



# The Extradition System as a Mechanism for International Cooperation to Combat Corruption in Light of the Merida Convention and Algerian Legislation

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**Abstract:**Through this article, we aim to shed light on the national strategy for preventing and combating administrative and financial corruption and its alignment with the provisions of the United Nations Convention against Corruption (Merida), particularly concerning one of the most important international mechanisms for combating the phenomenon, which is the mechanismfor the extradition of criminals. In this article, we address the " mechanism for the extradition of criminals", considering it a stable system in international relations, starting from its definition and explaining the basis from which its provisions are derived, leading to its types, then discussing its conditions related to the crime or the parties involved in the extradition process, and explaining its procedures, diagnosing its issues, and the mechanisms to resolve them. Finally, reaching how to implement this mechanism and how it embodies international cooperation to combat corruption.

**Keywords:** Corruption, extradition system, international cooperation, dual criminality, competing requests

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## Introduction

Corruption is one of the greatest challenges that has continued to face the international community as a whole, due to the danger it poses to various aspects of life. Its effects are no longer limited to a specific country's territory, as the advancement of information and communication technology, mobility, and trade facilitation between countries has allowed perpetrators of corruption and criminal networks to operate freely, enabling them to breach international borders.

And since committing corruption crimes nowadays has become as easy from the farthest corners of the earth as from the nearest places, and considering the serious consequences these crimes can leave, which may fall under various judicial jurisdictions with different systems, the efforts of a single state are no longer sufficient to combat corruption.

The aforementioned developments have made the levels of tolerance for the phenomenon international due to the increasing awareness of the seriousness of the corruption problem, and have called for measures to be taken to stop it at all levels.

In response to those calls, the United Nations has made the issue of corruption a focal point in its efforts to combat it, dedicating significant efforts in this area. Since addressing corruption requires cooperation between countries, and to achieve this goal, the international community has prepared a set of relevant international cooperation mechanisms. These mechanisms pertain to all types of crime, including corruption crimes. Perhaps the most important of these is the mechanism for extraditing criminals, but implementing this mechanism faces numerous obstacles, the most significant of which are related to the principle of state sovereignty, differences in legislative systems, and competing requests.

Since the Mérida Convention is the most important international legal reference for combating corruption, and Algeria is one of the countries that have ratified it, we will address the mechanism of extraditing criminals as one of the most important mechanisms of international cooperation in the field of combating corruption crimes and achieving justice in its fullest form, where the accused appears before the competent judicial authorities in the first state for trial, in addition to the execution of the conviction sentence against him as an expression of the effectiveness of the state's judicial system, in light of the relevant provisions included in the aforementioned references.

Based on this, the issue raised by the article primarily revolves around the effectiveness of the extradition mechanism in the field of international cooperation to combat corruption, the challenges faced in implementing this mechanism, and how to resolve them.

To address the issue, we found it appropriate to discuss in this article the concept of "extradition," starting from its definition and explaining the basis from which its provisions are derived, leading to its types, then addressing the conditions for its implementation, whether related to the crime or the parties involved in the extradition process, and explaining its procedures, diagnosing its issues, and the mechanisms to resolve them, according to the following plan:

**Chapter One:** The Concept of the Extradition System

**Chapter Two:** The Legal System for Extraditing Criminals

**Chapter One: The Concept of the Extradition System**

We will try to clarify the meaning of this system by addressing its definition, explaining its legal basis, and then its types. This will be as follows:

#### **The first requirement: Definition of extradition**

The extradition of criminals is considered one of the stable systems in international relations in its peaceful aspect, as it is one of the most important mechanisms for international judicial cooperation and the most commonly applied in practical applications. The reason for this is likely the nature of the extradition system and its direct impact on achieving the greatest possible effectiveness in cooperation between countries<sup>1</sup>. This means that one country (the country from which extradition is requested) hands over a person present on its territory to another country (the requesting country) at the latter's request, with the aim of accusing and thus prosecuting him for a crime he is alleged to have committed. Alternatively, it may be because he has been sentenced to a penal punishment, and thus the aim of requesting his extradition is to enforce the sentence issued against him<sup>2</sup>.

As for the state to which extradition is requested, it benefits by avoiding the presence of an undesirable element, whether in its residence or in the extension of its residence on its territory<sup>3</sup>. From the above, it is clear that the definition of "extradition" is the intended meaning of the term that succinctly expresses the system.

As for the precise legal definition, some have defined extradition as: "An act by which the state to whose territory a person accused or convicted of a crime has fled delivers him to the state competent to prosecute or execute the sentence on him"<sup>4</sup>. However, this naming system seems inaccurate because:

Extradition is an act performed by the state requested to extradite, while the act of the requesting state is recovery or receipt. The definition of "extradition" is provided in Article 102 of the Statute of the

International Criminal Court, which states: "Extradition means the transfer of a person by one state to another under a treaty, agreement, or national legislation...".

As for the word "criminals" in the phrase "extradition of criminals," it lacks precision in expressing the person subject to extradition. While it applies to the description of convicted individuals, it contradicts the description of non-convicted individuals (those being pursued) in accordance with the presumption of innocence. This is the same flaw that the Mérida Convention did not avoid in naming this system<sup>5</sup>, and the Algerian legislator followed the same path. Therefore, the more accurate and precise term is: "extradition and return of those sought by criminal justice."

Regardless of the inaccuracy of the naming in this system, we wonder about the legal basis for its implementation?

### **The second requirement: The legal basis for extraditing criminals**

The legal basis for extradition in general refers to the legislative and treaty provisions that fulfill the needs of states for extradition. This means it is the justification that establishes a state's request to extradite a person present in another state, in accordance with the aforementioned provisions that bind the states involved in the extradition relationship<sup>6</sup>.

