The Extradition System as a Mechanism to Combat Transnational Organized Crime, a Descriptive Analytical Study

نظام التسليم كآلية لمكافحة الجريمة المنظمة العابرة للحدود

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Abstract:

The extradition system is one of the mechanisms for international judicial cooperation in the fight against transnational organized crime, through a State extraditing a person to another State, based on an official request, to be tried or to execute a judgment that has been lifted for committing a crime that falls within the scope of transnational crimes. The extradition system draws its strength from the original and complementary sources which help the judge not to fall into the crime of denial of justice. This system requires a set of conditions, including those relating to the person subject to extradition, and those relating to the reason for the extradition.

This study relied on the descriptive analytical approach to try to understand this mechanism of international judicial cooperation, which can only succeed with a set of measures, including activating the role of international courts, the strengthening of cooperation between the parties of the international community in the field of information exchange and the use of modern technologies for extradition purposes, and adopting flexible means and systems which reconcile new developments in the world of organized crime, and protection of human rights, on the other. In the following sections, we will try to approach the concept of extradition system by examining the definition of this system, its legal basis its conditions through this research paper.

Keywords: *Extradition system, Transnational orgnized crime.*

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Introduction

Extradition is not a new phenomenon, as different societies and times have known it, so the definitions surrounding it differ and multiply in international jurisprudence, as there is no definition of extradition generally accepted, that is, complete and agreed. However, this jurisprudence recognizes that its importance lies in preventing the impunity of criminals and confirming the imposition of sanctions for the crimes they commit, in particular transnational organized crimes.

The principle of extradition is subject to international treaties, international standards or domestic legislation, as it is by the application of the principle of reciprocity, which is at the origin of the extradition system, but the application of this system often comes up against obstacles which lead the criminal to impunity.

Below we will try to address the concept of the extradition system by reviewing the definition of this system, its legal basis and conditions in two axes. The first relates to the concept of extradition as a judicial mechanism to combat transnational organized crimes, and the second relates to the conditions for extradition in transnational crimes, all as follows:

Firstly: The concept of extradition as a mechanism to combat transnational organized crime

Extradition is not a new technique[1]. It was known by different societies and eras, this is why the definitions differ around it and are multiplied by international jurisprudence. There is no generally accepted definition of extradition, that is, inclusive and agreed upon, but this jurisprudence agrees that its importance lies in preventing the impunity of criminals and confirming the imposition of punishment for the crimes they commit, especially transnational organized crimes.

As mentioned earlier, the extradition system is a vital area of transnational organized crime, through which criminals are blocked and prevented from escaping from justice and law.

1. Definition and importance of the extradition system

International jurisprudence on the extradition system included many definitions which differed in wording but were appropriate in content, which is to confirm the imposition of punishment on the fugitive criminal and prevent his impunity wherever he goes. In the following, we will mention some of the definitions that have been drawn up to the extradition system, then we will discuss the importance of this system as a repressive mechanism to combat organized crime and to trap criminals.

1.1. Definition of the extradition system

It has already been said that the extradition system has been dealt with by many international conventions, as well as by specialists in jurisprudence and law, as it is one of the most important means of achieving criminal justice. In the following lines, we review some definitions of Western jurisprudence as follows:

-Extradition is a "legal mechanism by which a State (requested State) delivers a person who is in its territory to another State (requesting State) which requests him for the purposes of prosecution or execution of a sentence "[2].

- "Extradition is the surrender by a State (the requested State), of an individual who is on its territory to another State (the requesting State), who is looking for this individual either in order to try him for an offense. That he would have committed, either in order to make him undergo the sentence that his courts have already pronounced against him" [3] .

- " Extradition is the act by which a State delivers to another State interested in the repression of an act punishable by an individual or presumed guilty of this fact so that he may be tried and punished if necessary, or already convicted, so that he undergoes the application of the penalty incurred " [4] .

- "Extradition is an act of interstate legal assistance in criminal matters which aims to transfer an individual criminally prosecuted or sentenced from the domain of judicial sovereignty of one State to that of another State" [5] .

