

## Extradition of Criminals in the Light of International Agreements

Mohammadullah Mandozay<sup>1</sup> and Abdu Rahman Rahimi<sup>2</sup>

<sup>1</sup>Department of Member of Administration and Diplomacy, Faculty of Law and Political Science, Sheikh Zayed University, AFGHANISTAN.

<sup>2</sup>Department of Judiciary and Attorney, Faculty of Law and Political Science, Sheikh Zayed University, AFGHANISTAN.

<sup>2</sup>Corresponding Author: [abdurahmanrahimi18@gmail.com](mailto:abdurahmanrahimi18@gmail.com)



[www.ijrah.com](http://www.ijrah.com) || Vol. 3 No. 6 (2023): November Issue

Date of Submission: 03-11-2023

Date of Acceptance: 01-12-2023

Date of Publication: 11-12-2023

### ABSTRACT

We know that crimes are committed at the national and international level, and there are a number of reasons and factors behind the commission of these crimes. In order to prevent the occurrence of these crimes, it is necessary to have coordination and cooperation between the countries in this area, in order to prevent the occurrence of crimes at the international level and if this cooperation does not exist. Yes, it will never establish international order and international peace, it will have financial and personal losses. Human life is the common heritage of all humanity and the preservation and protection of this heritage is the common obligation of all governments and individuals.

**Keywords-** crimes, criminals, extradition, punishment and criminality.

## I. INTRODUCTION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَالصَّلَاةُ وَالسَّلَامُ عَلَى سَيِّدِ الْمُرْسَلِينَ وَعَلَى آلِهِ وَاصْحَابِهِ أَجْمَعِينَ.

The present world is like a common house, which the governments of the world are the owners of, and they need such measures for the prosperous and happy life of themselves and their people, because of which they can share this common material and spiritual property. Keep doing the efforts and save them from all kinds of dangers. These types of actions take a practical form as a result of the signing of international agreements between these states, which they have signed in different areas of social life, one of these agreements is the agreement on the extradition of criminals, which Therefore, the issue of extradition of criminals will not be done.

### 1.1 Purpose of the research

Since Afghanistan is a part of the world, it is necessary for the law and Sharia department staff and other enthusiasts to sign and implement international agreements regarding the extradition of criminals and their prosecution. And understanding them is the main purpose of this scientific article.

## II. RESEARCH CHARACTERISTICS AND MATERIALS

Research in the field of social sciences is only the use of libraries and current technology. Therefore, national and international books have been used in the writing of this article. Hopefully, the thirst of the dear readers will be quenched.

In the current era, in addition to the international cooperation between the states on the extradition of criminals, international agreements should also be signed between the states on the good fight against crime at the international level, according to which the criminal who committed the crime He escapes from the place of committing the crime to other countries in order to protect himself, to be arrested and punished for his actions.

The importance of the subject is the application of real justice in the society, that is, when a person in the society commits a crime by the execution or non-execution of certain acts and from that place to another place for the purpose of safety from punishment. If he escapes, he is caught according to international treaties on extradition and international cooperation between states,

and he is punished for his actions in accordance with the restoration of the disturbed order in the society, and this is actually in human society. Bringing justice (2:54).

Just as the fight against crime is necessary at the national level, it is equally important to fight against crime at the international level, because crime, by its very nature, is on the rise day by day. Not only have crimes increased at the national level, but the graph of such crimes has also increased at the international level. Therefore, it is necessary for the countries to coordinate all their cooperation and efforts by taking advantage of all the available possibilities in the national and international arena, so that the criminal does not have an opportunity to commit a crime and another country to keep himself safe. to escape One of these cooperation's at the international level is the extradition of criminals. When a person commits a crime in one country and escapes to another country after committing the crime, that country cannot directly investigate the crime and prosecute and punish the person. The country where the wanted person resides should cooperate with the country where the crime was committed, to hand him over for trial and punishment. Since international cooperation on the extradition of criminals is not mandatory. Therefore, due to the importance of this issue, bilateral and multilateral agreements should be signed between the states, so that this issue can be addressed precisely (2: 369).

