

PRINCIPLES AND MECHANISMS OF EXTRADITION IN INTERNATIONAL CRIMINAL LAW

Prof. Dr. Ali Asghar Madaber¹

Abdul Ghafoor Hakimi²

Abdul Matin Fatah Zada³

<https://doi.org/10.5281/zenodo.15321101>

Abstract. *In order to effectively combat various forms of transnational and international crimes, the global community has intensified judicial cooperation and mutual legal assistance at the international level. One of the most significant forms of such cooperation is the extradition of offenders, which is carried out based on bilateral or multilateral agreements or in accordance with regional and international conventions.*

Linguistically, extradition refers to the act of reclaiming, requesting the return, or sending back an individual. In legal terminology, it encompasses a series of measures undertaken to return a criminal from the country of residence to the country where the crime was committed. As crime rates increase, offenders attempt to evade punishment by fleeing abroad, seeking refuge in another country to escape prosecution for their crimes.

The practice of extradition has a long historical precedent, evident across various periods, including ancient, medieval, and modern times. The issue of extradition is governed by specific rules and regulations, encompassing legal principles, procedural mechanisms, and associated challenges.

Keywords: *International cooperation, extradition of offenders, requesting states' plurality, principles, mechanisms.*

ПРИНЦИПЫ И МЕХАНИЗМЫ ЭКСТРАДИЦИИ В МЕЖДУНАРОДНОМ УГОЛОВНОМ ПРАВЕ

Аннотация. *Для эффективной борьбы с различными формами транснациональных и международных преступлений мировое сообщество активизировало судебное сотрудничество и взаимную правовую помощь на международном уровне. Одной из наиболее значимых форм такого сотрудничества является экстрадиция преступников, которая осуществляется на основе двусторонних или многосторонних соглашений или в соответствии с региональными и международными конвенциями.*

¹ - faculty of Law and Political Science at Herat University.

² - Master's student in Criminal Law and Criminology at Jami University.

³ - Master's student in Criminal Law and Criminology at Jami University.

Лингвистически экстрадиция относится к акту изъятия, запроса на возвращение или отправки обратно человека. В юридической терминологии она охватывает ряд мер, предпринимаемых для возвращения преступника из страны проживания в страну, где было совершено преступление. По мере роста уровня преступности преступники пытаются избежать наказания, сбежав за границу, ища убежища в другой стране, чтобы избежать судебного преследования за свои преступления.

Практика экстрадиции имеет давний исторический прецедент, очевидный в различные периоды, включая древность, средневековье и современность. Вопрос экстрадиции регулируется конкретными правилами и положениями, охватывающими правовые принципы, процессуальные механизмы и связанные с ними проблемы.

Ключевые слова: *Международное сотрудничество, выдача преступников, множественность запрашивающих государств, принципы, механизмы.*

Introduction:

From the past to the present, every government has sought to ensure security and social stability within its territory. This has been achieved through the establishment of legal and judicial regulations, defining the framework of crime, criminals, and punishment in each society.

By enforcing punishments and security measures against offenders, governments aim to rehabilitate criminals, reduce crime rates, and ultimately uphold justice while maintaining social stability.

Therefore, since the 19th century, states have formally intensified their efforts to enhance legal cooperation and judicial assistance to prevent and combat crime. Extradition of criminals or suspects refers to the process where an individual, who is a national of one country but has committed a crime in another, is surrendered based on various jurisdictional principles such as real jurisdiction, active and passive personal jurisdiction, and, in some cases, territorial, floating, or universal jurisdiction. In these cases, the principle of dual criminality or the rule of reciprocity may not necessarily be a requirement.

Most extradition laws follow a similar pattern; however, there is a divergence in their nature. Extradition procedures involve judicial, administrative, and political aspects, leading to inconsistencies with human rights standards. In most cases, political considerations prevail over judicial principles, meaning that states often prioritize their political and national interests before proceeding with extradition.

This article seeks to answer the question: "What are the principles and mechanisms governing the extradition of criminals in international criminal law?" It aims to explore the fundamental principles and mechanisms of extradition, as well as the challenges in this field. The present research is descriptive and follows a library-based methodology for data collection.