The Second International Conference on Criminal Law defined this system by saying: "Extradition is an act of interstate legal assistance in criminal matters which aims to transfer an individual criminally prosecuted or sentenced from the domain of judicial sovereignty of one State to that of another State."[6]

1.2. The legal importance of the extradition system

Extradition has become recognised as a major element of international cooperation in combating crime, particularly transnational crimes such as drug trafficking and terrorism[7].

The extradition of criminals is one of the most important forms of international cooperation in combating transnational organized crime and limiting its spread, especially in today's world, where there are many methods and techniques of crime, where the application of this system requires the concerted efforts of the concerned authorities, various security and judicial authorities.

As stated earlier, extradition is an act by which a country extradites a person residing in its territory to another State, for trial or for a court decision to be rendered against him.

From the above definitions, it becomes clear to us that the importance of extradition lies in finding fugitive criminals and bringing them to justice for the crimes they have committed, or in recovering them to legally serve the sentence prescribed by the courts of the country requesting them. Moreover, the importance of the extradition system also appears by refusing the criminal to benefit from the contradictions of legal legislation, and by extension, the difference in judicial systems between countries, thus escaping the grip of justice.

In fact, the extradition of criminals is both a right and a duty, as it is the right of the State in the territory of which the criminal committed his crime or prejudiced its interests, and it is a duty for the country to which the criminal fled. So it is necessary for the criminal to be certain that he will be subject to criminal prosecution wherever he goes, and wherever he resorts. He must always feel threatened and insecure,

because this feeling is the only way to combat the escape of the criminal to another country after committing the crime.

In addition, extraditing criminals is a logical and beneficial act, because it is natural for a person to be tried in the place where he committed his crime, where the crime components: corpse, effects, material evidence, accomplices and witnesses, are located. As for refraining from extradition under the pretext of trying the criminal at the place of his arrest, this is a matter of many problems, including the lack of accusation evidence, witnesses, and other difficulties.

The purpose of the extradition system, then, is to ensure that criminals do not escape justice and, consequently, from punishment wherever they are. Considering that extradition is an act of mutual assistance or legal assistance between two States, its usefulness appears very real. In the absence of an international judicial space, it constitutes a minimum procedure allowing two States to overcome the difficulty posed by the principle of State's sovereignty[8]. Consequently, judicial cooperation between countries in the field of combating transnational organized crime is consecrated.

Legal sources of the extradition system:

The extradition system is one of the most important traditional forms of judicial cooperation between countries in the field of combating crime in all its forms, as it is based on international treaties and customs as well as on domestic legislation and general legal principles such as the principle of reciprocity, and therefore some of these sources can be considered a legal basis for extradition system. In the following lines, we review these principles as follows:

2.1. Official sources

The institution of extradition is regulated primarily by international agreements at the multilateral or bilateral level and in the domestic law of each country[9].

-International treaties: ‘‘Treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single, two or more related instruments and whatever its particular designation is[10].

International agreements are among the most important legal foundations on which the delivery system is based, as many international agreements, regional and bilateral, have been concluded regarding this system. In terms of international agreements, the United Nations Convention against Transnational Organized Crime of 2000 can be mentioned. Which was not concerned only with criminalization, but also included all prevention and control measures [11]. Especially the extradition system, which was dealt with in detail by Article 16 of the Convention, where it came to codify some of the rules on which international custom has settled on the issue of extradition. Although it deals with the issue of extradition, this treaty is not an extradition treaty but an agreement to combat organized crime.

Many multilateral treaties have also been concluded regarding the extradition of fugitive criminals, such as: the Arab Convention for the Extradition of Criminals, the European Convention for the Extradition of Criminals, the Inter-American

Convention for the Extradition of Criminals, the Economic Community Agreement for West African Countries for Extradition. In parallel, the United Nations encouraged - especially after 1990, when a model treaty for extradition was established - the conclusion of bilateral agreements for the extradition[12] of criminals fugitive from justice and accused of transnational organized crimes.

