that Article 08 of the Extradition Treaty between Morocco and France, signed in Rabat on August 2, 2011, uses the term "specificity." At the same time, we find that Article 13 of the Extradition Treaty between Algeria and France, signed in Algiers on January 27, 2019, uses the term "specialization."



outlined in the extradition request for which the extradition was granted<sup>2</sup>." It also signifies that ""The effect of extradition is limited to the crime for which the extradition was granted."<sup>3</sup> Moreover, some consider this principle as one of the fundamental principles in the field of extradition, serving as an international customary norm that obliges the participating states to apply it<sup>4</sup>.

It is also observed that legal texts have adopted the same concept, whether in the definitions provided in the United Nations Treaty on Extradition<sup>5</sup>, regional treaties such as the Riyadh Arab Agreement for Judicial Cooperation<sup>6</sup>, or even bilateral treaties related to judicial cooperation and extradition<sup>7</sup>, not to mention domestic legislation. In this context, the Framework Decision concerning the European Arrest Warrant defines the principle of specialty in Article 27 as follows: It prohibits the prosecution, conviction, or deprivation of liberty of any person surrendered pursuant to a European Arrest<sup>8</sup> Warrant for any offense committed before their surrender other than the offense that prompted them to be delivered.

Based on the preceding discussion, the question arises regarding the legal basis upon which this principle is founded. Some argue that its strength derives from the agreement reached between the contracting states during the extradition process, and therefore, neither party is allowed to deviate from their obligations. Once an agreement is reached to surrender an individual based on specific facts, it is not permissible for the requesting state to prosecute this person for crimes that were not agreed upon.

On the other hand, some establish this principle on the right of the state to grant asylum. Consequently, when a state agrees to extradite an individual, it relinquishes a portion of its right to grant asylum. Therefore, the requesting state is obligated to prosecute the surrendered person according to the crimes specified in the extradition request. In the same context, one researcher argues that the principle of specificity "aims to protect the surrendered person from being accused of a crime other than the one for which they were surrendered, where the evidence is insufficient to prove the incident and a fair trial is not guaranteed." For example, this principle prevents the requesting state from circumventing the extradition conditions in order to seek retribution against the surrendered person for committing a political crime. They may list an ordinary crime in the extradition request but prosecute them for a political crime upon surrender. In essence, the true justification for the emergence and consolidation of this rule as a principle of law is to eliminate manipulation and deception in the extradition process.<sup>9</sup>

<sup>2</sup>Hisham Abdel Aziz Mubarak Abouzeid, "Extradition between Reality and Law: A Comparative Study in International Criminal Law," Ph.D. thesis, Faculty of Law, University of Menoufia, Egypt, page 317.

<sup>3</sup>Abdul Amir Junaid, "Extradition in Iraq," Iraqi Institution for Advertising and Printing, Baghdad 1977, page 255.

<sup>4</sup>Abdel Hamid Amara, "The Extradition System in Light of International Judicial Cooperation," Al-Baheth Journal for Academic Studies, University of Batna, Algeria, Issue 11, June 2017, p. 736.

<sup>5</sup>See Article 14 of the United Nations Extradition Treaty of 1990.

<sup>6</sup>See Article 52 of the Riyadh Arab Agreement for Judicial Cooperation of 1983, ratified by Algeria on May 20, 2001.

<sup>7</sup>For example, see Article 12 of the Extradition Agreement between Algeria and Spain, signed on December 12, 2006, and ratified on March 9, 2008, Official Gazette of the Algerian Republic, Issue No. 14, published on March 12, 2008, page 07.

<sup>8</sup>Council Framework Decision of June 13, 2002, on the European Arrest Warrant and the Surrender Procedures between Member States - Declarations by certain Member States on the adoption of the Framework Decision. Official Journal No. L 190 of 18/07/2002 p. 0001 – 0020.

<sup>9</sup>Ziyad Mohammad Jafal, Extradition of Criminals as One of the Mechanisms of the Arab League for Counterterrorism and the Position of UAE Legislators, University of Sharjah Journal of Legal Sciences, United Arab Emirates, Volume 16, Issue 1, June 2019, p. 519.



We also perceive that the principle of specificity finds its foundation and rationale in its consideration as one of the most crucial guarantees for a fair trial of the surrendered individual. Such an individual should not find themselves subjected to any manipulation or circumvention of the law, to use the expression appropriately. The requesting state is not entitled to bypass the rules governing the extradition of criminals and the guarantees and procedures associated with hosting an accused person for prosecution on crimes that the surrendering state would not have surrendered them for had it been aware of such charges. The purpose of establishing the principle of specificity in the extradition of criminals is to eliminate any manipulation that the requesting state may engage in. For instance, to pursue an individual for prohibited crimes such as political offenses, the state may request their extradition based on an ordinary crime as a disguise for its original intention.