Based on the above, legal doctrine has come to classify the references from which the system of extradition derives its rules and regulations into two types: primary references, which include international agreements and treaties, domestic law, and international custom; and secondary references, which include the principle of reciprocity, rules of courtesy, international ethics, and judicial precedents. Countries resort to these secondary references as alternatives to the primary sources. What concerns us from these sources in the context of our discussion is the primary sources, which we will briefly address as follows:

#### **Section One: The Treaty Basis for Extradition**

International agreements and treaties are at the forefront of international legislation to regulate international relations in various fields of international cooperation. This means occupies an important position in the field of extradition, as it is one of the primary sources from which extradition derives its provisions. Therefore, countries have concluded numerous international treaty instruments that can represent the legal basis for activating the extradition system. These fundamental international documents are divided into three types:

**First:** Bilateral Extradition Agreements: These are concluded between two countries according to the terms and regulations set by them. For example, reference can be made to the judicial agreement concluded between Algeria and Libya<sup>7</sup>.

**Second:** Multilateral extradition agreements: which are concluded between more than two countries, where many international judicial cooperation agreements can be referred to in this regard that have been concluded at the regional level, such as the Arab League Convention on Extradition of Criminals in 1952.

**Third:** International agreements: which are agreements that include provisions related to the extradition of criminals without being extradition agreements themselves. Examples of this type of agreement include: The Arab Convention on the Suppression of Terrorism 1998, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, and the United Nations Convention Against Corruption (Merida). Given the importance of the subject of extradition in combating corruption crimes and pursuing their perpetrators, the latter included it in Chapter Four dedicated to international cooperation and allocated Article 44 to it.

From the above, we observe that despite the numerous agreements that have made the extradition system their subject, whether at the bilateral or regional level, or those that included provisions related to

it without being extradition agreements themselves, the international community has not yet succeeded in concluding a global agreement on the extradition of criminals.

## **Section Two: The Basis of Extradition in National Laws**

The principle is that the legal basis for the obligation of states to extradite criminals lies in their being parties to international treaties with the requesting states. In addition to this important source, there is another source that states resort to in their desire to enhance the preventive role in combating crimes, punishing criminals, and deterring them, which is the explicit provision in their national legislation on the extradition of criminals and the regulation of its provisions. A state may agree to extradite a person for any crime even if it is not bound by an agreement with the requesting state, provided that its internal law permits it<sup>8</sup>. This is inferred from Article (44/2) of the Merida Convention<sup>9</sup>, even if the law of the requested state does not criminalize the acts for which extradition is sought, as we will explain in a later section of this article.

It is important to note here that most countries have recently introduced the extradition system into their domestic legislation. As for Algeria, it has included it in the first three chapters of the first section of the seventh book of Order No. 66/155, which includes the Code of Criminal Procedure in articles (694-718); conditions of extradition (694-701), procedures of extradition (702-713), and effects of extradition (714-718). Algeria also relies on many international and regional agreements in this regard. But the question that can be raised in this context is: What is the ruling on the conflict that we might encounter between the provisions of Chapter Four of the Mérida Convention on the Transfer of Criminals and the provisions of domestic legislations that address the same system? Although this question does not arise in the context of the approach followed by countries that have not enacted legislation governing the extradition system, the question particularly emerges in countries that have organized extradition provisions through domestic legislation in addition to being parties to the Merida Convention.

It can be said that in the event of a conflict between the provisions of the Mérida Convention and domestic legislation, the provisions that apply are those contained in the domestic legislation, and this is justified by the content of paragraph five of Article 44 of the Merida Convention.

## **Section Three: The Customary Basis for Extraditing Criminals**

The rule is that criminals should be extradited according to the provisions agreed upon by countries in the treaties they have concluded in this regard, and within the limits of their internal laws if there is an internal law in the concerned state that regulates the issue of extraditing criminals. In the absence of a treaty of the mentioned type or a provision in the internal law, international custom is relied upon as the basis for extraditing criminals, considering it a source of international law. Countries resort to it in the absence of an extradition treaty or an internal law that regulates extradition provisions to derive from it the rules and provisions that have been established in international practice in handling extradition cases<sup>10</sup>.

And the question that can be raised at this stage of our intervention is: If the legal basis for delivery is available, how is this delivery carried out? The answer to this question leads us to discuss the various delivery systems as follows:

### **The third requirement: Types of Extradition Systems**

Extradition requires certain procedures that follow one of the recognized directions on the international stage. Extradition systems vary, and each country differs in the way it examines the extradition request based on the type of system it adopts. This latter reflects the legal nature of the extradition system: is it a judicial act, an administrative act, or does it have another nature? To answer these questions raised by the legal nature of the extradition system, it is necessary to address the various systems followed by countries in extraditing criminals. This is as follows:

#### **Section One: The Administrative Delivery System**

The extradition of criminals under this system is considered an act of sovereignty or a measure of the executive authority, which has the absolute power to decide whether to extradite or not based on political, administrative, or other considerations. If it does, its decision is final and cannot be contested<sup>11</sup>, as the extradition decision it issues is definitive and not subject to judicial review or oversight, being a political act<sup>12</sup>.

### **Section Two: The Judicial Delivery System**

Under this system, the competent court issues the order to provisionally detain the requested person and examines the evidence presented in connection with the accusation against them, as well as the crime they are alleged to have committed. If the court decides to reject the extradition, its decision is enforceable, and the executive authority cannot oppose it; rather, it is obliged to implement the court's ruling and release the individual concerned. Therefore, the executive authority has no role other than receiving the extradition request and ensuring the implementation of judicial decisions<sup>13</sup>, which is the system followed by Algeria.