Information will be gathered from books, articles, online databases, and other scholarly sources. Although previous studies have examined the general aspects of extradition, this article specifically focuses on the concept, governing principles, mechanisms, and challenges of extradition.

Conceptual Definitions:

Every research study contains a set of general concepts and key terms that play a fundamental role in understanding the subject. Defining and explaining these key terms and fundamental concepts provides a framework for the main discussions and ensures clarity in addressing the core issues of the study.

Extradition:

- Linguistically, "extradition" means **returning, surrendering, delivering, or handing over**. It refers to the act of reclaiming or demanding the return of an individual. (Amid, 2002: 167)
- According to legal definitions, extradition refers to the set of actions taken to return a criminal from their place of residence to the country where the crime occurred. (Ibid.)
- Extradition is a legal process that allows the **requesting country** (usually where the crime was committed) to seek the transfer of a suspect or convicted individual who is present within another country's jurisdiction. (Momeni, 2014: 94)

Criminals:

- The term "criminals" is the plural form of "criminal," referring to a person who has committed a crime. A criminal is an individual whose guilt has been established in court and for whom a legal punishment has been determined. (Azam Shafaei Legal Institute)

Extradition of Criminals:

- The process of requesting the surrender of a suspect or accused person for prosecution or the transfer of a convicted individual for the execution of their sentence, based on a pre-existing treaty between two states. (Stanekzai, Nasrullah, et al., 2008: 23)

International Legal Documents:

- Generally, any official written agreement between states or international law subjects, structured as a document or treaty, outlining the objectives and commitments of states regarding legal principles or norms. (Baquer al-Olum Research Institute)

Criminal Law:

- Criminal law consists of general and common rules governing crimes and state-defined measures for determining punishments and security actions. Criminal law aims to prevent crimes and, in case of criminal acts, determine the level of responsibility of offenders, define legal procedures, and adapt judicial responses based on the personality of each offender. Additionally, it focuses on rehabilitation and correction methods. (Ibid.)

Extradition of criminals has been recognized as a fundamental principle by states in modern times, and its significance has been widely discussed throughout history.

History of Extradition

1- Extradition in Early Ages

The history of extradition in the early ages is unclear due to the lack of precise documentation. However, it can be stated that the early ages span from the beginning of human life on Earth to the year 476 AD, which marks the fall of the Roman Empire to the Barbarians. Historically, extradition existed in its primitive form during these early periods, which can be proven by the following two reasons:

- **First:** In 1278 BC, an international treaty was signed between Ramses II, the Pharaoh of Egypt, and Hattusili, the King of the Hittites. According to this treaty, both rulers pledged not to aid each other's enemies. If the enemies sought refuge in either country, the host country was obliged to return them to the original state. This treaty represents the first known extradition agreement, specifically concerning political criminals rather than ordinary criminals.

- **Second:** In ancient Roman law, a principle known as the "Remissio Rule" existed, which implied surrendering or returning a criminal. The victim, their family members, and their tribe had the right to take revenge on the criminal. However, the "Remissio Rule" limited this retaliation, stipulating that if the criminal was handed over by their own family, tribe, or kin to the victim's family or tribe, then the retaliation would be confined to the criminal alone. The victim and their kin were not permitted to take revenge on the criminal's relatives. This principle essentially established one of the earliest forms of extradition. (Danesh, 2017: 101).

2- Extradition in the Middle Ages

The Middle Ages span from 476 AD to 1423 AD, marking the conquest of Constantinople by the Ottoman Turks. Some historians extend this period to 1492 AD, the year of Christopher Columbus's discovery of America. During this era, extradition evolved significantly, and the number of extradition treaties between states increased. For instance:

- In 1176, an extradition treaty was signed between Henry II, King of England, and William, King of Scotland. In this agreement, both kings committed not to support each other's personal enemies. If such enemies sought refuge in either country, they would be returned to their country of origin.

- Similarly, in 1313, another treaty was signed between Philip IV (Philip the Fair), King of France, and Edward III, King of England. This treaty stipulated that if their personal enemies took refuge in each other's territories, they had to be returned to their original country.

3- Extradition in the Modern Age

The modern age began in 1423 AD, marked by the Ottoman conquest of Constantinople, and lasted until 1789 AD, the year of the French Revolution. During this period, extradition further expanded, with numerous bilateral extradition treaties being signed between nations, thereby broadening the scope of extradition.