The importance of international treaties and agreements, whatever their form, in the field of extradition of criminals lies in the following:

- An explicit expression of the State's desire to abide by the provisions of the convention, especially since extradition is an international judicial cooperation procedure aimed at preventing criminals from escaping punishment.
- Treaties are written, and thus provide the opportunity for the requesting State to find a legitimate bond that it can base on the request for extradition, as whenever there is a treaty for extradition, that constituted the first basis that the requesting and claimant States must adhere to when making the extradition.
- Most of them (the treaties) did not leave room for impunity and the authority of justice, especially with regard to the issue of abstinence, under the pretext that the "perpetrator whose extradition" is a citizen of the country from which the extradition is requested. Here, the State faces two options: extradition or prosecution.

- International custom: International custom is an unwritten law that emerged from the repetition of international behavior for a long period of time, until a belief was established among States that this behavior must be followed. The more States agree to resort to it with complete conviction, the greater the general strength of their obligation.

It is very clear that custom is one of the main sources of public international law, which is confirmed by Article 38 of the Statute of the International Court of Justice, and since the system of extradition in organized crime is a subject of international law, so international custom is therefore one of the sources of extradition, even if it is not direct.

The importance of custom in extraditing criminals, according to the opinion of some researchers, is that it can be relied upon in the absence of provisions in treaties, as it is the one that provides conventions with international customary rules for their codification, based on the fact that all agreements related to international law were norms and were codified overtime. Especially since customary rules have binding force in relation to countries that adopt the principles of common law in their legal system.

Custom affects the extradition system in limited cases, and examples of these cases include the international custom that it is not permissible to hand over foreign heads of state, and some rules that resulted from the frequency of state customs on them can be extracted and formulated in the form of agreements and legal texts such as: the double criminality clause, the principle of excluding the extradition of nationals, the prohibition of the extradition of refugees, and the inadmissibility of extradition in international crimes. In addition to the principle of "surrender or trial", all of these principles were initially established as international norms and then were

gradually codified and included in various international agreements and internal legislation.

-Internal legislation of countries: Legislation means the legal rules issued by the authority competent to legislate in written form and in accordance with the applicable constitutional rules, to regulate a matter of issues, including the issue of extradition. With regard to national laws on extradition, their content varies widely: for example, they may set the rules of extradition procedure and define the conditions to be included in future extradition treaties[13].

The national legislation of States in the field of extradition can be independent of itself, and therefore it is a direct source for the extradition system, as is the case with the Belgian extradition law of 1833, the American extradition law of 1848, the French extradition law of 1927, and Swiss law on extradition of criminals for the year 1983.

The regulation of the issue of extradition, its procedures and its effects may be within the Criminal Procedures Law, as is the case with the Lebanese Law of 1943, the Syrian Law of 1955, the Italian Law of 1977, and the Algerian Law of 1966 . These legislations and others are considered an indirect source of extradition.

The importance of domestic legislation, as a direct or indirect source of extradition, lies in the possibility of resorting to it in the absence of a bilateral agreement for extradition between two states, or in the event that this agreement does not contain some provisions, so that national law has a complementary role to the international agreement.

But the question that may arise in this regard is the case of conflict between the provisions of the internal legislation governing the issue of extradition, whether it is independent or represented in the law of criminal procedures, and the texts of an international agreement on extradition, which of which do we apply?. To answer this question, and without addressing the jurisprudential debate about the unity of law and the duality of law, one can refer to legal foundations at the international and domestic levels.

At the international level, it is possible to refer to the text of Article 27 of the Vienna Convention on the Law of Treaties of 1969, which settled the matter in favor of the texts of the international convention at the expense of national legislation, but at the local level, most national legislation stipulates in their constitutions the principle of the supremacy of the texts of the international treaty over the law, the domestic law, including the Algerian constitution. In addition to that the Criminal Procedure Code provides for action in a manner that does not conflict with international treaties related to extradition.

National constitutions, as domestic legislation, may be an indirect source of extradition, by addressing issues related to this topic, as it is the case for the Algerian constitution, which includes two basic principles: the principle that a person cannot be extradited based on the Extradition Law (Article 82 of the 2016 Constitution), and the principle that a person legally benefiting from the right to political asylum cannot be extradited.