Here, it is considered necessary based on the relevance of the topic, to shed light on the following topics.

### **III. DEFINITION, TYPES AND CONDITIONS OF CONTRACT**

Before studying the extradition of criminals in the light of international agreements, it is necessary to provide brief information about international agreements in the first step. This is because the title of our discussion (Extradition in the Light of International Treaties) requires that before presenting information on extradition, information on the treaty should also be presented. In this series of information, the definition of the contract, the types of contract and finally the conditions of the contract are discussed and studied under different topics.

1- Definition of contract in a broad sense: In a broad sense, an international agreement aims to create an agreement between two or more than two legal entities and also create specific legal consequences according to international law.

2- Definition of contract in a limited sense: In a limited sense, the purpose of a contract is an agreement that is created in writing and regulates international relations. In other words, a contract is a written agreement, which is created between the personalities of the international general law, because it brings about specific legal results according to the rules of the international general law (6:66).

- An international agreement is an agreement by which two or more states, international organizations have established their relationship within the framework of general international law or are on the way to establishing it.

- International agreements are a means of cooperation between states at the international level, through which states impose binding rules consciously and voluntarily.

#### **3.1 Second: Types of International Agreements**

International agreements are divided into different types depending on the accession of the signatory parties and the period of time. This division is only for their good understanding, which does not affect their credibility. Without prejudice to its executive power, all international agreements must be observed and implemented in good faith. According to the form, international agreements are divided into written, oral, secret (secret), a single document or a summary of notes, departmental agreements, inter-governmental and departmental agreements.

States must sign all agreements in writing. The first paragraph (102) of the United Nations Charter reads as follows: (Each international agreement must be registered and published in the United Nations Secretariat as soon as possible after its entry into force. It obliges member states to sign international agreements in writing).

Oral international agreements are also not prohibited from the point of view of international law, such as the members of the Security Council agreed in 1946 that two of their candidates would be from Latin America and one candidate each from Eastern, Western Europe, the Middle East and the Middle East. The British Commonwealth of Nations accepts (6) non-permanent members as elected representatives to the Security Council. International agreements are agreements that are published on social media for public information. On the other hand, secret agreements that are about security and order are deliberately kept secret from the public and other countries.

- General agreements are those agreements that are published in the press for public information and vice versa.

- Secret agreements are those agreements which are kept secret from the public due to the military and security situation and are also kept secret from other states. For example: In February 1945, a treaty was signed between the Soviet Union, the United States of America, and the United Kingdom regarding the Second World War, which could not be published. Such agreements, when the situation changes and the desired situation disappears, the said agreement should be published.

- The agreements signed by the heads of states. The agreements signed by the heads of governments are called inter-governmental agreements. Or it is signed by other representatives of the government such as ministers.

- The agreements signed by the departments. Belongs to various departments of ministries, for example: transportation, trade, cultural and religious services, etc.  
- Agreements can be bilateral or multilateral, international or regional (logical), which are enforceable for all.  
- It should be said about the accession to the agreements, that some agreements are open and some others are closed. Any state can join free or open treaties. An example is the United Nations Charter, which is an open international treaty. The issue of accession is discussed with him.

The agreements, which are closed or closed agreements, the majority of such agreements are bilateral agreements, such as trade, cultural, consular and other agreements. Regarding the open agreements, in order for other states to join it, it should be clearly written in one of the articles of the agreement. Political and economic agreements are divided into equal and unequal agreements in terms of legal nature (6:23).

#### **IV. POLITICAL AGREEMENTS**

Generally, it is signed for the security of the parties and international peace and security, non-aggression, neutrality, disarmament, friendship and collective defence are included in these agreements. Economic cooperation, technical, social and cultural international cooperation is governed by economic agreements. Legally equal agreements are agreements that have equal rights and obligations on both sides. International legal unequal agreements are the opposite of those international agreements, which are not equal in terms of rights and obligations.

