

# Exceptions to the Principle of Non-Extradition of Nationals: A Comparative Analysis of Extradition Practices between the European Union and China

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## Abstract

Extradition, as a vital mechanism for international criminal judicial cooperation, faces practical challenges in upholding national jurisdiction over its own citizens while potentially shielding criminals and hindering international collaboration. This paper examines the legal frameworks, practical models, and underlying institutional logic governing exceptions to the principle of non-extradition of nationals in both the European Union and China. Employing comparative analysis, case studies, and literature review, it systematically investigates these approaches. Findings reveal that the EU has achieved a paradigm shift from ‘absolute non-extradition’ to ‘principle of surrender with exceptions’ through supranational legislation such as the European Arrest Warrant, reflecting a governance logic of sovereign concession and judicial integration. China, grounded in its Extradition Law and upholding the principle of absolute sovereignty, has instead established a cautious adaptation model of ‘principle of refusal with exceptions subject to negotiation’ through bilateral treaties and domestic procedures. These divergences stem from multiple factors including legal systems, conceptions of sovereignty, judicial traditions, and cultural values. Building upon this analysis, this paper proposes that China should systematically refine its extradition exception mechanisms while upholding national sovereignty. This refinement should encompass adding mandatory provisions to domestic law, standardising exception clauses in bilateral treaties, and strengthening judicial review procedures. Such measures would enable more effective participation in global criminal judicial cooperation, achieving a balance between safeguarding sovereignty and punishing crime.

## Keywords

principle of non-extradition, exceptions, comparative study

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## 1. Research Background and Significance

Extradition denotes an international judicial cooperation mechanism whereby one state (the requesting state) submits a request to another state (the requested state) for the surrender of a criminal fugitive within its territory, for the purpose of conducting criminal proceedings or enforcing a sentence in the requesting state [1]. As an ancient and evolving institution of international law, extradition has evolved in the modern era into a vital safeguard for states exercising criminal jurisdiction and combating transnational crime. Within this framework,

the principle of non-extradition of nationals embodies the position of personal jurisdiction and sovereign priority, whereby a state retains the right to refuse the extradition of its own citizens to face trial abroad.

However, this principle faces multiple challenges in contemporary global judicial practice: firstly, nationals who commit crimes abroad and then flee back to their home country may exploit this principle to evade foreign prosecution, thereby creating judicial sanctuaries; secondly, insisting on non-extradition may provoke diplomatic friction and undermine judicial cooperation between nations. Consequently, striking a balance between safeguarding sovereignty and fostering international cooperation has become a pivotal issue in the development of extradition systems. This paper aims to reveal the legal evolution, practical divergences, and institutional motivations underlying the exceptions to the principle of non-extradition of nationals through comparative analysis of practices within the European Union and China. It seeks to provide insights for refining China's extradition legal framework.

## **2. Review of Exceptions to the Principle of Non-Extradition of Nationals under the EU Extradition Framework**

### **2.1 Traditional Framework: The European Convention on Extradition (1957)**

The 1957 European Convention on Extradition is a multilateral treaty formulated under the auspices of the Council of Europe. It aims to provide a unified legal framework for extradition cooperation among contracting states, forming the early foundation of the EU extradition system. The Convention covers core elements including the scope of extradition, exceptions for political offenders, the principle of double criminality, procedural norms, and human rights safeguards [2].

Article 6(1) of this Treaty provides that Contracting Parties shall have the right to refuse the extradition of their own nationals. Paragraph 2 stipulates that if the requested Contracting Party does not extradite its own national, it shall, at the request of the requesting Contracting Party, submit the case to its competent authorities for the purpose of instituting proceedings where deemed appropriate [2]. This provision explicitly embodies the traditional principle of non-extradition of nationals and establishes the alternative mechanism of either extradition or prosecution. However, the Convention does not elaborate further on exceptions nor does it depart from the fundamental position of prioritising personal jurisdiction. Consequently, within the framework of the 1957 Convention, non-extradition of nationals remains an absolute rule, with no substantive exceptions having been established.