### **Section Three: The Mixed Delivery System**

It is the most popular approach, as it balances the interests of the requesting state and the interests of the person to be extradited. The judiciary has the right to examine the request, and the person to be extradited is granted all legal guarantees related to defense and publicity. Moreover, the state from which extradition is requested should not interfere in examining the facts of the case; it should suffice with the documents and official papers received from the requesting state<sup>14</sup>.

## **Chapter Two: The Legal System for Extraditing Criminals**

After discussing the concept of the "extradition system" and explaining its legal basis and the types of approaches adopted by countries in this regard, the study necessitates, in this context, that we cover the most important conditions related to this system, explain its implementation procedures, and identify the main obstacles it faces. This is as follows:

### **The first requirement: Conditions for the extradition of criminals**

In this section, we will outline the conditions for the implementation of the extradition system, given their importance in delineating the boundaries of the relationship between the states involved in the extradition process. These conditions establish the general rules on which the extradition will be based, provided that these conditions are met when deciding on the extradition request. There are conditions that must be fulfilled for the extradition system to be applied<sup>15</sup>, some of which are linked to the crime that is the basis for extradition, and others that concern the parties involved in the extradition process. We will explain this as follows:

#### **Section One: Conditions Related to the Crime as the Reason for Extradition**

Not all crimes fall within the scope of extradition, and it becomes clear that determining the nature of the crime that falls under this category is of utmost importance, as it is the criterion for whether the extradition request can be met or not. If the person to be extradited is the focal point of the extradition process, then determining the nature of the crimes involved in the extradition process is the foundation upon which the conditions for extradition are primarily based<sup>16</sup>.

And since the general conditions for the crime for which extradition is requested do not fall outside the framework of the seriousness of the crime, or what is known as "the gravity of the facts," "the double criminality condition," "the condition of the place of commission of the facts," in addition to "the condition of the non-expiry of the public prosecution or the penalty." We will clarify these elements in detail as follows:

#### **First: The condition of the gravity of the facts**

The essence of this condition is that countries must determine in their domestic legislation or in bilateral or multilateral treaties, of which they are a party. The minimum penalty prescribed for the crimes for

which extradition may be granted. This is because the facts resulting from crimes are diverse, but there is a category of them that is of such gravity and danger to both the national and international communities<sup>17</sup> that some require severe penalties, which may reach the death penalty, while others require lighter penalties fit with their severity.

### **Second: The double criminality requirement**

The implication of the condition is that the act for which extradition is requested must be subject to criminalization and punishment in the legislation of both the requesting state and the state demanding extradition. The requirement for the act to be punishable in both states serves as a restriction on both, and it is also a guarantee for the person whose extradition is requested<sup>18</sup>.

And if this condition is not met for the countries that adhere to it, extradition is refused, because the basis of this condition in the requesting state is the impossibility of imagining the existence of a criminal lawsuit or a criminal judgment with a penalty for behavior that is not considered a crime<sup>19</sup>. It should be noted that the lack of conformity in the legal description of the act does not undermine the requirement of dual criminality, which was confirmed by the United Nations Model Treaty on Extradition of Offenders, when it stipulated that the requirement of dual criminality does not necessitate the legal characterization of the criminal act to be identical, and that the elements constituting the crime may differ in the legislations of the two concerned countries, as long as the totality of the acts as defined by the requesting state is taken into consideration<sup>20</sup>.

It is useful to point out that the double criminality requirement is closely related to the principle of legality, which states: "No crime and no punishment except by law." This condition has been included in many international treaties and relevant domestic laws concerning the extradition of criminals. Most bilateral and multilateral treaties on extradition, as well as the majority of countries' criminal legislation, have incorporated this condition into their texts. The Institute of International Law also endorsed it in its conference held in Oxford in 1880, after amending it by introducing some exceptions, stating: "As a general rule, the acts for which extradition is sought must be punishable under the legislation of both countries<sup>21</sup>." As confirmed by Article (6) of the Vienna Convention on the Law of Treaties on Extradition of 1988, Article (16) of the Palermo Convention, Article (3) of the Arab League Convention on Extradition, and Article (40) of the Riyadh Arab Agreement on Judicial Cooperation. As for the Merida Convention, it explicitly stated this condition as a general rule when it decided that for extradition to occur, the crime for which extradition is sought must be punishable under the domestic law of both the requesting state and the receiving state<sup>22</sup>. However, it provided an exception to the rule when it decided that if the act is not punishable under the laws of the requested state, the latter may agree to extradite the requested person if the crime for which extradition is sought is covered by the convention, provided that its domestic law permits it<sup>23</sup>. This exception is considered one of the peculiarities introduced by the convention<sup>24</sup>.

As for the Algerian legislator's stance on the dual criminality requirement, upon reviewing the relevant texts on extradition in Algerian law, we find that it has adopted the necessity of the dual criminality requirement but has not overemphasized this condition, such as requiring the description and nomenclature to match. Instead, it suffices that the acts for which extradition is requested constitute a felony or misdemeanor under the law of the requesting state and are also punishable under Algerian legislation<sup>25</sup>.

And this is confirmed by the agreements concluded by Algeria, both collective and bilateral, which include the dual criminality clause, as is the case in the Algeria-Mali Agreement ratified by Decree No. (83/399) dated: 18/06/1983 in its Article (29/1).

### **Third: Condition of the place where the incidents occurred**

There is a near consensus in international and domestic legal documents related to the field of extradition on the principle of territoriality of penal and criminal procedure laws, as it is the direct justification for the requesting state to seek extradition, considering that the facts occurred on its territory<sup>26</sup>. This principle grants it the jurisdiction to pursue and punish the perpetrator where there is evidence proving the criminal's guilt for the acts attributed to him, facilitating the judiciary's efforts in achieving justice<sup>27</sup>.