2.2. Complementary sources

Are seen as a set of practical means that countries have recourse to appropriate extradition solutions in case of need as an alternative to the original sources in the absence or gaps or difficulty of finding built on these original sources. These sources are represented in the principle of reciprocity and court rulings.

-The principle of reciprocity: In international law, reciprocity is also one of the most famous principles governing international relations and more particularly in matters of interstate cooperation[14] in the field of the fight against transnational organized crime.

It is one of the principles recognized in all the legal systems of States, and it is defined as the congruence of rights and obligations between two States, or at least their equivalence, and the principle of reciprocity is not considered a modern source of extradition because it is basically customary in nature and has been codified overtime.

Some researchers have defined the principle of reciprocity by stating that it is: "the situation in which a State ensures to another State or to its nationals a treatment equivalent to that which the latter reserves to it" or that "a State practices towards another State when it benefits in fact, on the territory of that State, for the same treatment[15]".

Codification is not considered one of the conditions required in the principle of reciprocity, and it is not required to be stipulated in a treaty or national law. Rather, it is sufficient that it is done through mutual behavior between states in their relations during the extradition procedure.

In fact, it is very difficult to consider the principle of reciprocity as a binding source for states in the field of extradition in transnational organized crimes, because this principle is not recognized by all States, and therefore it can be considered as a moral and not a legal undertaking that is not subject to any fixed controls, but is subject only to the nature of the relationship between the two requesting states and what is required of them, resorting to it dispenses with the rest of the sources and its denial does not entail any legal responsibility on the State, because, as previously said, it is of a moral and ethical nature.

- Courts rulings**:** Courts rulings are among the additional sources that can be used as a secondary source in the field of international relations in general, and extradition in particular, because the judge resorts to it in the absence of legal text or ambiguity on the question put to him.

In fact, the source of those rulings may be national courts or international courts. As for the national courts whose rulings serve as a source of extradition, they are the rulings of the higher courts in the States, due to the rules of their rulings that constitute judicial precedents that are based upon when presenting similar cases related to the same dispute, noting only that the rulings of the higher courts of states are not of an obligatory nature, so that It can only be used as a guide.

As for complementary international sources, we can talk about the international Court of Justice and the International Criminal Court:

- The International Court of Justice: The International Court of Justice has made great efforts in developing the rules of international law, including those related to the extradition system. In 1950, it issued a ruling on the issue of political asylum between Colombia and Peru. Its ruling determined the nature of extradition as a special decision that involves the practice of territorial sovereignty.

In contrast to the rulings of national courts, the rulings of the International Court of Justice are binding on its parties only, and this is what Article 59 [16]of the Court Statute stipulates.

- The International Criminal Court: The International Criminal Court has initiated criminal cases against the perpetrators of international crimes, and issued arrest warrants against them, but it has not yet issued a ruling since the Rome Convention of the International Criminal Court entered into force, which makes its future rulings an important source of extradition. Its charter deals with the provisions of extradition from the definition to the contention of multiple requests for extradition.

Secondly: Conditions of extradition in transnational organized crimes

It has already been said that extradition is a legal procedure through which a State submits a person to another State for a crime he has committed or for the implementation of a judicial ruling issued in respect of him, and this system, like other systems, is subject in its application to a set of conditions that can only be surrendered if they are available, including what is related to the person subject to extradition, what is related to the crime as well as the reason for surrender. These conditions are reviewed as follows;

1. Conditions of the person to be extradited

The person required for extradition is the mainstay in carrying out the extradition process between the requesting country and the requested country, so it is necessary to research the possibility of extradition or not, based on several determinants, including the criterion of nationality and the criterion of capacity, it is not permissible to hand over a category of persons, and the details of that are as follows:

1.1: Nationality of the person required for extradition

Nationality is defined as that political bond between the State and the individual, and it is the agent through which a fugitive criminal in cross-border crimes can or may not be extradited. For the criminal not to escape the grip of justice, the problems related to nationality have been addressed in many international conventions and norms and the criminal legislation of countries, as sources of the extradition system. Below we address the problems related to nationality as follows:

- The case that the person subject to extradition holds the nationality of the country requesting extradition: this case does not arise in any dispute, as most international agreements stipulate that criminals fleeing from justice may be extradited to the countries of their nationality, when the substantive and procedural conditions of extradition are met, provided that the burden of proof falls Citizenship of the

requesting country, and this case was stipulated in Article 696 of the Algerian Code of Criminal Procedures.