### **2.2 An Attempt at Breakthrough: The Convention on Extradition between Member States of the European Union (1996)**

The 1996 Convention on Extradition between Member States of the European Union represents a revision and development of the 1957 European Convention on Extradition. It aims to deepen judicial cooperation among EU Member States by streamlining extradition procedures. The Convention sets out specific provisions concerning the scope of extraditable offences, grounds for refusal of extradition, procedural time limits, and the execution of surrender [3]. Article 7(1) establishes the principle that extradition may not be refused on the grounds that the person claimed is a national of the requested Member State, consistent with the definition in Article 6 of the European Convention on Extradition [4]. This represents a significant step towards removing traditional obstacles to extradition among Member States. As emphasised in the general part of the explanatory report, this change stems from the shared values, common legal traditions and mutual trust in the proper functioning of the criminal justice systems of the Member States of the European Union [5]. This provision represents a principled step towards overcoming the restriction that nationals of one's own country are not extradited, while also setting a precedent for EU Member States in moving beyond outdated extradition principles [6].

This provision, by introducing a mechanism for returning persons to serve sentences, established for the first time at EU level an exception to the extradition of nationals contingent upon enforcement cooperation, representing a limited departure from the traditional principle of personal jurisdiction. However, as it failed to secure ratification by all Member States, the Convention ultimately did not enter into force, and its institutional innovation did not translate into binding practice.

Nevertheless, the 1996 Convention remains significant for its institutional evolution. It signalled the EU's commencement of restricting Member States' nationality-based extradition refusal rights through regional legislative instruments, laying the jurisprudential foundation for the subsequent 2002 Framework Decision on the European Arrest Warrant to abolish the principle of non-extradition of nationals. It thus played a pivotal bridging role in the evolution of the EU's extradition regime.

### **2.3 A Milestone Reform: The Framework Decision on the European Arrest Warrant and the surrender procedures between Member States of the European Union (2002)**

Following the 9/11 attacks, the EU accelerated the development of its Area of Freedom, Security and Justice, undertaking a fundamental restructuring of its fugitive surrender mechanisms among Member States. Against this backdrop, the 2002 Framework Decision on the European Arrest Warrant and the surrender procedures between Member States (hereinafter referred to as the Framework Decision) was formally adopted. This marked a paradigm shift in the EU's extradition system, transitioning from traditional administrative cooperation-based extradition to modern judicial integration-based surrender procedures [7].

The European Arrest Warrant (EAW), as the core mechanism of the Framework Decision, aims to comprehensively replace traditional extradition models with an efficient, direct judicial surrender procedure. This system possesses direct legal binding force, constituting an integral part of EU law, with its effect taking precedence over conflicting provisions in Member States' domestic legislation. Concurrently, the Framework Decision permits Member States to implement specific enforcement procedures through domestic legislation, reflecting the balance between direct effect and freedom of implementation within the EU legal system.

The establishment of the European Arrest Warrant system signifies a fundamental shift in the EU's extradition cooperation mechanism from an administrative orientation towards judicial integration. This system achieves a systemic reconfiguration of the extradition paradigm through three transformative changes:

First, a procedural shift towards judicialisation. The document consistently employs the term "surrender", which differs in nature from extradition. A surrender decision is made by a judicial authority, whereas an extradition decision is issued by a state's diplomatic department [8]. This demonstrates that the European Arrest Warrant replaces the traditional administrative extradition model with a purely judicial surrender procedure. Member State courts become the direct agents in the surrender process, entirely bypassing political scrutiny by administrative bodies such as foreign ministries. This significantly enhances the efficiency of judicial cooperation while safeguarding procedural fairness.

Secondly, limited exemption from the dual criminality principle. For the 32 categories of serious offences listed in Article 2 of the Framework Decision – including terrorism, human trafficking and drug offences – the European Arrest Warrant exempts the application of the dual criminality principle. Provided the relevant conduct constitutes an offence in the requesting State, the surrender procedure may be initiated without examining the corresponding offence under the law of the requested State [7].

Thirdly, a structural departure from the principle of non-extradition of nationals. The European Arrest Warrant system does not entirely abolish Member States' sovereign right to protect their nationals. Instead, Articles 4 and 5 of the Framework Decision establish a tiered mechanism based on the stage of criminal proceedings, thereby striking a balance between respecting tradition and achieving efficient judicial cooperation [7]. For convicted persons, where the arrest warrant aims to enforce a sentence, non-surrender may be chosen, but the obligation to enforce the sentence remains. For persons awaiting trial, where the arrest warrant aims to initiate criminal proceedings, surrender is in principle mandatory, though safeguards may be attached.