## **2. THE LEGAL ENSHRINEMENT OF THE PRINCIPLE OF SPECIALIZATION AS A GUARANTEE FOR THE EXTRADITED ACCUSED**

The legal dedication of the principle of specificity as a guarantee for the accused in extradition can be traced back to the year 1844, with the signing of a judicial cooperation agreement between France and Luxembourg. This treaty became the first international document to explicitly mention this principle. However, the principle of specificity was quickly generalized and incorporated into the domestic legislations of most European countries by the early 1870s, making it one of the most important principles governing the extradition process. In fact, it is rare to find any judicial cooperation agreement that does not include a provision on this principle.

### **At the International Level:**

Regarding international agreements, the most significant one that dedicates the principle of specificity is the Model Treaty on Extradition. The United Nations Treaty on Extradition of 1990<sup>10</sup> also addresses this principle as one of the key principles ensuring the rights and freedoms of the individuals subject to extradition, preventing any attempts by the requesting state to circumvent them.

It is worth noting that this principle applies not only to the requesting states but also in the context of the International Criminal Court (ICC) and its surrender procedures. Article 101 of the Rome Statute, which serves as the foundation of the ICC, emphasizes the necessity to respect the principle of specificity<sup>11</sup>.

### **At the Regional level:**

The principle of specificity has been enshrined in numerous regional agreements, such as the Arab League Treaty on Extradition<sup>12</sup>, the European Convention on Extradition<sup>13</sup>, the Cooperation Agreement among Arab Maghreb Union (AMU) countries<sup>14</sup>, and the Arab Riyadh Agreement for Judicial Cooperation<sup>15</sup>. These agreements emphasize that the person subject to extradition should only be accused or tried for the offense for which the extradition was granted, along with any related offenses and crimes committed after the extradition<sup>16</sup>.

<sup>10</sup>Article 14 of the Model Extradition Treaty Adopted by the General Assembly in its resolution 45/116 and amended by it in its resolution 52/88 states: "An individual extradited pursuant to this Treaty shall not, on the territory of the Requesting State, be the subject of prosecution, sentenced, detained, re-extradited to a third State, or subjected to any other restrictions of personal liberty for an offense committed prior to extradition..."

<sup>11</sup>Article 101 of the Rome Statute of the International Criminal Court states: "No proceedings shall be commenced against a person who is brought before the Court in accordance with this Statute, and this person shall not be subjected to punishment or detention by reason of any conduct related to offenses referred to in this Statute which he or she committed prior to being brought before the Court..."

<sup>12</sup>See Article 14 of the Extradition Treaty among the Arab League States for the year 1953.

<sup>13</sup>See Article 14 of the European Extradition Convention for the year 1957.

<sup>14</sup>See Article 62 of the Cooperation Agreement among the Arab Maghreb Union States concluded in Libya in 1991.

<sup>15</sup>See Article 52 of the Riyadh Arab Agreement for Judicial Cooperation for the year 1983.

<sup>16</sup>Ziyad Mohammad Jafal, *op. cit.*, p. 518.



These are just a few examples of the significant regional treaties dedicated to the principle of specificity.

**At the Bilateral Level:**

By examining the bilateral agreements concluded by Algeria, we find that most, if not all, of them include the principle of specificity. Let us review some of these agreements that bring together Algeria and some Arab and Western countries for comparison.

**With Arab Maghreb countries:**

The principle of specificity has been stipulated in Article 42 of the Mutual Cooperation Agreement in the Judicial Field between Algeria and Morocco, signed on 15/03/1963 and ratified on 17/04/1963. It is also present in the agreement on judicial cooperation between Algeria and Libya, signed on 08/07/1994 and ratified on 12/11/1995. Additionally, Article 37 of the Mutual Assistance and Judicial and Legal Cooperation Agreement between Algeria and Tunisia, signed on 26/07/1963 and ratified on 14/11/1963, covers the principle of specificity.

**With Arab countries:**

This principle is addressed in Article 36 of the Mutual Assistance and Judicial and Legal Cooperation Agreement between Egypt and Algeria, signed on 29/02/1964 and ratified on 29/07/1965. It is also covered by Article 29 of the agreement on judicial and legal cooperation between Algeria and Syria, signed and ratified on 27/04/1981.