4- Extradition in the Contemporary Era

The contemporary era began in 1789 and continues to the present day. Extradition has further developed in this period, mainly due to two reasons:

1. The number of independent states has increased, especially after World War II, when many former colonies gained independence and signed extradition treaties with other countries. This has significantly expanded the number of extradition agreements.

2. In the contemporary era, codified laws, particularly criminal laws, have been established in many countries. For instance, in France, the codified criminal law was introduced in 1811, and the codified civil law was enacted in 1814. (Same Source)

Principles Governing Extradition

1- Principle of Speciality

This fundamental principle is widely referenced in domestic laws regarding extradition and in treaties between states. It means that once a requested state approves an extradition request and surrenders the person, the requesting state can only prosecute and punish them for the offenses specified in the extradition request. This principle prevents states from violating the

legitimate rights and freedoms of individuals in extradition cases. (Legal Civilization, 2022: Volume 5, Issue 10)

2- Principle of Double Criminality

Another essential principle in extradition is that the act for which the individual is sought must be considered a crime in both the requesting and requested states. It is evident that the act in question is considered a crime in the requesting state, prompting the extradition request. However, extradition can only occur if the act is also classified as a crime under the criminal laws of the requested state. (Khalqi, 1948: 27)

3- Principle of Non-Extradition of Political Criminals

From a criminological and sociological perspective, political criminals are viewed differently from ordinary criminals. Individuals who commit offenses for noble motives aiming for societal progress should not be equated with common criminals. Most countries provide political offenders with privileges, immunity, and better prison conditions. Additionally, political criminals generally receive lighter sentences than those convicted of other crimes. Accordingly, extradition laws universally uphold the non-extradition of political criminals. (Afrasiabi, 1999: 342)

4- Principle of Non-Extradition of Military Offenders

Similar to political offenders, military offenders have traditionally benefited from non-extradition. However, the absolute non-extradition of military offenders has weakened over time and lost some of its legal significance. (Akhundi, 2011: 319)

5- Principle of Non-Extradition of Nationals

A core aspect of statehood, alongside territory and governance, is the obligation to protect its citizens. Nationality is a legal and political bond between an individual and a state. Many states adhere to the principle of not extraditing their own nationals to ensure their protection. (Nasiri, 2016: 26)

6- Principle of Exclusivity

Extradition has both political and legal dimensions. A crucial question arises regarding whether extradition requests should be assessed solely by the executive branch and foreign affairs departments or if they should also undergo judicial review. While the role of the executive branch is recognized, legal experts argue that extradition decisions should be subject to judicial assessment to ensure adherence to legal principles. (Legal Civilization, 2022: Volume 5, Issue 10)

7- Principle of Non-Extradition for Minor Offenses

Although all criminals should ideally be extraditable, regardless of the severity of their crimes, the high costs and extensive efforts required for extradition have led states to refrain from pursuing extradition for minor offenses. (Legal Civilization, 2022: Volume 5, Issue 10)

8- Principle of Non-Re-Extradition

A well-established principle in international law, recognized by various legal systems, is the "ne bis in idem" or "double jeopardy" rule. This principle dictates that once an individual has been prosecuted and either convicted or acquitted for a particular offense, they cannot be prosecuted again for the same offense. Consequently, if a person has been extradited and tried for an offense, they cannot be extradited again for the same crime. (Al-Naqib, 1986: 770)

1. Mechanism of Extradition Request

The state requesting extradition is referred to as the requesting state, while the state in which the accused or convicted individual resides and from which extradition is sought is called the requested state or the surrendering state. The principle of state sovereignty dictates that each state has the authority to decide whether to prosecute or refrain from prosecuting crimes committed within its own territory. Consequently, it is possible for a criminal who enters the territory of another country to evade punishment for their actions. Even if the country to which the criminal has fled decides to prosecute and punish crimes committed outside its territory, the country where the criminal has taken refuge has priority in prosecution and punishment. In the extradition mechanism, the following authorities are primarily involved:

1. Judicial authorities of the requesting state.
2. Judicial and administrative authorities of the requested state.

1.1 Extradition in the Requesting State:

To execute a legal act or any action carried out through diplomatic channels, a series of formalities must be followed to ensure transparency in the legalization process. This mechanism varies depending on the provisions of different treaties. However, in most countries, the following process applies:

The prosecution office submits the extradition request to the Attorney General. Some conventions stipulate that this request should be accompanied by an anthropometric card and the criminal record of the requested individual. Conventions signed between France and England, as well as between France and the United States, require that the charges brought against the requested person be explicitly stated in the extradition request.