However, since some crimes - such as corruption crimes - can extend beyond the territories of states, and since applying the principle of territoriality to such types of crimes may lead to unacceptable outcomes for some countries, as the adherence to sovereignty should not prevent states from cooperating in combating crime, especially corruption crimes, a complementary system has emerged, which is the principle of universal jurisdiction that stipulates that the interest of all states requires not leaving the perpetrator unpunished<sup>28</sup>. Below is some clarification on the condition of the place of the crime:

### **1- Committing the acts within the territory of the requesting state:**

In this case, extradition can take place if the extradition request has met its procedures and if the authority in the requesting state decides to interact positively with it<sup>29</sup>. This condition has been stipulated in the provisions of some international agreements and national legislations, as it is the direct justification for the requesting state's request, considering that the acts occurred within its territory, which grants it the jurisdiction to pursue the perpetrator and impose punishment on him, where evidence exists proving the perpetrator's guilt in the attributed acts, thus facilitating judicial work and achieving its goal of embodying justice<sup>30</sup>.

### **2- The commission of acts within the territory of the state requested for extradition:**

There is an international consensus that the state where the criminal act was committed has the original jurisdiction to prosecute the perpetrator, unless it waives its jurisdiction<sup>31</sup>. The principle of territoriality should be prioritized over the extradition system, as referring to the principle of territoriality in criminal law, the jurisdiction belongs to the state requested for extradition. When the perpetrator is a national of this state or a foreigner, the principle of territoriality remains preferable in application. The prohibition of extradition in such cases is to maintain the principle of state sovereignty without undermining international cooperation, which must respect state sovereignty and foster mutual trust in the judicial authorities whose goal is to punish the perpetrator. This principle is enshrined in national legislations as well as international agreements<sup>32</sup>.

### **3- Committing the acts in a third territory:**

This means that the perpetrator commits criminal acts in the territory of a state other than the requesting state or the state to which the request is made, and is apprehended in the territory of the state from which extradition is requested. If we assume that the crime affects the security of the requesting state, what is the basis for the extradition request in this case given the impossibility of applying the principle of territoriality?

It is necessary to be a justification for the requesting state's extradition request for it to be acceptable when made and to serve the interests of that state.

The requesting state can justify its request based on the principle of personality, which means that the perpetrator is one of its nationals, if the state where the acts were committed does not demand them, or based on the principle of universal jurisdiction, which extends beyond national borders and allows prosecution in certain cases that are serious crimes threatening the internal security of states and global security<sup>33</sup>.

There remain two exceptions in which the extradition of criminals is prohibited: the first, which is agreed upon, is the refusal of a state to extradite its own nationals; the second, which is disputed, is the possibility of refusing to extradite political refugees residing within the territory of the state requested to extradite them<sup>34</sup>. As we will clarify in a later section of this article.

### **Fourth: The condition of the non-expiration of the public lawsuit or the penalty**

One of the requirements of dual criminality in the laws of both the requesting and requested states is that the public prosecution or the penal judgment imposing the penalty must not have lapsed due to one or more reasons for lapse under either of their laws, such as statute of limitations, general amnesty, or others<sup>35</sup>.

Where it is a condition for the admissibility of extradition that the public prosecution has not lapsed, or that the judgment imposing the penalty has not expired for one of the reasons for expiration in the requesting state, in accordance with the laws of the requesting and requested states<sup>36</sup>. The failure to meet this condition renders the extradition meaningless and futile, as long as the person is wanted for acts that will not be prosecuted due to the expiration of the public prosecution, or is extradited for a penalty that has lapsed, they will certainly be released after extradition<sup>37</sup>. This condition is considered one of the fundamental guarantees when prosecuting the person to be extradited, as it aims to provide the maximum possible judicial protection to the requested person, so that they do not face double punishment.

By examining the Algerian Code of Criminal Procedure in the section related to the extradition of criminals, we find that the Algerian legislator has paid attention to this condition and emphasized it by stipulating that extradition is not permissible if the prosecution has expired by prescription before the request is submitted, or if the penalty has expired by prescription before the arrest of the requested person<sup>38</sup>. However, he excluded corruption crimes stipulated in Law No. (06/01) from this condition, in the case where the proceeds of the crime have been transferred abroad. He decided that the statute of limitations for public prosecution should be equal to the maximum penalty prescribed for the crime of theft of property by a public official or its unlawful use<sup>39</sup>.

There are also many agreements and treaties that stipulate, and even emphasize, this condition, such as the United Nations Model Treaty on Extradition in its Article (3), and the Arab League Convention on Extradition in its Article (5). However, the question that arises here concerns determining the applicable law to know the reasons for the expiration or lapse of the penalty. Is it the law of the requesting state or the law of the state to which the request is made? To answer this question, we are faced with two scenarios:

**First: The law of the requesting state for extradition applies:** as stated in the Arab Convention on the Suppression of Terrorism 1998<sup>40</sup>.

**Second: The law of either of the two states requesting or being requested for extradition is decisive:** meaning that extradition is prevented if the public prosecution has expired or the punishment has lapsed for any reason according to the legislation of the requesting or requested state for extradition. An example of this is the legal and judicial agreement between the countries of the Arab Maghreb Union<sup>41</sup>.

It is the form that was adopted by the Arab League's Extradition Treaty of 1952<sup>42</sup>, which is the prevailing trend in extradition treaties concluded at the global level, and some laws on extradition in Arab countries<sup>43</sup>.

## **Section Two: Conditions Related to the Parties Involved in the Delivery Process**

The parties involved in the extradition process are those elements that carry out the extradition procedures or are subject to those procedures. If the requested person is the focus of the extradition procedures, then both the requesting state and the state to which extradition is sought are the interested parties in carrying out the extradition.

### **First: The requesting state for extradition**

It is well established that the state whose penal law has been violated by an individual has the full right to demand their extradition if they leave its territory for another state. Such a request is legitimate as long as the aim is to enable the requesting state to exercise an undisputed right, as the criminal's escape should not allow them to evade punishment<sup>44</sup>.