**With European countries:**

The principle of specificity is mentioned in Article 13 of the Extradition Agreement between Algeria and France, dated 27/01/2019, and ratified on 25/04/2021. It is also present in the agreement on extradition between Algeria and Italy, signed on 22/07/2003 and ratified on 13/02/2005, as well as in Article 12 of the agreement on extradition between Algeria and Spain, signed on 12/12/2006 and ratified on 09/03/2008.

**With other countries worldwide:**

For example, Article 12 of the Algerian-Iranian Extradition Agreement of 2005, Article 16 of the Algerian-Korean Extradition Agreement of 2007, and the Algerian-Cuban Extradition Agreement approved by Decree 02/102 on 06/03/2002 encompass the principle of specificity.

**At the Domestic Level:**

By referring to Article 700 of the Algerian Code of Criminal Procedure, it can be said that the Algerian legislator has enshrined this principle<sup>17</sup>, similar to the French<sup>18</sup>, Belgian, Moroccan<sup>19</sup>, Jordanian<sup>20</sup>, and other legal systems. However, the Algerian formulation of the principle differs, and it is accompanied by some ambiguity compared to the provisions of the ratified agreements by Algeria.

Within the framework of legislative consolidation of this principle in Algerian legislation, and to emphasize the principle of extradition as immunity for the accused within the rules of surrendering criminals, ensuring that it does not remain merely a legal provision disconnected from punishment, we refer to the penalty resulting from violating the extradition request based on the principle of specialization. This is stipulated in Article 714 of the Code of Criminal Procedure, which declares the invalidity of surrender in case of violating the rules established in this law. The nullification is considered a general provision that the judge can raise on their own initiative and can be raised at

<sup>17</sup>Article 700 of the Algerian Code of Criminal Procedure provides: "Subject to the exceptions provided for hereinafter, extradition shall only be granted on the condition that the extradited person is not subject to prosecution or has not been convicted of a crime other than that which justified the extradition."

<sup>18</sup>See Articles 696-68 of the French Code of Criminal Procedure.

<sup>19</sup>See Article 723 of Law No. 22-03 containing the Criminal Procedure Code.

<sup>20</sup>Article 6/b of the Jordanian Extradition Law stipulates: "The fugitive criminal shall not be extradited to a foreign state unless its law or the treaty concluded with it provides for the non-arrest or trial of the criminal for another crime... other than the offense for which the extradition request was made." Yasser Mohammed Al-Jubour, *Extradition or Surrender of Criminals in International Treaties and the Statute of the International Criminal Court*, Master's Thesis, Middle East University, Jordan, 2011, p. 216.





any stage of the public lawsuit. The deadline for challenging the nullification of the extradition request is set at 3 days from the date of the notice sent by the public prosecutor to the person subject to surrender.

In general, it becomes evident from the above that the principle of specialization holds great importance in the process of extraditing criminals, making it enshrined in a range of international and regional conventions, as well as in domestic laws and the statute of the International Criminal Court. However, through examining the concept and basis of this principle, it becomes clear that there is a distinct difference between the principle of specialization as a mechanism to protect the surrendered individual and the state requested to surrender, and the state seeking extradition as it relates to the idea of protecting the fundamental rights and freedoms of the surrendered individual. The principle of immunity, on the other hand, acts as a barrier against the legislative, executive, or judicial jurisdiction of another state, aiming to enable representatives of the state to effectively perform their assigned duties and tasks without hindrance, even though both principles essentially constitute restrictions that prevent the punishment of the accused for the committed crime.

## **II- The Principle of Specialty and the State's Right to Impose Punishment**

The principle of specialization and the right of the state to impose punishment raise numerous questions and challenges in the minds of researchers and practitioners in the field of law, particularly after completing the first section of this research study. These questions primarily revolve around the contradictions accompanying the application of this principle in reality. It is undeniable that any attempt to enforce the principle of specialization without considering its implications may undermine several other legal principles, such as the principle of sovereignty, the principle of the state's right to impose punishment, the principle of not allowing criminals to escape punishment, and so on.

Additionally, there is the possibility of discovering other crimes committed by the surrendered individual after the completion of the surrender process. This is not a rare occurrence. For instance, in 2017, during the surrender of the accused individual, M.S., by the Belgian authorities upon the initiative of the Public Prosecutor at the Flawsen Court (previously Oran), Algeria, once his fingerprints were matched by the Judicial Police Service in the Oran Security Department through the Automated Fingerprint Identification System (AFIS)<sup>21</sup>, it was revealed that he was wanted for other crimes not included in the extradition request. This situation has raised several concerns about the possibility of prosecuting him for those crimes first.