The Attorney General reviews the submitted case. If issues such as participation in a crime, accumulation of crimes, the statute of limitations, and other legal considerations arise, they must be mentioned. Additionally, detailed information about the nature of the crime and the reasons for the extradition request must be included. Once the case file is completed, it is submitted to the Ministry of Justice, which then forwards it to the Ministry of Foreign Affairs.

The Ministry of Foreign Affairs, in turn, submits the extradition request to the requested state through diplomatic channels.

According to Article 4 of the Regulation on the Extradition of Suspects, Defendants, and the Transfer of Convicted Prisoners, the Ministry of Foreign Affairs is required to observe the following in every stage of extradition and transfer of foreign nationals convicted of imprisonment (Langroudi, 1999, Vol. 1, p. 320):

1. Review the requesting country's application in good faith, in accordance with national laws and bilateral agreements, and facilitate the surrender and return of suspects, defendants, and prisoners to their home country.
2. Ensure that the requesting country reciprocally commits to the same process in similar cases.
3. When extraditing individuals accused of terrorist crimes, require the requesting state to provide reports on the latest intelligence activities of the suspect or defendant.
4. Request that the requesting state provide necessary facilities for Afghan nationals residing or traveling in that country.
5. Improve consular cooperation, particularly with neighboring requesting countries.
6. If no extradition or prisoner transfer agreements exist with certain countries, facilitate the conclusion of such agreements as needed.
7. In extradition and prisoner transfer agreements, ensure that the extradition of foreign nationals committing crimes against national security does not require their consent, in order to prevent challenges in surrendering and returning such suspects, defendants, and prisoners. Additionally, enhance the exchange of information on national security-related crimes between the two countries.
8. Ensure that all costs related to the surrender and return of suspects, defendants, and prisoners in a single stage are covered by the requesting country.

2.1 Extradition in the Requested State:

The extradition mechanism in the requested state can be conducted through two systems: the administrative system **and the mixed system**.

First - The Administrative System:

In this system, the extradition request is reviewed by administrative authorities, who then make the necessary decision. The individual sought for extradition is arrested by the competent authorities upon police orders, and the extradition document is signed by the head of state before extradition is carried out. Under this system, the fugitive has no judicial guarantees; no legal proceedings are conducted against them, they are not entitled to legal defense, and they have no right to appeal. This system was common in the 19th century and was followed in Portugal and Panama until a few years ago. It is still applied today in extradition transit cases, where an extraditable suspect is transferred through a third country. In such cases, a transit request is made through diplomatic channels, accompanied by a document proving the non-political nature of the crime (Eskandari, 2016, p. 45).

Second - The Mixed System:

In this system, judicial authorities play a significant role in extradition, although administrative authorities are not entirely excluded. Both judicial and administrative authorities work together. The process begins with administrative authorities taking initial actions, followed by the involvement of judicial authorities, who review the case and issue a ruling. The case is then referred back to administrative authorities for enforcement.

Granting judicial authorities control over extradition offers several advantages. Firstly, it provides legal guarantees for the fugitive, allowing them to defend themselves. Secondly, it prevents the misuse of administrative power. Finally, in controversial cases, administrative authorities and the government can argue that the decision was made by a court and was free from political bias.

Moreover, since extradition is a form of international cooperation in criminal matters, the final decision should be made by a judicial body, as extradition ultimately represents cooperation between the judicial authorities of different states. Most countries do not have specialized courts for extradition. In some countries, the matter is handled by courts with jurisdiction over criminal offenses. In others, it is assigned to courts competent to hear felony cases. Among the latter category, Belgium, Italy, and France can be mentioned (Adalat, 2018, p. 190).

Challenges of Extradition in International Criminal Law

Procedural Aspects:

The previous discussion mainly focused on the essence and nature of extradition. Now, we turn to the procedural aspects: what steps must be taken to execute extradition? In other words, how should extradition be initiated and carried out? What are the costs associated with extradition? Can the requested person voluntarily waive the prohibitions against extradition and accept the process? If multiple countries request the extradition of the same individual, which request should be granted, and which should be rejected?