Although Member States such as France and Italy, when transposing the legislation domestically, have opted to apply the mandatory surrender provisions solely to persons subject to criminal proceedings pending trial based on traditional positions, this precisely demonstrates the fundamental paradigm shift achieved by the Framework Decision: a transition from Member States' absolute assertion of sovereign rights towards a principles-and-exceptions procedural framework oriented towards judicial cooperation. The European Arrest Warrant represents a beneficial reform of the traditional extradition system, granting judicial authorities absolute primacy in judicial actions. Its implementation has created favourable conditions for EU Member States to deepen criminal judicial cooperation [9].

## **2.4 Evolutionary Trajectory and Institutional Breakthroughs: Paradigm Shift in the EU Extradition Framework**

In summary, the evolution of the principle of non-extradition of nationals within the EU extradition framework clearly traces a developmental path from traditional adherence to fundamental restructuring. From the absolute preservation of territorial jurisdiction under the 1957 European Convention on Extradition, through the 1996 Convention on Extradition between Member States of the European Union's tentative introduction of the "return to serve sentence" mechanism, to the 2002 Framework Decision on the European Arrest Warrant completing the paradigm shift from "absolute non-extradition" to "transfer as a rule, non-extradition as an exception". This evolution profoundly reveals the dynamic equilibrium between sovereign concerns and judicial efficiency within regional integration.

The core breakthrough of the EU extradition system lies in establishing, through a supranational legal framework, an efficient judicial cooperation system grounded in mutual recognition and high levels of trust. Although bilateral treaties still dominate current international extradition cooperation, the EU model, as a paradigm of regional judicial integration, has not only established a new cooperative paradigm of 'judicial surrender plus safeguards,' but also provided a viable pathway for systematically reconstructing traditional extradition rules under the dual objectives of safeguarding human rights and enhancing judicial efficiency. This institutional innovation holds significant paradigm reference value for the future development of international criminal judicial cooperation in the context of globalisation.

## **3. Review of Exceptions to China's Principle of Non-Extradition of Its Own Nationals**

China adopts a restrictive application model centred on treaty exceptions and procedural substitutes. Article 8(1) of the Extradition Law of the People's Republic of China (hereinafter referred to as the Extradition Law), promulgated in 2000, explicitly stipulates that extradition shall be refused where the person sought for extradition possesses the nationality of the People's Republic of China, thereby establishing the fundamental principle of non-extradition of nationals [10]. However, while upholding the primacy of territorial jurisdiction, China has established the following exceptions through special provisions in international treaties and domestic procedural substitution mechanisms:

### **3.1 Special Provisions in International Treaties**

Pursuant to the principle of equality and reciprocity enshrined in Article 3 of the Extradition Law, China has achieved limited departures from the absolute non-extradition principle [10] in certain bilateral extradition treaties through the adoption of either extradition or prosecution mechanisms.

#### **3.1.1 Obligation to Submit to Domestic Judicial Proceedings**

Article 5(2) of the Treaty on Extradition between the People's Republic of China and the Republic of Serbia provides that where extradition is not granted pursuant to paragraph 1 of this Article, the requested Party shall, at the request of the requesting Party, submit the case to its competent authorities for the purpose of instituting criminal proceedings in accordance with its domestic law [11]. Similar provisions are also found in Article 7(2) of the Extradition Treaty between the People's Republic of China and the Republic of Chile [12], and Article 6(2) of the Extradition Treaty between the People's Republic of China and the Republic of Zimbabwe [13]. This implies that when China refuses extradition on grounds of nationality, it must initiate domestic criminal proceedings at the requesting State's request, thereby establishing an indirect cooperative model where proceedings substitute for extradition. This mechanism was demonstrated in practice during the 2007 Supreme People's Court adjudication of the Republic of Korea's request for the extradition of Byun In-ho. Although the case concerned the extradition of a South Korean national, it exemplified the application logic of the principle of either extradition or prosecution [14].

