

THE CRIMINAL EXTRADITION SYSTEM AS A MECHANISM IN INTERNATIONAL LAW

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Abstract:

The criminal extradition system is considered one of the best manifestations of solidarity among nations, a fact that has become evident to all. The United Nations emphasized this after World War II, as numerous international conferences were held successively to discuss various means of combating criminals. Therefore, international cooperation has become an absolute necessity imposed by current reality and necessitated by the increase in criminal activities between different countries of the world.

Perhaps the reason for this is due to the nature of the extradition system and its direct effect in achieving the greatest degree of effectiveness. This is represented in the possibility of deporting the wanted person to the requesting state to enable it to prosecute or execute the criminal penalty issued against them. Extradition is an explicit expression of countries' desire to achieve this cooperation, especially in light of the continuous increase in violent crimes and terrorist offenses.

Keywords: Criminal extradition, international agreements, international cooperation.

INTRODUCTION:

The principle of extradition and retrieval of criminals is one of the manifestations of international cooperation. Extradition is the act by which a state surrenders a convicted person or suspect who has fled to its territory to the state that has jurisdiction to subject them to punishment or to prosecute them. The regulatory relationship between two or more countries based on the principle of cooperation regarding the extradition and retrieval of criminals and convicts is the main element in activating the criminal extradition system.

A country cannot exercise its jurisdiction in applying penal laws to criminals or convicts on the territory of another country. This is because the principle of applying penal laws and the jurisdiction of national courts is limited to the territory over which the state exercises sovereignty, based on the principle of territoriality of criminal law. When a criminal commits a crime and fears being exposed and falling into the hands of justice, they typically flee from the country where they committed their crime to another country.

A criminal may also commit their crime while abroad, whether they are a citizen or of a different nationality, regardless of their citizenship. If that crime affects the security and stability of the state, its constitutional system, or its financial position, the national law applies to it. This is considered one of the cases where the penal laws of the affected state extend to reach the perpetrators of these crimes outside its territory. The state will only be able to enforce its laws by extraditing these criminals through international cooperation, which is organized by bilateral or multilateral agreements or within the framework of the International Criminal Court.

The importance of this study lies in the fact that the purpose of the criminal extradition system is the common interest of the international community in eliminating crime to achieve justice. Therefore, countries have typically not refused extradition, as the extradition system is required by the principle of solidarity that should prevail in international relations, in order to uphold international justice.

The majority of scholars view the extradition of criminals as an act of sovereignty, exercised by the state with its sovereignty over its territory, to decide on the extradition request either by acceptance or rejection. International cooperation in this field is manifested through the collection of information and evidence that would help bring those who committed crimes to justice, exchanging this information, and disregarding immunity for high-ranking officials.

It must be emphasized that the criminal extradition system has not yet reached the stage where its desired benefit can be achieved, despite the existence of international agreements¹ regulating its conditions and provisions. This is especially true when we find that the Rome Statute, in Article 93/4, opens the way for the state to invoke its sovereignty, either by refusing to provide documents or by claiming that domestic law prevents providing this type of assistance.

Hence, we can pose the following problem: **How effective is the criminal extradition system within the framework of international law?**

To answer this problem, we followed the descriptive approach by addressing the legal system for criminal extradition. We also used analysis as a tool of scientific research, through collecting, classifying, and analyzing information to reach a state where an accurate description and explanation of the phenomenon under study can be provided. This will then be employed in describing and analyzing the texts contained in laws and international agreements.

First: The Concept of the Criminal Extradition System

The term extradition is the most established and widely used in the field of international judicial cooperation, which has been regulated by a vast arsenal of national laws and international agreements. It is also one of the most controversial aspects of international judicial cooperation due to its severe impact on personal freedom.

1. Definition of the Criminal Extradition System

In this section, we will address the terminological and legal definitions of the criminal extradition system.

1.1. Terminological Definition:

Criminal extradition is the Arabic translation of the word "EXTRADITION," which was first used in a decree on February 19, 1891, in France, and it means deportation.² Most scholars have not agreed on a single definition of criminal extradition, due to differences regarding the nature of extradition, the extent of extraditing nationals or not, as well as the branching and extension of this system on both domestic and international levels, which led to multiple definitions.