Extradition Request Format:

The format and drafting of an extradition request are determined by a country's domestic law or extradition treaties between requesting and requested states. If a treaty exists between the two countries, the request must comply with its provisions. Otherwise, it should be drafted in a way that does not contradict the domestic laws of the requested country. These treaties or laws outline the essential elements that must be included in the request, such as:

- Full identification details of the requested person, including name, surname, father's name, passport number, nationality, age, occupation, and place of residence.
 - Evidence of the crime committed and its attribution to the requested person.
 - The nature of the offense, the date and location of the crime, and the manner of its commission.
 - Justification for the requesting state's jurisdiction over the crime.
 - A conviction sentence or an arrest warrant for the requested person.
 - The request and supporting documents must be prepared in two copies: one in the official language of the requesting state and the other in the official language of the requested state.
- (Hosseini Nejad, 2004, Vol. 3: 106)

Multiple Extradition Requests:

The previous discussion assumed that only one country is requesting the extradition of an individual. However, in cases where multiple countries simultaneously seek extradition, the issue of competing requests arises. This situation occurs when a person is accused of crimes in multiple jurisdictions or their actions significantly impact the interests of various states.

For instance, suppose an individual is wanted in Country A for drug trafficking, in Country B for money laundering, and in Country C for cybercrimes. Each country may submit an extradition request. In such cases, the country holding the individual must decide based on specific criteria. The severity of the offense and its impact on each country is a key factor. If a crime results in substantial damage or casualties in one state, that state's request may take

precedence. Additionally, the location of the crime is crucial since offenses committed within a country's territory usually receive priority.

Other considerations include the nationality or residence of the accused. The country of the person's nationality or residence may be given preference. In a hypothetical case, if Country A submitted an earlier request due to the severity of the crime, decision-makers might favor extraditing the person there. However, human rights concerns, such as the risk of the death penalty or torture, can significantly influence the decision. If Country C argues that the accused may face capital punishment or mistreatment in Country A, this factor may weigh in the final assessment.

Resolving such situations often requires diplomatic and legal mechanisms. Sometimes, states negotiate bilaterally or involve international organizations like INTERPOL to reach an agreement on the order of extradition or even joint prosecution. If no agreement is reached, the holding state may opt to prosecute the accused itself. The issue of multiple extradition requests presents legal and political challenges that demand fair and justice-oriented decision-making. (Khaleghi, 2016, Vol. 2: 22)

Extradition Costs:

The financial costs associated with extradition represent a practical challenge for states and can influence the final decision. Consider a case where Country A requests the extradition of a cybercriminal from Country B. While Country B agrees in principle, the costs of the process become a major concern.

These costs involve several aspects. First, Country B must cover legal and judicial expenses related to processing the request, including attorneys' fees and official document translation. Additionally, the requested person may be held in custody for a prolonged period, increasing detention-related expenses such as security and healthcare.

The highest costs arise during the execution phase of extradition. Transferring the individual to Country A requires careful security planning, including airfare for escort officers, aircraft rental if needed, and enhanced security measures. In high-risk cases, such as terrorism-related offenses, the transfer costs can reach hundreds of thousands of dollars.

The requesting country (Country A) must be prepared to bear part or all of these costs. If no prior agreements exist between the two countries, diplomatic negotiations may be necessary to determine cost-sharing arrangements. These financial considerations are not limited to direct expenses but also involve the time and human resources invested in the process. If Country B

refuses extradition due to financial constraints or domestic pressures, Country A may face difficulties in enforcing justice and maintaining public trust.

Thus, extradition costs are not just a financial matter but also a political and legal factor that can shape the outcome of the process. This highlights the need for an economic and diplomatic analysis alongside legal assessments when handling extradition cases. (Abbasi, 1988: 237)

Conclusion:

The issue of extradition of criminals at the international level is one of the most crucial legal and diplomatic tools in combating transnational crime. This process, in terms of its concept and general principles, involves transferring a suspect or convicted individual from one country to another based on domestic laws, international treaties, or principles of reciprocity. Extradition, as a mechanism of international cooperation, plays a key role in achieving criminal justice and preventing impunity for offenders.