Where the judicial jurisdiction is vested in the requesting state, either by virtue of an internal legal provision or a treaty provision, meaning that the criminal judiciary in the requesting state is competent to prosecute the requested person. The requesting state, exercising its general authority to enforce the right to punish, can refer the crime to its judicial authorities and determine whether the requesting state is competent or not. This is governed by the rules of jurisdiction contained in its internal legislation, which are governed by the following principles:

**A-** Principle of territorial jurisdiction: which means the state's right to apply its penal law to all crimes committed within its territory<sup>45</sup>.

**B-** Principle of Personal Jurisdiction: In its positive and negative aspects, which means granting the state the authority to apply its penal law to crimes committed by its nationals abroad, or to consider crimes committed abroad against its nationals<sup>46</sup>.

**C-** Principle of Subject Matter Jurisdiction: Under this principle, the state has the right to adjudicate crimes that affect its security, safety, and fundamental interests. This type of jurisdiction is considered complementary to the principle of territoriality, as it extends criminal law beyond the state's territory, regardless of the perpetrator's nationality, based on the idea of defending national interests outside the state's territory<sup>47</sup>.

However, if jurisdiction is vested in the courts of both states, the requesting state is not obliged to extradite, as long as the state does not extradite its nationals, it does not extradite those who fall under the jurisdiction of its courts. However, it is not entitled to refuse extradition if it does not exercise its jurisdiction. Saying otherwise would allow the wanted person to escape punishment, despite violating the laws of both states, which contradicts the requirements of justice<sup>48</sup>.

### **Second: the state to which extradition is requested**

The jurisprudence differs on the extent of the obligation on the state requested for extradition to deliver the person in question or not. The prevailing view is that there is no obligation in this regard for the state to deliver this person to another state for trial or punishment<sup>49</sup>. On the other hand, another perspective sees the existence of a different type of obligation stemming from the duty of courtesy and propriety, which some have referred to as a "partial obligation." These individuals believe that the obligation of the state requested for extradition is a special type of obligation<sup>50</sup>.

Therefore, the state to which extradition is requested has discretionary authority in making the extradition decision according to the conditions governing this procedure, while also considering political considerations and its interests based on the nature of its relations with the requesting state, whether there is an agreement or not<sup>51</sup>.

### **Third: Conditions related to the persons to be extradited (those who may be extradited)**

The principle applied in this context is the permissibility of extraditing any person who has sought refuge in a certain country after committing criminal acts on the territory of another country, whether for trial or to serve the sentence imposed on them.

However, there are exceptions to this principle<sup>52</sup>, which we will outline as follows:

**1- Prohibition of Extraditing Nationals:** The general principle, which is included in most national and international legislations, is that a state is not allowed to extradite its nationals regardless of the type of crime they have committed in any territory outside their own state<sup>53</sup>. According to this principle, a state cannot be obliged to extradite one of its citizens to another state<sup>54</sup>.

**2-: Prohibition of extraditing political refugees:** One of the prevailing principles in most international, regional, and bilateral legislations and agreements related to the extradition of criminals is the prohibition of extraditing those granted political asylum<sup>55</sup>.

It is worth noting in this context that the international community generally holds the view that

extradition is not permissible in political crimes. This is because a political criminal is not considered a criminal in the sense that this term carries in criminology or sociology. Their motive is not material or personal but rather ideological and reformist, as their actions are often aimed at achieving national liberation goals against what they perceive as an oppressive regime<sup>56</sup>.

### **The second requirement: Delivery procedures**

The term "extradition procedures" refers to the procedural rules adopted by the states involved in the extradition process, in accordance with their national laws and international commitments, to complete the extradition process, ensuring that it is valid and effective. The aim is to reconcile the preservation of human rights and freedoms with securing the public interests arising from the necessities of international cooperation in combating crime, so that no criminal escapes punishment<sup>57</sup>.

These procedures are shared by the requesting and the requesting state for extradition, and here is a statement regarding them:

**Section One: Procedures of the Requesting State:** The first generation of international law scholars, including "Grotius," believed that there is an obligation on the state, which consists of its commitment to punish the person who commits a crime abroad and escapes to it,

or to hand him over to the authorities of the state where the crime was committed on its territory, so that the competent authorities there can impose the punishment on him. Contemporary jurisprudence has followed the same direction<sup>58</sup>.

The extradition request is considered the tool through which the requesting state explicitly expresses its desire to receive the wanted person; without it, the right to extradition cannot be established. The request should be in writing, as it is not permissible to submit it orally or send it by telegram, telegraph, or electronic communication, except in certain cases characterized by urgency and as an exception<sup>59</sup>.

The extradition request is usually accompanied by a set of judicial documents that provide evidence of the conviction or accusation against the person to be extradited, the nature of the crime they are accused of, the arrest warrant issued against them, and some specifications of the person to be extradited, which would assist the requesting state's authorities in tracking and apprehending them<sup>60</sup>.

As for the authorities responsible for preparing and submitting the extradition request, since extradition is an act of sovereignty, it can only be submitted by one state to another. Additionally, preparing the extradition request is considered an action related to the judicial system of states. For example, in the United States of America, extradition procedures begin with the Department of Justice - Office of International Affairs, where the request is primarily submitted by the requesting state's courts, the state's attorney general, or its local district attorney. In France, the extradition request is prepared by the public prosecutor's office, which sends it to the attorney general, who then forwards it to the Ministry of Justice. The Ministry of Justice sends the complete extradition file to the Ministry of Foreign Affairs, which, through diplomatic channels, sends the file to its embassy in the requested state<sup>61</sup>.