This inequality is seen in political, economic and legal agreements. An example of such an unequal agreement is the Capitalization Agreement. These were the agreements that the colonial and imperialist big countries signed on the weak and weak countries that had just gained independence (7:24).

##### **4.1 Second: The validity of international agreements and the reasons for their invalidity**

From a legal point of view, the most important condition for the validity of international agreements is the subject of its signature, which is signed by independent countries. That is, states must have all the attributes of signing, because the state is the only international legal entity that has the authority to sign agreements.

- The second condition is that the states show agreement or consent in signing the international agreement.  
- While there is fraud or misunderstanding between the parties or a party at the time of signing the agreement, such as the Geneva (1989) agreement between Afghanistan and Pakistan.  
- While the contract was signed under duress.  
- While there is a major error in the signing of the contract.  
- While the contract creates such an obligation, which is impossible to perform.

- The signed international agreement should be recorded and registered in the United Nations Secretariat according to Article (102) of the United Nations Charter. - Whereas, a party does not have the authority to sign the treaty, for example, a colony or a protected country does not have the authority to sign. - Whereas, the aforementioned international agreement is in conflict with the principles of international general law and the principles of the United Nations Charter (8:78).

##### **4.2 Historical process of extradition in the light of international agreements**

- Definition of restitution: Restitution is an Arabic word with a verb weight, whose literal and terminological meanings are discussed separately below.

A- The literal meaning of return: return has come in the dictionary with the meanings of rejection, delivery, submission and other meanings (4:140).

B- Terminological meaning of Aster Dad: In accordance with the judicial process, it is a request for the surrender of the accused or a request for imprisonment for the implementation of the sentence of the convicted person. Or in other words, in terms of terms and legal terms, extradition consists of the handing over of the accused or criminal by an incompetent or weak competent state to a competent or strong competent state for trial and punishment (115:2).

C- Explanation of the definition: If this definition about extradition is studied carefully, it will be clear to me that the following important points are present in extradition.

A- Not handing over the accused or the criminal by an incompetent or weakly competent state to a competent or strong competent state and vice versa.

B- Existence of the defendant and defendant state: The defendant state is the one that wants the accused or the criminal, and the defendant state is the one from which the defendant or the criminal is wanted restitution.

D- Trial and punishment of the wanted person: If the wanted person is accused, trial and if he is guilty, is punished.

E - The importance of extradition in crime prevention: because the accused and the criminals assume that after committing the crime. If he escapes to any country in the world. Extradition is prosecuted and punished based on international cooperation. Therefore, international justice is strengthened at the international level and crime is prevented (9:115).

- The historical process of extradition: We inform you about the historical process of extradition first at the international level and then at the level of Afghanistan.

##### **4.3 The historical process of extradition of criminals at the international level.**

A- Extradition of criminals in the first centuries: Historically, extradition begins in the early stages. In these centuries, extradition existed in a very primitive form. For example, the first extradition treaty was signed in 1278 BC between King Ramses II of Egypt and the Hittite kings, Shelley. The purpose of this agreement was to deal with their common criminals. Also, in ancient

Rome, there was a nickname rule called Remsso's rule and it means restitution. In ancient Roman law, the interaction in criminal matters was such that when a crime was committed, the victim, his family, clan and relatives had the right to take revenge on the criminal, his family and clan members; But based on the (Rimsio) rule, this revenge was limited in the sense that according to the order of this rule, the criminal will be handed over to the victim or his family and tribe, and in this case, the members of the family and tribe of the criminal will be victim or her family and clans were safe from revenge (10:102).

B- The extradition of criminals in the Middle Ages: In this era, the extradition of criminals developed a lot and in these times, many agreements were signed between the states regarding the extradition of criminals and this chain is still continuing. For example, in 1176, an extradition treaty was signed between King Henry II of England and King Guillaume of Scotland. In which the two kings promised that they will not help each other's personal enemies and if their personal enemies take refuge in each other's countries, they will be returned to the original country. Also, in 1303, another agreement was signed between King Philippe Lobel of France and King Edward III of England. , will be handed back to one and another (11:117).