- The case that the person subject to extradition holds the nationality of the requested State: International custom has settled, followed by international agreements and internal laws , has established that the State may not hand over its subjects to the authorities of another State, whatever the nature of the crimes they committed, including transnational organized crimes, provided that the authorities of the State that the extradited criminal holds its nationality by referring him without delay to the competent judicial authorities to prosecute him in cooperation with the requesting country, especially in the procedural and evidence-related aspects, in order to ensure the effectiveness of such prosecution.
- The case that the person subject to extradition is multinational: Many international conventions and national laws for extradition are not concerned with this issue because it is a complex solution, and it is not possible to set fixed and general rules that can be absolutely guided, and that is why some jurisprudence went to say the necessity of relying on the criterion of actual nationality. That is, the nationality of the country in which the criminal resides, or his family resides or he works in. Noting that the term actual nationality was mentioned in the text of Article 05 of the Hague Convention of 1930.
- The case that the person subject to extradition is a national of a third country: We are faced with this situation when the criminal does not hold the nationality of either of the requesting or requested countries, so that this case does not affect the extradition procedures as a general rule.

Some jurisprudence has raised the issue of consultation. That is, consulting the State requesting extradition to the State of which the criminal holds the nationality, which is only a matter of courtesy and reciprocity. Because there is no rule of international law that obliges the requested State to consult the State (the criminal) required to be extradited before agreeing to extradition, unless it has committed itself to this consultation, there should be an agreement expressly stipulating that.

- The case of the extradited person being stateless: a stateless person is defined as “a person who is not considered by any state to be a citizen of it under its legislation”, and therefore does not enjoy the rights granted to a citizen who holds the citizenship of a State, and this situation leads to considering the stateless individual a foreigner for all Countries of the world.

In fact, the issue of handing over a criminal who has fled justice in transnational organized crime does not face any problem, as the requested State has the right to extradite him to the requesting State without obstacles or restrictions, simply because he does not hold the nationality of any State.

1.2: The quality of the person to be extradited

The general rule is that every person who commits a transnational organized crime is brought to trial before the competent judicial authorities, and may be extradited if he is on the territory of another country. But there are categories that, according to international conventions and norms and even national legislation, the

extradition system cannot be applied. These are exceptions that are reviewd as follows:

-Prohibition of extradition of persons enjoying various immunities: If the person subject to extradition enjoys one of the diplomatic, judicial or parliamentary immunities, he is exempted from extradition procedures despite the crime against him was proven during the exercise of the jobs entrusted to him by his state, and heads of state and government fall within the scope of diplomatic immunity. Foreign ministers, members of the diplomatic and consular corps are also exempted from extradition. Whereas Article 31/01 of the 1961 Vienna Convention states that it is one of the impediments to extradition. As for members of the legislative and judicial authority, it is permissible to initiate proceedings against them provided that they obtain permission of the country to which the offender belongs.

- Prohibition of extradition of the political refugee: Refugee means a person who has left his country without his consent, as a result of events that occurred in his country that made him afraid of being persecuted because of his race, religion, belonging to a particular social group, or his political opinions.

International custom, and later international conventions and domestic legislation, have settled on the prohibition of extradition of political refugees. The justification for not extraditing a refugee according to the majority of international jurisprudence is sympathy with this person who did not leave his country of his own free will, but rather the compelling circumstances prompted him to do so.

-Prohibition of extradition of a person because of his gender, race, religion or nationality: The requested State may reject the request of the requesting State if it has a firm belief that the person subject to extradition is being prosecuted because of his gender, race, religion, nationality, since this request is inconsistent with international conventions related to extradition and basic human rights. The country that is requested to extradite can also refuse the extradition request of a person if it deems that doing so would harm the position of that person for any of those reasons, and this is what is stipulated in Article 14/16 of the United Nations Convention against Transnational Organized Crime for the year 2000.