Considering the aforementioned issues, the question arises as to how these theoretical and practical contradictions are addressed. Answering this question requires us to refer to and examine the provisions dedicated to the principle of specialization. By analyzing the wording of these articles, it becomes clear that the principle is not absolute but rather contains exceptions that align it with the requirements of justice and the imposition of punishment. These exceptions safeguard the state's constitutional and international right to impose punishment, while also upholding the principles of criminal justice. Among these exceptions are those related to the surrendered individual and those concerning the states involved in the extradition process.

### **1. Exceptions Regarding the Will of the Extradited Individual**

In this context, we find that legal texts and agreements have provided the surrendered individual with the ability to determine the procedural path regarding proceedings not mentioned in the extradition request. Thus, the surrendered individual may explicitly or implicitly waive the principle of specialization, allowing for the possibility of being prosecuted and/or punished for other acts not included in the extradition request.

#### **1. 1. Explicit Waiver of the Principle of Specialization:**

This refers to the consent of the extradited individual when appearing before the competent authorities of the requesting state to be tried and punished for acts other than those for which they

<sup>21</sup>This system refers to the Automated Fingerprint Identification System (AFIS), which is an abbreviation for the first letters of the English phrase "Automated Fingerprint Identification System."



were extradited. This case is considered one of the most important exceptions to the principle of specialization, as it signifies the extradited acceptance of the state's exercise of its authority over them.

This case may raise a lot of ambiguity, especially due to the fraudulent methods or coercion that the requesting state may employ to obtain the consent of the surrendered individual. This may explain the absence of this exception in many international agreements<sup>22</sup>. However, this does not prevent it from being considered an exception to the principle of specialization, as it is enshrined in several agreements relating to the extradition of criminals<sup>23</sup>.

#### 1. 2. Implicit Waiver of the Principle of Specialization:

Through an analysis of various texts related to the principle of specialization, it becomes apparent that the surrendered individual's implicit waiver of this principle takes two forms. The first form is when the individual remains within the territory of the requesting state for a specific period of time<sup>24</sup> after their release, even though they could have left that country<sup>25</sup>. The second form occurs when the surrendered individual voluntarily returns to that state after having left it following their release.

In contrast to the explicit waiver, this exception is codified in most international agreements, such as the Model Treaty on Extradition<sup>26</sup>. It is also explicitly stated in Algerian legislation under Article 717 of the Code of Criminal Procedure<sup>27</sup>. However, the legislator has been criticized for only regulating the first form, namely the individual's stay in the requesting state for 30 days after their release, while neglecting the second form concerning the individual's voluntary return to that state. Therefore, it is necessary to reformulate this article to align national legislation with the signed and ratified agreements by Algeria.

While some may argue that the 30-day period specified in the Code of Criminal Procedure conflicts with, for example, a 45-day period stipulated in the extradition agreement between Algeria and the United Kingdom, this confusion is resolved when we realize that the legislator, specifically under Article 694 of the Code of Criminal Procedure, ensures the application of provisions in agreements and treaties in cases of conflict with the provisions of the criminal procedure

<sup>22</sup>For example, this exception was not stipulated under the United Nations Extradition Treaty of 1990, nor in the Extradition Treaty between Algeria and France signed on January 27, 2019, Official Gazette of the Algerian Republic, Issue No. 34, issued on May 9, 2021, page 05.

<sup>23</sup>Article 12/j of the Extradition Treaty between Algeria and Spain, signed on December 12, 2006, and ratified on March 9, 2008, states "...if the person who has been extradited agrees to it while appearing before the authorities of the requesting party," Official Gazette of the Algerian Republic, Issue No. 14, issued on March 12, 2008, page 07. This is the same wording as in Article 13/03 of the Extradition Treaty between Algeria and the Kingdom of Saudi Arabia, signed in Riyadh on April 13, 2013, Official Gazette of the Algerian Republic, Issue No. 43, issued on August 12, 2015, page 06.

<sup>24</sup>This period varies according to the texts; for instance, we find it specified as 45 days in the Extradition Treaty between Algeria and the United Kingdom, while it is specified as 30 days in the framework of the Extradition Treaty between Algeria and Spain.

<sup>25</sup>It should be noted that in the presence of a force majeure or exceptional circumstances preventing the person from leaving, this exception does not apply.