As for the means of communication between countries, it is either the diplomatic way or the judicial one. And although the first channel has been accepted as a principle among countries, as most international treaties and agreements of various kinds have stipulated it. Moreover, some countries consider submitting the request through diplomatic channels as a guarantee of the documents' formality, while other countries are strict about the formality of documents and require several signatures for them to be accepted by judicial authorities<sup>62</sup>. In this context, the European Extradition Convention indicated the possibility of following the diplomatic route or any other route agreed upon by the parties involved in the extradition process<sup>63</sup>.

It is clear that the European approach left the choice of the channel for submitting the extradition request to the parties, unlike the United Nations Model Treaty on Extradition, which considered the diplomatic channel as the only route for submitting extradition requests<sup>64</sup>.

As for the Algerian legislator, he did not mention in the Code of Criminal Procedure the procedures

for preparing and submitting the request as a requesting state. Perhaps he left the matter to the internal laws of each requesting state to organize it in the way it sees fit, because each state enacts laws that include specific provisions related to the subject as a requesting state. Therefore, the requesting state is not in need of such provisions.

**Section Two: Procedures of the Requested State:** According to Algerian law, the procedures that Algeria follows if requested to extradite a person are divided into three stages:

**The first:** Receiving the request and examining it by the Minister of Foreign Affairs, then by the Minister of Justice<sup>65</sup>.

**The second:** taking investigative measures, gathering evidence, and apprehending the wanted person, which falls under the jurisdiction of security authorities.

**The third stage:** It involves the interrogation of the detainee by the Attorney General at the Supreme Court, and a report is prepared within (24) hours<sup>66</sup>. The reports and documents are submitted to the Criminal Chamber of the Supreme Court, which sets a hearing date within a maximum of (08) days from the date of notification of the documents. This period may be extended by (08) additional days if requested by the detainee or the Public Prosecution<sup>67</sup>. The detainee has the right to be assisted by a lawyer accredited by the Supreme Court for his defense. The trial is conducted in a public session unless otherwise decided upon the request of the Public Prosecution or the request of the detainee. If the latter waives these procedures, this must be proven by the court<sup>68</sup>.

And the court, in this regard, verifies the fulfillment of formal conditions, such as the existence of the extradition file and its inclusion of all required documents, which must be certified by the competent authorities in the requesting state. Additionally, it is necessary to ensure the fulfillment of substantive conditions, such as the dual criminality requirement, the non-expiration of the public prosecution or the penalty, and the absence of any impediments to extradition.

As for the delivery expenses – the money paid to transfer the person to be extradited, the proceeds of the crime, and sometimes for translating the required documents and papers<sup>69</sup>, the Merida Convention did not address this issue.

**The third requirement: Issues of the extradition system in combating corruption and mechanisms to resolve them**

This section addresses the most significant obstacles and issues facing the extradition system, as well as the key mechanisms that should be implemented to eliminate these issues or at least attempt to reduce them, as follows:

### **Section One: The Issues Raised by the Extradition System**

Among the issues hindering international cooperation in combating corruption related to the extradition of criminals are the dual criminality and the competition in extradition requests. The following is an explanation of this:

#### **First: The issue of dual criminality**

It has been settled that it is sufficient for the condition of dual criminality to be met if the act constitutes a crime under the legislation of both countries<sup>70</sup>, meaning that as long as the act is criminalized even under different descriptions, the condition of dual criminality should be considered fulfilled, as the essence lies in the unity of the act and not in its description<sup>71</sup>.

#### **Secondly: The issue of congestion in delivery requests**

The situation in which a state receives multiple requests for the extradition of the same accused or convicted person, whether the request is related to the same crime or different crimes, is described as "concurrent extradition requests" or "conflicting requests"<sup>72</sup>. The relevance of this issue to corruption crimes, especially those with an international dimension, is that

the person sought for extradition may commit a crime in a country other than their home country and flee to a third country. In this case, the country where the crime was committed can request their extradition, as can the country whose nationality they hold. We also face a situation of competing requests if the person commits two crimes, one in their home country and the other abroad, or commits multiple crimes in countries other than their home country<sup>73</sup>. But the issue arises around the priority of responding to extradition requests and favoring extradition to one country over another?

**Section Two: Mechanisms for Resolving the Issues Raised by the Extradition System**  
The Merida Convention addressed the issues of dual criminality and the overlap in extradition requests. Below is an explanation of that:

**First: Solving the issue of dual criminality**

The Merida Convention states: "In matters of international cooperation, whenever the requirement of dual criminality is stipulated, that condition shall be deemed fulfilled regardless of whether the laws of the requested state categorize the relevant offense within the same class of crimes

as the requesting state or use the same terminology as the requesting state, provided that the conduct underlying the offense for which assistance is sought is considered a criminal act under the laws of both states<sup>74</sup>."

Through this text, it becomes clear to us that the Mérida Convention has proposed a suitable solution to overcome the issue of double criminality, as the commitment of states to criminalize the acts stipulated in the agreements they conclude provides the sufficient legal basis to achieve double criminality<sup>75</sup>.

**Secondly: Solving the issue of congestion in delivery requests**

The opinions of jurists differ regarding the solution to the problem of conflicting extradition requests; some have adopted the criterion of the severity of the crime and the duration of the prescribed punishment, while another approach has taken into account the precedence of the extradition request and the nationality of the requested person<sup>76</sup>. Practically, the determination and prioritization of delivery priorities in case of conflicting requests have not been settled in the international direction, as there are numerous differences in the arrangement of these priorities. Moreover, this difference can be observed at the level of a single country in each individual agreement, primarily due to the differing priorities and interests of the countries with the contracting parties<sup>77</sup>.