From the perspective of principles and mechanisms, extradition is carried out based on bilateral or multilateral agreements, international legal norms, and human rights standards.

Prioritization of the severity of the crime, the location of its occurrence, the nationality of the accused, and the assurance of a fair trial are fundamental principles considered in this process. The mechanisms of extradition include submitting a formal request, judicial review, and executing the transfer of the accused, each of which must align with legal and diplomatic standards.

However, challenges are an inseparable part of this process. Legal discrepancies between countries, multiple requests for the same suspect, high costs of extradition, and human rights barriers such as the risk of the death penalty or torture complicate the extradition process. Additionally, political and diplomatic issues may act as obstacles to cooperation in this area.

Ultimately, the success of extradition efforts depends on effective collaboration among nations, adherence to principles of criminal justice, and balancing national interests with international commitments. Addressing existing challenges and improving cooperative mechanisms can contribute to achieving the primary goal of this process—ensuring justice and enhancing international security.

REFERENCES

1. Hassan, Amid (2002), Persian Dictionary Amid, Volume 1, Eighth Edition, Tehran: Amirkabir Publishing, p. 11.
2. Jafari Langroudi, Mohammad Jafar (2005), Terminology of Law, Fifteenth Edition, Tehran: Ganj Danesh Publishing, p. 3.
3. Akhundi, Mohammad (2003), Criminal Procedure, Seventh Edition, Volume 2, Tehran: Ministry of Culture and Islamic Guidance, Printing and Publishing Organization, p. 3.
4. Momeni, Dr. Mehdi (2014), International Criminal Law, Tehran: Institute for Legal Studies and Research, p. ...
5. Abbasi, Mahmoud (1988), International Police, Master's Thesis, University of Judicial Sciences and Administrative Services.
6. Khaleghi, Ali (2016), Criminal Procedure, Volume 2, Thirty-Second Edition, Tehran: Shahr Danesh Publishing.
7. Khaleghi, Ali (2016), Studies in International Criminal Law, Fifth Edition, Tehran: Shahr Danesh Publishing.
8. Khaleghi, Ali (2015), International Criminal Law, Fourth Edition, Tehran: Mehr Danesh Institute for Legal Studies and Research.
9. Khaleghi, Morteza (1948), Extradition of Criminals, Master's Thesis, University of Tehran.
10. Afrasiabi, Mohammad Esmaeil (1997), General Criminal Law of Iran, Second Edition, Tehran: Ferdowsi Publishing.
11. Khaleghi, Morteza (1948), Extradition of Criminals, Master's Thesis, University of Tehran.
12. Shambayati, Houshang (1995), General Criminal Law, Fifth Edition, Tehran: Vistar Publishing.
13. Kitti Sheyazri, Kriangsak (2004), International Criminal Law, Translated by Behnam Yousefian & Mohammad Esmaeili, First Edition, Tehran: SAMT Publishing.
14. "Introduction to the Principles and Barriers of Extradition in International Law," Legal Civilization Quarterly, Vol. 5, No. 10, Spring 2022.
15. Specialized Legal and Cultural Monthly - Twentieth Year / Serial Number 190 / December 2013.
16. Political Science, Law, and Jurisprudence Studies, Vol. 8, No. 3, Fall 2022, pp. 1.

17. International Police Quarterly and International Terrorism Policy, Research Group of NAJA, July ...
18. Shebeth, William A. (2005), Introduction to the International Criminal Court, Translated by Seyed Bagher Mir Abbasi & Hamid Al-Hoei Nazari, First Edition, Tehran: Jungle Publishing.
19. Kitti Sheyazri, Kriangsak (2004), International Criminal Law, Translated by Behnam Yousefian & Mohammad Esmaeili, First Edition, Tehran: SAMT Publishing.
20. Malek Esmaeili, Azizollah (1976), General Criminal Law, First Edition, Tehran: University of Tehran Publishing.
21. Azam Shafaei Law Institute (Retrieved from blogfa.com.shamslayers.www).
22. International Criminal Law, Dr. Nasrin Mehra.
23. International Criminal Law, Hafizullah Danish (2017), Volume 1, Kabul: Motaqbel Publishing.