<sup>26</sup>See Article 14/03 of the United Nations Extradition Treaty of 1990.

See also Article 13/01/A of the Extradition Treaty between Algeria and France, Official Gazette of the Algerian Republic, Issue No. 34, issued on May 9, 2021, page 05.

See also Article 12/1/A of the Extradition Treaty between Algeria and Spain, Official Gazette of the Algerian Republic, Issue No. 14, issued on March 12, 2008, page 07.

See also Article 13/1/G of the Extradition Treaty between Algeria and Italy, Official Gazette of the Algerian Republic, Issue No. 13, issued on April 16, 2005, page 13.

<sup>27</sup>Article 717 of the Algerian Code of Criminal Procedure states: "The extradited person who could have left the territory of the requesting state within thirty days from the date of his final release shall be considered subject without reservation to the laws of that state regarding any act committed prior to his extradition and different from the crime that justified this extradition."



legislation. This provision is logical as it aligns with the principle that treaties prevail over domestic legislation.

## **2. Exceptions Related to the States Involved in the Extradition Relationship:**

Unlike the exceptions previously discussed, which are related to the consent of the surrendered individual, these exceptions primarily concern the will of the states involved in the extradition relationship to pursue and punish the surrendered individual for acts not included in the extradition request. In fact, these exceptions are the most effective way to address the omission of such acts in the extradition request because, in practical terms, it is not expected for the surrendered individual to explicitly or implicitly agree to further proceedings unless they have an interest in doing so, such as benefiting from the consolidation of penalties, or if they are unaware of other pending proceedings, which may result in their remaining within the territory of the state after their release, or if they are compelled to return to that country after leaving it. Generally, these exceptions rely on the consent of the requested state for extradition and the adaptation of the facts subject to the extradition request.

### **2.1. Consent of the requested state for extending its effect:**

This exception has sparked many debates in the jurisprudential circles, as some consider it a violation of the sovereignty of the requesting state for extradition and an unjustified interference in its internal affairs. However, this can be explained based on the fundamental principle of specialization discussed earlier. The consent of the requested state for extradition is considered one of the prominent exceptions to the principle of specialization, as it is included in most legal texts and conventions dedicated to this principle<sup>28</sup>. Article 14/01/b of the Model Extradition Convention explicitly mentions it<sup>29</sup>, as well as Article 101/02 of the Rome Statute of the International Criminal Court<sup>30</sup>. Such consent should be based on a new request supported by the required documents and evidence usually involved in the extradition process, in addition to a record of the surrendered person's statement regarding the facts and the possibility of extending the extradition's effect. This exception can also manifest through a prior agreement on extradition that excludes the principle of specialization. In such a case, the requesting state is not bound to refer back to the requested state for extradition if the surrendered person is pursued for acts other than those mentioned in the extradition request<sup>31</sup>.

### **2.2. Adaptation of the facts subject to the extradition request:**

The adaptation of the facts subject to the extradition request raises suspicions regarding the manipulating intentions of the requesting state. It may resort to adapting the facts in a way that allows it to request the extradition of the accused and then, once the extradition proceedings are completed, adapt the facts again. Therefore, the issue of adapting the facts was not initially allowed according to the principle of specialization, as the state was obliged to prosecute the surrendered person based on the same adaptation mentioned in the extradition request. This is evident from the fact that the original Article 14 of the Model Extradition Convention did not include this exception. It was later included by General Assembly Resolution 25/88 concerning

<sup>28</sup>See Article 13/1/B of the Extradition Treaty between Algeria and France, Article 12/1/B of the Extradition Treaty between Algeria and Spain, and Article 13/1/B of the Extradition Treaty between Algeria and Italy.

<sup>29</sup>Article 14/01/B of the Model Extradition Treaty Adopted by the General Assembly in its resolution 45/116 and amended by it in its resolution 52/88 states: "If it concerns another offense for which the Requested State gives its consent. Consent shall be given if the offense for which it is requested itself gives rise to extradition under this Treaty."

<sup>30</sup>Article 101/02 of the Rome Statute of the International Criminal Court states: "...the Court may request the State that surrendered the person to the Court to waive the requirements set out in paragraph 1, and the Court shall provide any additional information required under Article 91. The States Parties shall have the authority to waive to the Court, and they should seek to do so."

<sup>31</sup>This exception was included under Article 13/01/A of the Extradition Treaty between Algeria and Italy.





international cooperation in criminal matters<sup>32</sup>, with the condition that the new description refers to the same acts of the crime for which extradition was granted, and that the crime in its new description falls within the extraditable offenses<sup>33</sup>.