#### **3.1.2 Priority Jurisdiction Rules for Dual Nationality**

Although the Nationality Law of the People's Republic of China does not recognise dual nationality, de facto conflicts of nationality may arise in extradition practice. When a person sought for extradition is regarded as a citizen by both China and the requesting state, China generally adheres to the principle of territorial

jurisdiction priority, determining jurisdiction primarily based on the location where the criminal act occurred or where the principal harmful consequences arose.

Should the criminal facts exhibit close ties to China, priority jurisdiction may be asserted; where the conduct demonstrates deeper connections to a foreign state, resolution may be sought through consultation based on the principle of reciprocity or extradition treaties [15]. Concurrently, in extradition reviews, China comprehensively considers national sovereignty, judicial fairness and human rights safeguards. Where necessary, it clarifies its position through diplomatic channels or case-by-case consultations to ensure extradition decisions both align with the spirit of domestic law and accommodate the practical requirements of international judicial cooperation.

### **3.2 Procedural Substitute Mechanisms under Domestic Law**

Beyond treaty-based exceptions, China has established multiple procedural substitute mechanisms through domestic legislation, effectively supplementing the extradition system:

#### **3.2.1 Extraterritorial Application of Criminal Trial in Absentia**

Article 291 of the Criminal Procedure Law of the People's Republic of China establishes trial in absentia procedures for offences including corruption and bribery, endangering state security, and terrorist activities. It explicitly permits the conduct of trials in absentia for suspects or defendants located outside the territory [16]. Whilst this system does not directly produce extradition effects, it establishes the legal consequences of final judgments, thereby constructing an extraterritorial criminal prosecution framework independent of extradition. In judicial practice, such judgments may serve as legal grounds for China to pursue subsequent international judicial cooperation. Moreover, based on the principle of international judicial deference, they may prompt relevant countries to recognise their validity, thereby achieving the substantive effect of punishing crime.

#### **3.2.2 Procedural Breakthroughs in the Provisional Surrender Mechanism**

Article 43 of the Extradition Act stipulates that, without prejudice to ongoing criminal proceedings within the State, a person may be provisionally surrendered upon the requesting State's assurance that they will be returned immediately upon completion of the proceedings [10]. Although this provision does not explicitly exclude the application to nationals of the requesting State, when considered in conjunction with provisions such as Article 14 of the Extradition Treaty between the People's Republic of China and the Republic of Zimbabwe concerning the application of provisional extradition to persons serving sentences within the territory of the requested State [13], it effectively establishes a procedural pathway for the extradition of nationals under specific conditions. This constitutes a substantive exception to the right to refuse extradition on grounds of nationality.

### **3.3 Judicial Cooperation Mechanisms for Specific Types of Crime**

Whilst upholding national judicial sovereignty, China has established flexible judicial cooperation mechanisms for particular categories of crime, enabling substantive departures from the principle of non-extradition of nationals under specific circumstances.

#### **3.3.1 Application of Universal Jurisdiction to International Crimes**

For crimes defined under peremptory norms of international law, such as war crimes and crimes against humanity, China may exercise criminal jurisdiction pursuant to the principle of universal jurisdiction established under Article 9 of the Criminal Law of the People's Republic of China [17]. In such cases, China may proactively request the relevant state through diplomatic channels to surrender its own nationals suspected of criminal offences, and pursue their criminal liability under Article 6 (territorial jurisdiction) or Article 9 (universal jurisdiction) of the Criminal Law. In this context, the traditional principle of non-extradition of nationals is appropriately tempered, reflecting China's responsible approach to fulfilling its international obligations, grounded in the shared judicial consensus of the international community to combat core international crimes.

### **3.3.2 Case-by-Case Cooperation Under the Principle of Reciprocity**

Pursuant to Article 15 of the Extradition Law, where no extradition treaty exists, the requesting State shall undertake to accord reciprocity. Accordingly, China may engage in case-by-case consultations with nations possessing established judicial cooperation practices regarding the extradition of their nationals, based on the principle of reciprocity. For instance, in the high-profile case of the extradition of Mr Li from Thailand, China successfully secured the extradition of its citizen suspected of illegal fundraising through diplomatic channels [18]. Although the explicit legal basis for this case was not publicly disclosed, it fully demonstrated the flexible application of the reciprocity principle in practice, establishing a significant precedent for achieving the extradition of nationals outside the framework of a treaty.