C- Extradition of criminals in the new centuries: At the end of the 7th century and during the 18th century, political relations between states developed with attention to general rights. Agreements were signed, among which were the Extradition Agreement between France and the Netherlands on the 17th of August 1736 for the crime of disturbing certain palaces, and the agreements between France and Austria. On the 6th of September 1766, between the countries of France and Switzerland on the 27th of May 1777, between the countries of France and Spain on the 29th of September 1765 and between the countries of France and Portugal Between them were signed on 25 January 1783. Why was Belgium the first country to prepare an extradition law? For the first time, in his book called (Crimes and Punishments), (Bakaria) expressed his ideas about the extradition of criminals with his scientific and legal perspective. had done (3:36).

D- Extradition of criminals in the present time: In the present time, the extradition of criminals has developed more than in the past centuries. Why has extradition developed so much in the present time, maybe the following two reasons have caused it.

First - the number of independent states has increased, especially after the Second World War, many colonial countries gained their independence and concluded extradition treaties with many states. On this basis extradition treaties increased.

Second - that at the present time, written laws, especially written criminal laws, have been approved and are in force in many countries, for example, in France (1810) the criminal law and (1804) the civil code. The law was enacted.

Therefore, in addition to international agreements, criminal laws also followed the issue of extradition. Why, at the present time, especially after two world wars, there was a gap between the states regarding the non-existence of a single procedure for extradition, and that is that Some undercover criminals misused various extradition procedures and after committing the crime, they fled to a country from which it would be impossible to extradite them. Finally, in 1914, an international police conference was held in Monaco, France, in order to eliminate this defect, and a single procedure was proposed in it. Following it, an international conference was held in London in 1925 under the title of (Prison Administration Science). As a result, considering this proposal, in 1928, most American countries decided to create a single law on international issues, in this law, all 37 articles from Article 344 to Article 381 for extradition. were allocated and a single procedure was considered in it. Later, in 1962, an agreement was signed between the countries of Belgium, the Netherlands and Luxembourg on a single extradition procedure.

- Another historical international agreement, which was signed between the second Pharaoh of Egypt Ramos II and the Junta King Hiti, which was signed (1300 years ago) before Milada. It was signed for the return of fugitives, permanent peace, territorial integrity, ending the state of aggression and the establishment of a defense alliance (2: 120-121).

#### ***4.4 The second part - the historical process of extradition of criminals in Afghanistan***

When our dear country Afghanistan was established as an independent country under the leadership of Ghazi Amanullah Khan at the end of the third war with the British and became independent in domestic and foreign affairs, it established diplomatic relations with the states and some He signed agreements with them. In 1920, Sardar AbdolAziz Khan was sent to Iran as a political representative. Sardar presented his demands to the Iranian government in five paragraphs. Request for friendly talks, exchange of ambassadors, establishment of Afghan consul in Mashhad, strengthening of communication and trade relations. The talks between the Afghan representative and the Iranian officials led to the signing of the agreement between the two countries after almost a year. This agreement was signed on June 22, 1921 by Afghan Ambassador Sardar Abdulziz Khan and Iran's Minister of Foreign Affairs Mirza Hassan Khan Mohtsham Al-Sultana. It was requested in the seventh article of this agreement, that the criminals who take refuge in their countries will be returned. But political criminals are not eligible for extradition. After that, on June 15, 1928, the extradition of criminals and accused was signed between the governments of Afghanistan and Iran (3: 86, 87).

In addition, the Islamic Republic of Afghanistan is eager to activate and strengthen cooperation in the field of dealing with the spread of crime in recent times, and

for the purpose of returning criminals to normal life, extradition and exchange of prisoners with some states. Agreements have been signed. We mention it briefly below.

In order to sign the agreement between the Islamic Republic of Afghanistan and the Russian Federation on the transfer, exchange and surrender of criminals, the President of the Islamic Republic of Afghanistan in the decree numbered (100) dated (8) of the month of Scorpio, 1386, which According to the order of Article (79) of the Constitution of Afghanistan, the Jirga of the Elders held a meeting on (27) of the month of Sambla 1386 and the House of Representatives on (19) of the month of Asad of the year 1386. has been approved. It was published in the newspaper Lapse No. 931 on the 26th of November 1386 (9: 77).