As for the arrangement of jurisdictions arising from multiple requests regarding a single crime, and the rule that the requested state should follow, which grants priority to this or that state's request. International law rules have not stipulated a sequence of priorities among jurisdictions, so states are not obliged to follow a specific rule unless there is a special agreement between them<sup>78</sup>.

**Conclusion:**

We conclude with a series of results and recommendations:

**Results:**

- 1- The extradition system is considered one of the most important mechanisms for international cooperation in the field of crime prevention in general and corruption crimes in particular, to prevent their spread and put an end to the impunity of their perpetrators.
- 2- International treaties are considered the primary legal references in the field of international cooperation related to the extradition of criminals.
- 3- Despite the numerous agreements that have made the extradition system their subject, whether at the bilateral or regional level, or those that included provisions related to it without being extradition agreements themselves, the international community has not yet succeeded in concluding a global agreement on the extradition of criminals.

- 5- The legal basis for implementing the extradition system is available, and thus the possibility of resolving the issues that hinder the activation of this mechanism, particularly those related to double criminality and multiple requests, is ensured by legal regulations provided by both Algerian legislation and numerous regional and international agreements, especially the Merida Convention.

#### **Recommendations:**

- 1- Encouraging countries to join Mérida as it is the most important legal basis that can be relied upon to activate the system of extraditing criminals.
- 2- Urging countries to align their domestic legislation with the provisions of relevant international agreements, especially the Mérida Convention.
- 3- Accompanying the legal framework for the extradition system with diplomatic efforts, given the latter's role in facilitating the implementation of this mechanism.
- 4- Show some flexibility in requiring dual criminality between the requesting state and the state to which extradition is sought to resolve issues in applying the extradition system and prevent criminals from escaping punishment.

#### **FOOTNOTES:**

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<sup>1</sup>Ali Farouk, "International Cooperation in Combating Money Laundering from Organized Crime and Drug Trafficking in Light of International Law," (PhD Thesis, Faculty of Law, Department of Public International Law, Cairo University, 2008), p. 268.

<sup>2</sup>Mohamed Talaat Al-Ghoneimi, "The Mediator in Peace Law," (Alexandria: Manshiyat Al-Ma'arif, 1982), p. 435.

<sup>3</sup>Youssef Ihab Mohamed, *op. cit.*, p. 7.

<sup>4</sup>Jundi Abdul Malik, "The Criminal Encyclopedia," Vol. 2, (Cairo: Dar Al-Kutub Al-Masriya, 1932), p. 590.

<sup>5</sup>See: Article (44) of the Merida Convention.

<sup>6</sup>Suleiman Abdel Moneim, "The Problematic Aspects of the Legal System for Extraditing Criminals," *op. cit.*, pp. 74-98.

<sup>7</sup>Presidential Decree No. 95-367 dated November 12, 1995, approving the Judicial Cooperation Agreement between Algeria and Libya, Official Gazette of the People's Democratic Republic of Algeria, No. 69, dated November 15, 1995

<sup>8</sup>Suleiman Abdel Moneim, "The Problematic Aspects of the Legal System for Extraditing Criminals," *op. cit.*, pp. 84-86.

<sup>9</sup>"... The state party whose law permits it may agree to the extradition request of a person for any of the crimes covered by this agreement that are not punishable under its domestic law."

<sup>10</sup>Abdel Ghani Mahmoud, "Extradition of Criminals on the Basis of Reciprocity," 1st ed.; (Cairo: Dar Al-Nahda Al-Arabiya, 1991), pp. 8-10.

<sup>11</sup>Youssef Ihab Mohamed, *op. cit.*, p. 57.

<sup>12</sup>The same reference, p. 57.

<sup>13</sup>Youssef Ihab Mohamed, *op. cit.*, p. 58.

<sup>14</sup>The same reference, pp. 59-60.

<sup>15</sup>Abd al-Fattah Muhammad Siraj al-Din, *op. cit.*, p. 209.

<sup>16</sup>Suleiman Abdel Moneim, "The Problematic Aspects of the Legal System for Extraditing Criminals," *op. cit.*, pp. 130-200.

<sup>17</sup>Ali Jamil Harb, previous reference, p. 36.

<sup>18</sup>Abdul Fattah Muhammad Siraj al-Din, *op. cit.*, p. 332.

<sup>19</sup>Gerhard Glahn, "Law Among Nations: An Introduction to Public International Law," (Translated by: Abbas Al-Imar), (Beirut: New Horizons, 1970), p. 269.

<sup>20</sup>Article (2/2) of the United Nations Model Treaty on Extradition.

<sup>21</sup>For more details, see: Article (11) of the resolutions of the Institute of International Law in: Siraj al-Din Muhammad al-Rubi, *op. cit.*, p. 54.

<sup>22</sup>Refer to: Article (44/1) of the Merida Convention.

<sup>23</sup>Merida Convention, *op. Cit.*, Article (44/2).

<sup>24</sup>Abdel Haq Mersli, "International Cooperation in Combating Corruption," *Ijtihad Journal for Legal and Economic Studies* (University Center of Tamanrasset, Algeria, Issue 09, September 2015), p. 166.