### **3.4 Exception Mechanisms in Legal Interpretation and Practice**

Through legal interpretation techniques and the definition of specific categories of offences, China has further expanded the scope of exceptions to the principle of non-extradition of nationals in the application of law and judicial practice.

#### **3.4.1 Determination and Discretion Regarding Nationality Conflicts**

Under the principle of single nationality established by Article 3 of the Nationality Law of the People's Republic of China, China does not, in principle, recognise dual nationality [19]. Accordingly, when a person sought for extradition claims dual nationality of both China and a third country, the competent Chinese authorities typically recognise their Chinese nationality as taking precedence and exercise the right to refuse extradition on that basis. However, in certain bilateral treaty practices, discretion may be granted to competent authorities in cases of conflicting nationalities, enabling extradition decisions to be made based on the practical requirements of criminal judicial cooperation. This constitutes a flexible supplement to the rigid principle of nationality.

#### **3.4.2 Exclusion of the Political Offence Exception**

Although Article 8(3) of the Extradition Law lists political offences as grounds for refusing extradition, this exception itself does not apply to internationally recognised non-political offences, particularly terrorism offences [10]. In accordance with the Anti-Terrorism Law and the spirit of relevant international conventions, terrorist acts are not regarded as political offences. Consequently, when Chinese nationals engage in terrorist activities abroad, China may lawfully exclude the application of the political offence exception, thereby mitigating or circumventing the constraints of the principle of non-extradition of nationals. This enables China to directly initiate or cooperate with relevant international fugitive pursuit and judicial cooperation operations.

### **3.5 Coordination of Legal Norms at Different Levels**

At the level of legal application, China coordinates the relationship between international treaties and domestic law through explicit rules on the hierarchy of legal norms. As legal instruments, international treaties take precedence over domestic law and are binding. Thus, where an extradition treaty concluded or acceded to by China conflicts with the provisions of the Extradition Law, the treaty provisions shall prevail.

### **3.6 Institutional Positioning and Evolutionary Characteristics**

In summary, China's principle of non-extradition of its own nationals exhibits a composite characteristic at the normative level, characterised by a foundational principle, diverse exceptions, and treaty primacy. Its system of exceptions is constructed through multiple pathways, including the extradition or prosecution mechanism in international treaties, domestic procedural alternatives, priority jurisdiction over specific categories of offences, and reciprocal consultation arrangements. These institutional arrangements strictly adhere to the existing legal framework, demonstrating China's careful balancing act between upholding national sovereignty and deepening international judicial cooperation in their practical application. They also reflect China's proactive response to the need for modernising extradition systems within the context of global governance.

#### **4. Comparison of Exceptions to the Non-Extradition Principle for Nationals in the EU and China, and Causes of Disparities**

Significant divergences exist between the EU and China in the practical application of exceptions to the non-extradition principle for nationals. These differences manifest not only in legal frameworks and treaty design but are also profoundly shaped by political, cultural, and judicial traditions.

##### **4.1 Specific Exception Practices**

###### **4.1.1 The EU's Exception Practice: Limited Breakthroughs Under Judicial Integration**

The European Union established a regional judicial surrender mechanism through the European Arrest Warrant (EAW), achieving a revolutionary breakthrough from the traditional extradition paradigm. Its core principle is the exclusion of nationality as grounds for refusing surrender. Under the Framework Decision, Member States bear a duty of priority execution regarding surrender requests for nationals of other Member States. Grounds for refusal are strictly confined to exceptional circumstances such as public policy considerations or the risk of serious violations of fundamental human rights. This reflects the mandatory requirement of EU law to pursue judicial integration within the Union. For instance, while the extradition treaty between Italy and China permits both parties to refuse the extradition of their own nationals, it explicitly requires the requested State to refer the case to its domestic judicial authorities for processing following any refusal [20]. This mechanism of either extradition or prosecution embodies the EU's mandatory requirements for mutual legal assistance.

Despite the supranational enforceability of the legal framework, political considerations persist in practice. For instance, in 2025, a Polish court refused to extradite a suspect in the Nord Stream pipeline explosion case to Germany on grounds of insufficient evidence [21]. Despite invoking domestic procedural provisions, it has been widely criticised that geopolitical factors have influenced judicial cooperation. This demonstrates that even within a highly integrated framework, member states' sovereign will and judicial discretion may still pose challenges to uniform rules in specific cases. Nevertheless, instances of political interference persist within the EU.