It has been defined as: "A procedure in which a state surrenders a wanted person present on its territory, who is accused of committing international crimes, to the concerned state or an international judicial body for the purpose of bringing them to justice and trial, or for the purpose of executing a criminal judgment issued against them."³ In other words, it is the surrender by one state to another of a person accused of committing a crime or against whom a punishment has been issued, so that the requesting state can prosecute or execute the punishment.

Criminal extradition is also defined as: "One of the manifestations of international solidarity in combating crime, whereby a state surrenders a person residing in its territory to another state that requests them for prosecution for a crime that violated the sanctity of its laws or to execute a judgment issued against them by one of its courts." This means that a state relinquishes a person present in its territory to another state upon its request to prosecute them for a crime punishable by its law or to execute a judgment issued against them by one of its courts.⁴

¹ Model Treaty on Extradition, pursuant to Resolution 45/116 in the 45th session of the General Committee on 14/12/1990.

² Ben Jadah Abdullah, *International Cooperation in the Field of Criminal Extradition, Complementary Memorandum for obtaining a Master's Degree, Faculty of Law and Political Sciences, University of Algiers 1, 2009*, p. 09.

³ Al-Buqairat Abdul Qadir, *International Criminal Justice (Trials of Perpetrators of Crimes Against Humanity)*, Office of University Publications, Algeria, 2005, p. 134

⁴ Al-Saghir Jamil Abdel Baqi, *Procedural Aspects in Criminal Extradition*, Arab Renaissance House, Egypt, 1998, p. 85.

The latter definition is criticized for using the term "relinquishment," which implies that the requesting state exercises its powers of arrest and movement within the requested state, which contradicts the provisions of international agreements on extradition.

It can also be defined as: "A manifestation of international cooperation in combating crime, whereby a state surrenders a person residing in its territory, for the purpose of prosecuting them for a crime committed by the state requesting and receiving them, or to execute a severe punishment against them from one of its courts, thus preventing the possibility of impunity."⁵

1.2. Legal Definition:

Criminal extradition is an international procedure by which a state agrees to surrender to another state, at the latter's request, a criminal present in its territory, to be tried or to execute a sentence previously issued against them. This procedure derives its origins primarily from international agreements.⁶ In another definition, it is: "Criminal extradition is an act by which the state to whose territory a person accused or convicted of a crime has fled surrenders them to the competent state for prosecution or execution of the sentence."

Extradition is the legal procedure carried out by the state (the requesting state) in order to prosecute or execute the punishment on the person.⁷ The Rome Statute of the International Criminal Court defined it in Article 102: "Extradition means the delivering up of a person by one State to another as provided by treaty, convention or national legislation..."

From the previous definitions of the extradition procedure, we conclude that extradition occurs between two states. The first is called the requesting state, which seeks to retrieve the accused to prosecute them or to impose criminal punishment on them. The second party is called the requested state, which is the state where the wanted person is present on its territory.⁸

2. JUSTIFICATIONS AND PRINCIPLES OF CRIMINAL EXTRADITION

There are several justifications and principles for extradition, including:

2.1. Justifications for Criminal Extradition:

The justifications for extradition can be identified as follows:⁹

- Extradition is considered a national right exercised by the state according to the paramount importance of this procedure in achieving its interests, in accordance with the sources of extradition that the state relies on in its relations with other states.
- Extradition is based on international relations regardless of the type and nature of the crime committed. There is no international or national system that obliges any state to carry out extradition in violation of the requirements of sovereignty that it exercises over its territory and those who reside on it. This justification supports the idea of sovereignty on which some trends are based to determine the nature of the extradition system.
- The procedure achieves the interest of the international community in not allowing the criminal to escape justice.
- The appearance of the accused before the judge at the crime scene provides the best guarantees for the trial of the wanted person and conducts investigations more effectively.
- Extradition is also based on the right of the requesting state to punish anyone who violates its laws, in implementation of the principle of territoriality in both its substantive and procedural

⁵ Manaa Mona, Ben Bouabdallah Warda, Application of the Controlled Delivery Procedure to Confront Corruption Crimes under the Bilateral Agreement (Algeria-France), *Journal of Legal and Political Research*, University of Jijel, Volume 8, Issue 2, June 2023, p. 438.

⁶ Al-Qaram Ibtisam, *Legal Terms in Algerian Legislation*, National Institute for Printing Arts, Algeria, 1992, p. 129.

⁷ Al-Junaidi Abdul Malik, *Criminal Encyclopedia. Part 2*, 2nd Edition, Egyptian Book House, Egypt, 1976, p. 590.