2. Conditions related to the Reason of the crime for extradition

Extradition is the formal procedure by which one State requests from another the forcible return of a person who is in the requested country and who is accused or convicted of one or more criminal offenses under the laws of the requesting State. This return is requested so that the person can be tried in the requesting country or serve the sentence imposed there for this or these offense (s)[17]. Based on this, the second pillar of the extradition system is the crime that is the reason for extradition. In organized crimes, extradition is subject to a set of conditions, perhaps the most important of which are the following:

2.1. The principle of double criminality

Double criminality means, in short, that an act or omission must be considered criminal in two States, one of which is the State where the crime is prosecuted [18]. It

has been already noted that the expression of double criminality is not used by the legislator but by the doctrine[19]. This is what makes it, like many principles, a customary basis that has been codified over time, and is considered one of the most prominent manifestations of international cooperation in the fight against transnational organized crime.

The content of this condition is that "The fact that the conduct which is the subject of the cooperation constitutes an offense both in the requesting State and in the requested State ..."[20]. That is, extradition can only take place if the crime subject of extradition is stipulated in both the internal laws of the requesting State and the requested State, as it is not logical to extradite a person to a State without this act being criminalized in accordance with the internal legal texts of the requested State. Because by doing so, we have violated the principle of legality, which states that "There is no offense, no penalty without law".

But is "double Criminality" a condition or a principle? The truth is that this problem has not been answered by either jurisprudence or the judiciary. Some talk about the "principle" of double criminality, while others talk about the "condition" of double criminality. As for those who use the term "principle" they mean international criminal cooperation, while those who use the word "condition" use it both in matters of international criminal cooperation and in matters of extraterritorial jurisdiction[21]. But we sometimes see a mixture of these two terms by the doctrine, yet between "principle" and "condition" a fundamental distinction exists[22] as explained.

Double criminality is a fundamental principle in extradition law, as it is contained in much domestic legislation of countries, and in various bilateral treaties that must include this principle. Thus, the requirement of double criminality is based on several international, internal, and international legal bases through a set of general, bilateral and regional international agreements (United Nations Convention against Transnational Organized Crime of 2000, Article 16, Model Convention on Extradition 1990, Article 02, Convention United Nations Anti-Corruption 2004, Article 44, European Extradition Convention 1958, Article 02), and internal, that is, national legislation related to the issue of extradition and combating transnational organized crimes (Criminal Procedure Law of 1966, in Article 297 of it).

As for the jurisprudential aspect, the basis of double criminality, in the field of international criminal cooperation, according to the jurist BECCARIA, can be found in the conviction that there is no place on earth where crime remains unpunished, which makes this an effective way to prevent it[23].

After our study of the definition of double criminality and its nature and legal basis, we conclude that it is one of the most important pillars of the extradition system in international crimes, especially those that cross borders, but it is not sufficient on its own as there must be other conditions that are no less important than it, including the specification clause that we will try to take a look at some of its aspects in the following section.

2.2. Condition of specialty

Modern extradition law contains several widely recognized rules[24], among them is the principle of specialty, the latter being one of the principles contained in a large number of bilateral and regional extradition treaties, and is recognized as a principle of customary international law.

Specialty is frequently referred to as a principle because it is so broadly recognized in international law and practice that it has become a rule of customary international law[25]. The principle of specialty allows requesting states to try or punish defendants only for the offenses for which they were extradited[26]. That is, the requesting State may only prosecute the requested person for the acts that are the subject of the extradition request, and such trials, in general, become possible only if the requested State agrees to extend the scope of extradition to include new acts or if, first, it gives the person a reasonable period to leave the country on his own, but he did not leave it.

As already said, the principle of specialty requires that the individual be tried for the only facts referred to in the extradition request and under the qualification given to them. If the requesting state finds out after the extradition of acts prior to that date which appear to have to be prosecuted, it requests the requested state's authorization to prosecute these new facts. (Request for extension of extradition) [27]. Especially if it comes to cross-border crimes, such as the crime of terrorism, the crime of human trafficking, the crime of money laundering, drug crimes, corruption crimes.