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- <sup>25</sup>Refer to: Articles (695) and (697) of the Penal Code.
- <sup>26</sup>Ali Jamil Harb, previous reference, p. 72.
- <sup>27</sup>Sadiq Hisham Al-Haddad, "Lessons in Private International Law and International Private Judicial Law and Arbitration," 3rd ed.; (Alexandria: Al-Intisar Press, n.d.), p. 71.
- <sup>28</sup>Suleiman Abdel Moneim. "The Problematic Aspects of the Legal System for Extraditing Criminals," previous reference, pp. 252-256.
- <sup>29</sup>Ali Jamil Harb, op. cit., p. 72.
- <sup>30</sup>Refer to this meaning: Article (696) of the Algerian Code of Criminal Procedure.
- <sup>31</sup>Ali Jamil Harb, op. cit., p. 72.
- <sup>32</sup>Suleiman Abdel Moneim. "The Problematic Aspects of the Legal System for Extraditing Criminals," op. cit., p. 252.
- <sup>33</sup>Fatima Ben Nasser, "Limiting Procedural Guarantees for Accused in Terrorist Crimes: A Comparative Study," (Alexandria: Dar Al-Jamia Al-Jadida, 2011), p. 220.
- <sup>34</sup>Suleiman Abdel Moneim, "Lessons in International Criminal Law," Alexandria: Dar Al- Jamia Al-Jadida, 2000, p. 98.
- <sup>35</sup>Ali Jamil Harb, op. cit., p. 205.
- <sup>36</sup>This is what the Algerian legislator confirmed in paragraph four of Article (698) of the Algerian Code of Criminal Procedure.
- <sup>37</sup>Salama Ahmed Abdel Karim, previous reference, p. 97.
- <sup>38</sup>Article (698/4) of the Algerian Code of Criminal Procedure.
- <sup>39</sup>Articles (54 and 29) of Law No. (06/01), previous reference.
- <sup>40</sup>Article (41/e) of the Riyadh Arab Agreement for Judicial Cooperation of 1983.
- <sup>41</sup>Article (50/c) of the Agreement on Legal and Judicial Cooperation between the Countries of the Arab Maghreb Union of 1991.
- <sup>42</sup>An example is Article (6) of the Extradition Treaty concluded between the Arab League countries in 1952, which states, "Extradition shall not take place if the crime or punishment has been extinguished by the passage of time according to the law of either the requesting or requested state, unless the requesting state does not adhere to the principle of extinction by the passage of time and the person whose extradition is requested is a national of that state or a national of another state that does not adhere to this principle."
- <sup>43</sup>An example is Article (698 / 5, 6) of the Algerian Penal Code.
- <sup>44</sup>Youssef Ihab Mohamed, previous reference, p. 41.
- <sup>45</sup>Mahmoud Nagib Hosni, "Explanation of the Penal Code...", previous reference, p. 221.
- <sup>46</sup>Fatiha Ben Nasser, op. Cit., p. 219.
- <sup>47</sup>The same reference, p. 75.
- <sup>48</sup>Mohamed Al-Fadhil, "Lectures on Extradition of Criminals," Op. Cit., pp. 82-18.
- <sup>49</sup>Youssef Ihab Mohamed, op. cit., p. 41.
- <sup>50</sup>Mahmoud Hassan Al-Arousi, op. cit., p. 29.
- <sup>51</sup>See: Article (87) of the Statute of the International Criminal Court.
- <sup>52</sup>Ali Sadiq Abu Haif, op. cit., p. 302 and following.
- <sup>53</sup>Hussein bin Said Al-Ghafri, "International Efforts to Combat Internet Crimes," previous reference, p. 14.
- <sup>54</sup>According to Article (698/1) of the Algerian Code of Criminal Procedure in the section related to the extradition of criminals, Algerian citizens cannot be extradited to any foreign country. If one of the citizens commits a crime in another country and then flees to Algeria, and that country requests their extradition, in this case, the person cannot be extradited as they hold Algerian nationality, and Algeria has the right to prosecute them.
- <sup>55</sup>Article (698/2) of the Algerian Code of Criminal Procedure.
- <sup>56</sup>Ali Jamil Harb, previous reference, pp. 53-54.
- <sup>57</sup>Hussein bin Saeed Al-Ghafri, "International Efforts to Combat Internet Crimes," previous reference, p. 16.
- <sup>58</sup>Abd al-Fattah Muhammad Siraj al-Din, op. cit., p. 363.
- <sup>59</sup>Article (9/1) of the Model Treaty on Extradition.
- <sup>60</sup>Refer to Article (702) of the Algerian Code of Criminal Procedure for that.
- <sup>61</sup>Abd al-Fattah. Muhammad Siraj al-Din, op. cit., pp. 374-376
- <sup>62</sup>Mahmoud Hassan Al-Arousi, op. cit., p. 135.
- <sup>63</sup>Refer to Article (12/1) of the European Convention on Extradition, which was replaced by Article (5) of the Second Additional Protocol No. 98 issued on 17/03/1978, to include the judicial way.
- <sup>64</sup>Refer to: Article (5/1) of the United Nations Model Treaty on Extradition.

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- <sup>65</sup>Article (703) of the Algerian Code of Criminal Procedure.
- <sup>66</sup>Same reference, Article (706).
- <sup>67</sup>The same reference, Article (707).
- <sup>68</sup>The same reference, Article (708).
- <sup>69</sup>Abd al-Fattah Muhammad Siraj al-Din, op. cit., p. 460.
- <sup>70</sup>Suleiman Abdel Moneim, "The Problematic Aspects of the Legal System for Extraditing Criminals," Op. Cit., p. 141.
- <sup>71</sup>Mohamed Al-Fadl, "International Cooperation in Combating Crime," previous reference, p. 84.
- <sup>72</sup>Ahmed Mohamed El-Sayed Abdallah, "International Cooperation in Criminal Procedures: A Comparative Study with the Islamic System," (PhD Thesis, Faculty of Law, Mansoura University, 2009), p. 394.
- <sup>73</sup>Mahmoud Hassan Al-Arousi, op. cit., p. 125
- <sup>74</sup>Article (43/2) of the Mérida Convention
- <sup>75</sup>Sameh Ahmed Moussa, previous reference, p. 540
- <sup>76</sup>Mahmoud Hassan Al-Arousi, previous reference, p. 125.
- <sup>77</sup>Ahmed Mohamed El-Sayed Abdullah, previous reference, p. 294.
- <sup>78</sup>Iman Frehat, previous reference, p. 519.