⁸ Al-Saghir Jamil Abdel Baqi, *IBID*, p. 105.

⁹ Al-Masdi Adel Abdullah, *The International Criminal Court*, 1st Edition, Arab Renaissance House, Cairo, 2002, p. 115.

aspects. In general, it can be said that the main justification for extradition lies in ensuring the punishment of the accused for their criminal behavior, within the framework of criminal justice principles that the state relies on when formulating the features of international cooperation.

2.2. Principles of Criminal Extradition:

The criminal extradition system is based on a set of principles, the most important of which are:¹⁰

- The principle of dual criminality: This means that the act for which extradition is requested must be criminalized in both states.
- The principle of reciprocity: Extradition is carried out in accordance with the domestic legislation of the requested state by applying this additional condition for extradition.
- The principle of specialty: This refers to the principle that prohibits the requesting state from prosecuting or imposing punishment on the wanted person, except for the same crime they committed and for which they were extradited, and the prohibition of extradition for any charges for crimes prior to the extradition.
- The principle of non-extradition of nationals.
- The rule of *res judicata*: This means that the requested state has the right to refuse to extradite the wanted person if its judicial authorities have previously tried this person for the same act for which extradition is requested, and the judgment issued by it has the force of *res judicata*.

Second: The Legal Framework for the Criminal Extradition System

The scientific and technological progress achieved by humans has contributed greatly and positively to the development of the world and facilitated many things, especially means of transportation between countries and the fall of barriers and borders between them. This has been accompanied by the ease of movement of criminals. For this reason, most countries of the world have enacted laws to combat crime and limit the movement of criminals. However, legislation is not the only tool for cooperation between countries to combat crime. The judicial authority can play an important role in this regard. As long as the state's sovereignty does not exceed its borders, it is prohibited from carrying out any judicial action in territories subject to the sovereignty of another state. Therefore, it must request assistance from that state.

1. Sources of the Criminal Extradition System

There is no doubt that the emergence of extradition rules was a result of constructive international cooperation based on the provisions of international law and custom. Therefore, countries have included it in their domestic legislation to regulate cases of extradition.

Accordingly, the sources of the criminal extradition system are not uniform in all legislations, but differ according to the legislative circumstances of each country. However, they can be traced back to five sources:

1.1. International Agreements:

International agreements are considered the leading source from which extradition derives its conditions, procedures, and binding force. The provisions of the agreement are the primary legal rules that govern extradition. Countries have enacted these provisions within their domestic legislation to enable them to apply them at the domestic level. They have taken into account the conflict that may occur between the provisions of the agreement and domestic extradition legislation by requiring the application of domestic legislation unless it contradicts the provisions of the agreement.

International agreements are divided into three types:¹¹

- Bilateral extradition agreements, which are concluded between two countries according to the conditions and controls, set by them.
- Multilateral extradition agreements, which are agreements involving several countries.

¹⁰ Al-Sawi Mohamed Mansour, *Provisions of International Law in the Field of Combating International Drug Crimes*, University Press House, Alexandria, 2012, p. 25.

¹¹ Siraj Abdul Fattah Muhammad, *The General Theory of Criminal Extradition*, Doctoral Thesis, Mansoura University, Egypt, 1999, p. 07.

– International agreements, which are international agreements that include provisions related to the extradition of criminals without being extradition agreements in themselves.

1.2. International Treaties:

These are considered the second most important source on which the extradition system is based. Their provisions include the general foundations and conditions for extradition, and the identification of competent authorities to carry out this process. Countries tend to conclude extradition treaties with neighboring countries, or those most politically, economically, or socially connected to them, in the form of collective or bilateral agreements. It is noted that some countries refuse to extradite refugees unless there is an extradition treaty between the requesting state and the requested state, such as the United States of America. Moreover, some countries require, in addition to the existence of the treaty, that it be ratified by the competent authorities.¹²

It is worth mentioning that the United Nations Organization established a model treaty for the extradition of criminals in 1990 to serve as a framework to assist countries in the process of negotiating bilateral extradition agreements.