###### **4.1.2 China's Exceptional Practice: Sovereignty Primacy and Flexible Balancing**

China's approach is anchored in the absolute non-extradition principle established by its Extradition Law, seeking case-by-case equilibrium through diverse supplementary mechanisms. This practice distinctly prioritises sovereignty and features exceptional consultation.

China creates exceptional pathways within legal boundaries by incorporating 'extradite or prosecute' clauses in bilateral treaties (e.g., Extradition Treaty between the People's Republic of China and the Italian Republic, and the Extradition Treaty between the People's Republic of China and the Kingdom of Thailand [22]). For situations falling outside treaty coverage, China has developed alternative practices exemplified by Operation Fox Hunt. By pursuing fugitives abroad through channels such as Interpol Red Notices and diplomatic and police cooperation, these measures—while not constituting extradition in the strict legal sense—effectively compensate for treaty mechanism shortcomings, forming a cross-border criminal judicial cooperation system with Chinese characteristics.

##### **4.2 Causes of Divergence: The Interplay of Legal Traditions, Political Cultures and Institutional Design**

###### **4.2.1 Differences in Legal Systems: Codified Sovereignty versus Integrated Rules**

Most EU Member States belong to the civil law tradition, where domestic judicial systems emphasise the authority and systematic nature of codified statutes. However, the European Arrest Warrant does not represent a natural extension of Member States' domestic laws, but rather an active, top-down restructuring of rules. Through supranational legislation, it has imposed uniform EU rules over the divergent domestic codes of member states in the core judicial sovereignty domain of extradition. Its purpose is not to refine domestic legal systems but to establish an entirely new, independent regional order for judicial cooperation.

As another civil law country, China's practice strictly adheres to the logic of prioritising the authority of domestic codes. Its codified system, centred on the Extradition Law of the People's Republic of China, unequivocally and absolutely establishes the principle of non-extradition of its own nationals (Article 8(1)). No exception can undermine this fundamental stance of domestic legislation. Consequently, the exceptions created by China are subsidiary, supplementary, and highly specific: they must be individually and explicitly embedded within the domestic legal system through the sovereign act of concluding bilateral treaties, taking the form of special laws.

#### **4.2.2 Political and Cultural Differences: Functional Cession versus Absolute Retention**

The political culture of the European Union is founded upon the principles of shared sovereignty and the construction of an ever-closer union. The European Arrest Warrant system is a product of this philosophy, its core being the agreement among Member States to cede the traditional discretionary powers of their national judicial authorities in matters of extradition to a common regulatory framework based on mutual recognition and trust. The Court of Justice of the European Union's ruling in Case C-700/21 clearly articulates this logic: the Court held that Member States may not deprive individuals of their right to either extradition or prosecution proceedings solely on the basis of nationality (third-country nationals) [23]. This ruling demonstrates that within the EU's integrated judicial space, the primacy of certain supranational values – such as the principle of equality and judicial efficiency – may supersede Member States' inclination to differentiate treatment based on traditional notions of sovereignty towards specific groups, such as non-EU nationals. Here, the cession of sovereignty serves the higher objective of constructing a more efficient and unified regional legal order. In international judicial cooperation, China consistently regards national sovereignty as an indivisible, non-transferable absolute principle. This notion of absolute sovereignty subjects any arrangement potentially perceived as diminishing judicial jurisdiction to rigorous scrutiny. The principle of non-extradition for death penalty offences upheld in China's extradition practice epitomises this stance. It constitutes not merely a condition for cooperation, but a declaration of national judicial sovereignty and exclusive penal jurisdiction.

#### **4.2.3 Differences in Judicial Independence: Judicial Primacy versus Sovereign Review**

The European Arrest Warrant system within the EU is founded upon a high degree of judicial trust among Member States, with its ideal operational model being judicialisation and depoliticisation. The institutional design aims to render surrender decisions as much as possible a direct dialogue between judicial authorities based on law and evidence, thereby diminishing the political discretion traditionally afforded to administrative bodies in extradition proceedings [24]. The case law of the Court of Justice of the European Union is dedicated to upholding the autonomy of this system. For instance, in cases involving conflicts over extradition requests from third countries, the Court emphasises that the relevant review procedures must be judicial in nature to safeguard the fairness of decisions and the parties' rights to redress.