In general, these are the exceptions reached through examining various texts related to the extradition of criminals. They aim, in general, to mitigate the strictness of the principle of specialization in a way that makes it more consistent with the requirements of achieving justice and the state's right to impose punishment, as well as enabling states to enforce this principle in their domestic legislation.

#### CONCLUSION:

In conclusion, this research study has highlighted the important circumstances and factors that led the international community to establish the principle of specialization as one of the key guarantees for the surrendered person facing the requesting state for extradition. This principle emerged in response to the international practices that previously aimed to conceal the main justified reason for extradition, thus gaining prominence as one of the essential international norms governing the extradition process and subsequently enshrined in international instruments and domestic legislations of states.

However, the implementation of the principle of specialization soon encountered several accompanying challenges, particularly concerning the contradictions it raises with other principles such as sovereignty, the principle of not allowing criminals to escape punishment, and the state's right to impose penalties, among others. Consequently, the international community reconsidered the absolute application of the principle of specialization and introduced some exceptions to strike a balance between this principle and other legal principles, and to find a middle ground between protecting the surrendered person and the requirements of justice and the state's right to impose penalties.

It is noteworthy that the international community has largely succeeded in maintaining this balance by mitigating the strictness of the principle of specialization. As a result, this principle no longer prohibits the prosecution of the surrendered person for crimes not mentioned in the extradition request if the requesting state explicitly or implicitly expresses its intention to waive the adherence to the principle of specialization or if the participating states show their willingness to address the situation.

It should be noted that through examining most international treaties that include the principle of extradition, it is observed that its dedication is not accompanied by guarantees or penalties to ensure its respect. This has led the Algerian legislator to declare the invalidity of the extradition process in case of non-compliance with the stipulated provisions concerning the extradition of criminals, especially the principle of extradition, according to Article 714 of the Algerian Penal Procedure Code. This was an attempt to cover the gap created by the bilateral agreements ratified by Algeria in this field. This may lead us to make a set of recommendations based on the findings of this research study:

1. The need to rephrase Article 700 of the Algerian Penal Procedure Code due to its ambiguity and lack of reliance on the same wording dedicated to the principle of extradition in the bilateral treaties approved by Algeria.
2. Working on formulating the exceptions to the principle of extradition clearly and systematically, possibly consolidating them into a single article instead of scattering them across different articles.

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<sup>32</sup>General Assembly resolution number 52/88 dated 02/04/1998 concerning international cooperation in criminal matters includes supplementary provisions to the Model Treaty for Extradition where the following annex was added to sub-paragraph 1(A): "Countries may also wish to specify that the principle of specialty does not apply to crimes for which extradition is permissible and which can be proven based on the same facts, and which carry the same penalties or lesser penalties than those imposed for the original crime for which extradition is requested."

<sup>33</sup>See Article 13/02 of the Extradition Treaty between Algeria and France.  
See also Article 12/01/B of the Extradition Treaty between Algeria and Spain.



3. Ensuring the implementation of the exceptions stipulated in the agreements ratified by Algeria in its Penal Procedure Code, particularly in cases where the surrendered person returns to the territory of the state after being released as a form of implicit waiver of the principle of extradition by the surrendered person. Also, excluding the principle of extradition as a form of consent from the state required to surrender.

4. Revisiting the first chapter of the seventh book of the Algerian Penal Procedure Code, which includes provisions related to the extradition of criminals in general, with an attempt to update these provisions in line with Algeria's implementation and obligations towards other countries bound by international agreements in the field of extradition.

5. On the international level, despite the existence of a range of customary, treaty, and legal provisions that regulate the process of extradition in detail, it cannot be denied that other factors, circumstances, and considerations may influence the success or failure of this process, including the principle of reciprocity or the state's policy. Therefore, in our opinion, the extradition process is not purely a legal process but may be linked to political factors, which may contradict the requirements of justice. Hence, it is time to reconsider the nature of the extradition process as an act of sovereignty, with the necessity of establishing an independent international judicial body responsible for reviewing and adjudicating the legitimacy of extradition requests regardless of other considerations. The countries, especially those where the requested person is to be surrendered on their territories, should be obliged to respect the decisions of this body, even though it may initially appear to contradict the principle of sovereignty. However, there are justifications for this solution, especially when it comes to one of the most serious international crimes where the extradition or trial principle is ineffective. The Netherlands' refusal to extradite Emperor Wilhelm II is the greatest example of this.