1.3. Extradition Laws:

These are domestic laws that regulate extradition procedures. The first such law in the world appeared in Belgium in 1833, and then the enactment of domestic legislation for the rest of the world's countries followed. However, what is criticized about these legislative texts is that in some of them, the state that legislated and enacted them is restricted in extraditing criminals if the person requested for extradition does not meet the conditions of the crime for which extradition is permissible or in the person himself who is the subject of the extradition request. It also prevents them from concluding agreements that exceed the limits of this law. However, some laws, such as the French law of 1927, the German law of 1929, the Iraqi law of 1923, and the Moroccan law issued in 1958, have addressed these obstacles. They stipulated in their provisions that it is permissible to agree to violate the provisions of domestic law, provided that these treaties are ratified by parliament.¹³

4.1. International Custom: It is stipulated in Article 38 of the Statute of the International Court of Justice and is a constantly present source, unlike other sources which may be absent due to states' disregard, such as concluding treaties and agreements or enacting domestic laws. States that do not have a treaty or agreement for extradition, or in the absence of domestic law regulating extradition, draw from it in handling extradition cases presented to them. The United Nations General Assembly is considered the main source for formulating international custom. Among the features that distinguish customary rules is their binding nature, which is more binding than treaties and national law, as international custom binds all members of the international family, unlike treaties which only bind their parties. Among the countries that still work with this source is the Arab Republic of Egypt, which does not have internal legislation regulating extradition and has only concluded a few treaties regarding extradition. It is worth noting that there is no direct effect of international custom in the field of extradition except in limited cases. Examples of these cases include the international custom of not extraditing foreign heads of state. Some customary rules can also be derived from the recurrence of state customs and their formulation in agreements, including: the dual criminality requirement, the principle of exemption from extradition of nationals, the prohibition of extraditing refugees, and the inadmissibility of extradition for political crimes.¹⁴

¹² Al-Rubi Siraj Al-Din Muhammad, *Organized Cooperative Work According to International Legislation*, 1st Edition, Majdalawi Library, Amman, 1998, p. 46.

¹³ Taha Muhammad, Abdul Rahman Ahmad, *The Legal System for the Extradition of Criminals*, Al-Basira Journal for Research, Consultations and Educational Services, Issue 7, 2010, p. 24.

¹⁴ Helal Ali El-Din, *The Impact of Globalization on Politics*, Publications of the Faculty of Economic and Political Sciences, Cairo, 2000, p. 56

5.1. Reciprocity: It means the matching of rights and obligations, i.e., each state's commitment to the other with a set of rights and duties imposed by the proper application of this principle, and each commits to applying it in the future. It is one of the important and contemporary tools in the field of international relations in general and in the field of extradition in particular. This source is resorted to in the absence of an extradition treaty with the requesting state. If this state recognizes the principle of reciprocity, it would be possible to respond to its request. However, if it does not recognize this principle, the requested state has the option to accept or reject its request.¹⁵

2. Crimes covered by extradition according to global international agreements. There are some serious crimes subject to extradition under global international agreements. These are crimes that world countries have taken special interest in, either due to their inherent danger and the severe harm they cause, or due to the method of their commission and their organized international nature.

1.2. Drug Crimes and Money Laundering.

Given the serious implications of these crimes on political, security, and economic aspects, countries have worked to enact legal rules for their prevention and effective combating.¹⁶ They have also established international mechanisms for cooperation in this field, including the extradition system stipulated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Article 6 of this convention obliges member states to extradite those accused of various drug crimes such as smuggling, production, manufacturing, drug trafficking, and money laundering derived from drugs.

The Arab Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in 1994, also stipulated extradition in its sixth article.¹⁷ Additionally, the United Nations Convention against Transnational Organized Crime of 2000 criminalized money laundering and outlined measures to combat it in Articles 6 and 7.¹⁸

2.2. Transnational Organized Crimes:

Organized crime threatens the security of the entire world. Specialized conferences acknowledge the gravity of this crime and the necessity of international cooperation to confront it through international agreements to avert its increasing danger at the international level.¹⁹ These crimes are covered by the United Nations Convention against Transnational Organized Crime and are subject to the extradition system according to Article 16.

As a result of the rapid development and spread of organized crime, both in terms of methods and geographical boundaries, domestic criminal legislations have become inadequate in combating these emerging patterns of globally characterized organized crime. This necessitates the globalization of national efforts in legal, security, and judicial fields to align with relevant international and regional efforts.

3.2. International Terrorism:

¹⁵ Shehata Alaa El-Din, *International Cooperation in Combating Crime*, Atrak for Publishing and Distribution, Cairo, 2000, p. 133.

¹⁶ Taouilet Karim, "Evidence in Money Laundering Crime in Algerian Law," *Journal of Legal and Political Research*, University of Jijel, Volume 9, Issue 1, June 2024, p. 233.