In fact, this "customary" principle usually reflects a fundamental concern of governments that persons who are surrendered should not be subject to indiscriminate prosecution by the receiving government, especially for political crimes[28] committed against the state or its system of government.

What is important is that the principle of Speciality embodies the theory -in international law- that compels the requesting state to prosecute the extradited individual upon only those offenses for which the requested country granted extradition[29], provided that the act subject to extradition is of a certain degree of gravity, such as transnational organized crimes, and this is what we will discuss in the following section.

2.3. Condition of the Gravity of Crime Committed

First of all, it must be said that this condition concerns the extradition of international crimes as a whole, including crimes falling within the scope of organized crime, that is to say serious crimes for which the penalty is established by international conventions, and this is what the United Nations Convention against Transnational Organized Crime calls for.

"Serious offense" is defined as: "an act constituting a offense punishable by deprivation of liberty, the maximum of which must not be less than four years or more severe ..."[30]. This definition does not contain any other requirements in relation to the gravity, motivation or content of the offence, other than the amount of criminal penalty associated to it[31].

It is important to stress that the definition of "serious crime" is valid only for purposes of the application of the Organized Crime Convention, and it does not require a State party to introduce a definition of serious crime in its national laws[32].

The United Nations Convention against Organized Crime did not follow the method of the exclusive list of extrajudicial crimes, but rather limited those crimes to the size of the penalty prescribed for the crime, the reason for extradition, that is, it adoptes the minimum penalty (04 years). This more flexible approach means that there is no exhaustive or indicative list of offences that would provide for a uniform approach among States parties[33] on extraditable crimes.

Conclusion

We conclude from all of the above that extradition is a legal mechanism whereby the State (the requested state) delivers a person present in its territory to another State (the requesting state) that requests him for the purposes of prosecution or enforcement of a judgment. It was dealt with by many international conventions, as well as by scholars of jurisprudence and law as one of the most important means of achieving criminal justice.

The supreme aim of extradition -as stated previously- is to confirm the imposition of sanctions on perpetrators of transnational organized crime of all kinds and to prevent their impunity from the sanctions provided by law against them, wherever they are. In the absence of an international judicial space, extradition, in matters of transnational organized crime and other offenses, represents a minimum procedure which allows the two countries to do so, and to overcome the difficulty posed by the principle of State sovereignty. Thus, it is the most important repressive mechanism to fight against transnational organized crime at national and international levels, especially in today's world, where criminal methods and techniques are numerous, and the implementation of this system requires concerted efforts of the judiciary and the various security services.

As we have said, the extradition system, especially with regard to transnational organized crime, is based on international treaties and customs, as well as on national legislation, general legal principles and decisions of justice. National and International, which gives the national or international judge a large scale to seek solutions to the problems that are posed to him. In matters of extradition, the plurality of sources of this system helps the judge not to fall into the offense of denial of justice.

From all of the above, it can be said that the success of the fight against transnational organized crime, through the extradition system, requires taking a set of measures, including:

- Activating the role of international courts, in cooperation with national courts, in the fight against transnational international cri.me, by not leaving legal loopholes that allow criminals to escape justice and the law more easily.
- The strengthening of cooperation between the parties of the international community in the field of information exchange and the use of modern technologies

for extradition purposes, since exchange of information, particularly financial information, is an effective means to curb and thwart the schemes of criminals.
- Adopting flexible means and systems which reconcile new developments in the world of organized crime, on the one hand, and adhering to the principle of sovereignty and protection of human rights, on the other.
- Involving States in a more systematic practice of extradition throughout the world, by making the extradition system an ethical rule before it is legalied.

Footnotes

[1] Philippe Richard, *Droit de l'extradition Droit de l'extradition et terrorisme. Risques d'une pratique incertaine : du droit vers le non-droit ?,* Annuaire Français de Droit International, N° 34, 1988, pp 654, 655.
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