Also, the agreement between the Islamic Republic of Afghanistan and the Islamic Republic of Iran on the transfer, exchange and surrender of criminals. According to the order of article 79 of the law, it was confirmed in the meeting of the Upper House on (27th) of the month of Sambla 1386 and the (26) of the month of Sambla of the year 1386 of the house of representative. It was published in the newspaper (931) on the 26th of November 1386 (10:16).

Also, the Agreement between the Islamic Republic of Afghanistan and the Republic of Tajikistan on the Transfer, Exchange and Surrender of Criminals No. According to the order of Article 79, the law was approved in the session of the of representative on the (14th) of the month of Thor 1386 and the (27th) of the month of Sambla of the year 1386 of the Senate. It has been published in the newspaper No. 931 on (26th) of November 1386 (11:88).

## V. CONCLUSION

As today, criminals use different devices to escape from the place of crime and to keep the crime hidden inside a country and to keep it safe from the enforcement of the law. The target moves from one place to another and even a number of criminals flee from one state to another after committing the crime and take up residence there to avoid the application of the legal penalties of the state in which the crime is committed. Execute, protect, so this is the reason why crimes are increasing in the world and they have not come under control in any way. In the international arena, the extradition of accused and criminals between countries is an optional matter, and the states are not obliged to extradite these criminals to other countries upon request, rather, the states have complete discretion in this regard; But in order to have a fight against crime at the international level and to control the graph of crimes.

There should be an extradition agreement between the states regarding the accused and criminals and criminal cooperation should be increased in this field, so that no one can commit a crime and then flee to another country and remain safe from the execution of the punishment.

## REFERENCE

- [1] Holy Quran
- [2] Hosami, Hazrat Gul. (1389). Extradition of criminals. Saeed Publications.
- [3] Danish, Hafeezullah. (1390). International Criminal Law. Volume 1,
- [4] Mostaqbal Publications.
- [5] Abbasi, Mahmod. (1373). Extradition criminals. First edition. Tehran: Ganj Danish Library.
- [6] Ameer, Hassan. (1381). Volume III, Tehran: Amir Kabir Publishing House.
- [7] Law of Extradition of Criminals of Afghanistan, Official Gazette 1391, No. 939 to 941.
- [8] Faculty of Law and Political Sciences of Kabul University. (1387). Dictionary of Legal Terms, Publishing Agency: (USAID).
- [9] Ministry of Justice. (939 to 941). Agreement between the Islamic Republic of Afghanistan and the Islamic Republic of Iran on Extradition of Criminals, Official Gazette, Kabul: Ministry of Justice.
- [10] Ministry of Justice. (1103). The Law on Extradition of Accused, Convicted and Judicial Cooperation, Official Gazette, Extraordinary Edition, Kabul: Ministry of Justice.
- [11] Ministry of Justice. (931). Agreement between the Islamic Republic of Afghanistan and the Russian Federation on the Transfer, Exchange and Surrender of Prisoners, Official Gazette, Kabul: Ministry of Justice.
- [12] Ministry of Justice. (931). Agreement between the Islamic Republic of Afghanistan and Iran on the Transfer, Exchange and Surrender of Prisoners, Official Gazette, Kabul: Ministry of Justice.
- [13] Ministry of Justice. (931). Agreement between the Islamic Republic of Afghanistan and Tajikistan on the Transfer, Exchange and Surrender of Prisoners, Official Gazette, Kabul: Ministry of Justice.
- [14] Mandozi, Mohammadullah. (1401). Contemporary International General Law, Publisher: printing press Farida, Khost.
- [15] Safi, Vader. (1388). International General Law, Publisher: International Organization for the Development of Law.
- [16] Ministry of Justice. (1023). Agreement between the Islamic Republic of Afghanistan and the Government of the United Arab Emirates on the Extradition of Criminals, Official Gazette, Kabul: Ministry of Justice.