¹⁷ Article 6 of the Convention: "..... The Parties shall consider the offenses they determine in accordance with paragraph (2) of this Article as extraditable offenses in any treaty concluded between them. This Convention shall also be considered the legal basis for extradition between Parties that do not have bilateral or multilateral extradition agreements for this type of crime....."

¹⁸ Suleiman Abdel Moneim, "Problematic Aspects in the Extradition System," *New University House*, Alexandria, 2000, p. 137.

Article 6/2: "Each of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty existing between Parties. The Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between them."

¹⁹ Al-Burayzat Jihad Mohammed, "Organized Crime," *House of Culture for Publishing and Distribution*, Jordan, 2010, p. 151.

Terrorism is considered a manifestation of violence that pervades international and domestic societies. Terrorist crimes are subject to the extradition system according to the Arab Convention on Combating Terrorism of 1998 in its fifth article.²⁰ This convention has excluded terrorist crimes from political crimes for which extradition is not permissible, making extradition necessary for such crimes.

4.2. International Crimes:

These refer to the crimes stipulated in Article Five of the Rome Statute of the International Criminal Court, namely genocide, crimes against humanity, war crimes, and the crime of aggression.²¹ Extradition is permissible for international crimes, and the concept of political crime cannot be invoked within the scope of international criminal law to prevent the extradition of persons wanted for international crimes. International crimes are exempt from the statute of limitations rule, and perpetrators of international crimes do not benefit from the principle of immunities.²²

CONCLUSION:

Legal globalization translates the legitimacy of power that major powers resort to in crafting a package of international decisions that align with their strategic ambitions, far from the legitimacy of international law texts and provisions. This clearly reflects that legal globalization in its international framework embodies the will of major powers to extend their radical policies, which do not believe in international justice as much as they believe in drawing a new map of the world by keeping it subject and submissive to their legal will.

The system of extradition is considered one of the most important forms of international cooperation, playing a significant role at both international and national levels. It aims to protect international societies from the severe damages caused by international crime. The extradition system combats crime and puts an end to it, especially with its development in various fields. It also aims to prevent criminals from escaping punishment for crimes they commit in their countries by fleeing to foreign countries.

Through this research paper, **we conclude:**

1. Contemporary international trends have adopted the extradition system as an effective means of international cooperation to combat crime, whether this cooperation is represented in bilateral or multilateral agreements, or through national legislations that regulate extradition provisions.
2. The extradition system is not a recent development but has roots in ancient history. It is one of the most prominent forms of international cooperation achieved by the international community in the field of crime fighting. It aims to protect the entire international community and to avoid the non-punishment of serious crimes committed or being committed in the territory of a certain state by foreigners, and to strengthen cooperation between countries to confront criminals wherever they are found in any territory.
3. International agreements are considered the primary source for the extradition system, from which it derives its procedures, conditions, extent of commitment, and determination of the competent authority to decide on its requests. They are considered the legal basis that regulates extradition according to the clauses they contain.

²⁰ Article 5 of the 1998 Convention on Combating Terrorism: "Each of the contracting states undertakes to extradite those accused or convicted of terrorist crimes whose extradition is requested by any of these states, in accordance with the rules and conditions stipulated in this Convention."

²¹ Al-Qahwaji Abdul Qadir, "International Criminal Law," 1st edition, Al-Halabi Legal Publications, Beirut, 2001, p. 7.

²² Suleiman Abdullah, "Basic Introductions to International Law," Office of University Publications, Algeria, 1992, p. 96.

4. Extradition has an international nature, and its conditions are regulated by international agreements concluded in this regard and national legislations in order to activate aspects of international cooperation.

From this, we can **recommend**:

1. The international community is in urgent need of unifying the extradition system to prevent criminals from escaping punishment. This is a result of the numerous conflicts between states due to deteriorating political and security situations.

2. Countries should be called upon to conclude more international agreements regarding the extradition system, as it is considered a consensual procedure and international agreements are the primary basis for this system.

3. The extradition system should be enshrined as a legal duty to avoid non-implementation.

4. The international community should establish effective systems that allow for confronting organized criminal activities that transcend state borders. States should also adapt their rules and legislations to the globalization of the economy and the specificities of transnational crimes. The globalization of organized crime now requires at least a similar approach in combating mechanisms, through the adoption of the principle of globalizing criminal legislation.