China's extradition review process exhibits distinct sovereign-centric characteristics, with judicial scrutiny and administrative review closely integrated to serve the comprehensive balancing of national sovereignty, security, and diplomatic interests. The entire procedure constitutes not a purely judicial determination, but rather a political-legal decision-making process. Judicial organs are responsible for conducting legality reviews of extradition requests (such as whether they satisfy the dual criminality principle), while administrative organs (such as the Ministry of Foreign Affairs) exercise discretion over matters involving national sovereignty and significant public interests.

#### **4.2.4 Cultural Value Differences: Rights-Based vs Order-Based Approaches**

The cultural and legal-philosophical traditions of the European Union are profoundly shaped by Enlightenment thought, placing fundamental individual rights and freedoms at the apex of its value hierarchy and viewing the judiciary as the core mechanism for safeguarding these rights. This rights-based perspective underpins the institutional logic of the European Arrest Warrant: the primary purpose of extradition (surrender) extends beyond combating crime to establishing a unified legal space within the EU characterised by equal rights and judicial fairness. The institutional design places paramount importance on procedural safeguards, judicial independence, and the right of parties to seek redress, operating on the premise that sound judicial procedures inherently produce just outcomes.

China's political culture and legal philosophy, however, place greater emphasis on the state's overall order, authority, and social harmony. Within this order-centric paradigm, criminal justice serves not merely as a tool



for resolving individual disputes, but as a critical domain for maintaining social stability and demonstrating state sovereignty and dignity. Extraditing its own nationals to face trial abroad is culturally and psychologically perceived as diminishing judicial sovereignty and the state's duty of protection. Consequently, China's extradition practice must first and foremost serve the higher value of upholding sovereign order.

### **4.3 Conclusion: Path Selection in Dynamic Equilibrium**

The exceptions to the principle of non-extradition of nationals practised by the EU and China represent not merely divergent rules, but fundamentally distinct governance logics and path choices within global governance. Their divergence essentially embodies the tension between supranational legal compulsion towards integration and prudent adaptation under the principle of absolute sovereignty, reflecting differing understandings of judicial sovereignty, cooperative efficiency, and value prioritisation.

The European Arrest Warrant system, founded on mutual recognition and leveraging supranational legal coercion, has successfully established the world's most efficient regional fugitive transfer mechanism, achieving a paradigm shift from cooperation to obligation. However, its success relies heavily on the high homogeneity of legal cultures among member states, political mutual trust, and loyalty to shared values. Poland's conduct in the Nord Stream case serves as a cautionary reminder that such homogeneity may fracture when core geopolitical interests are at stake. The legal coerciveness of integration can encounter fierce resistance from the political will of nation states, exposing the vulnerability of this model when confronting major crises.

China adheres to a sovereignty-centred consultative model, with domestic law as its absolute bedrock. It constructs cooperative networks through bilateral treaties and alternative mechanisms (such as trials in absentia and Operation Fox Hunt). This approach eschews formal uniformity and speed in favour of greater flexibility, controllability, and strategic depth. It permits nations to comprehensively weigh legal, political, and diplomatic interests in each specific cooperation, excelling particularly in handling complex cases involving differing systems and cultural contexts. However, its efficacy relies on extensive diplomatic groundwork and case-by-case negotiations, rendering the process more uncertain and making it difficult to establish standardised cooperation procedures suitable for large-scale replication.

## **5. Recommendations for Refining Exceptions to the Principle of Non-Extradition of Nationals in China**

Article 8 of China's Extradition Law mandates refusal of extradition on the grounds of nationality, establishing a rigid legal boundary for extradition cooperation. Although scattered exceptions have been created through clauses such as 'extradite or prosecute' in bilateral treaties, the overall framework remains characterised by rigid principles, fragmented exceptions, and unclear procedures. This creates significant tension between the increasingly urgent demands for cross-border crime governance and China's strategic positioning of deep engagement in global judicial cooperation. Building upon the preceding dialectical analysis of the EU integration model and China's sovereign consultation model, China should systematically construct a more predictable and operational exception mechanism from three dimensions: legislative rigidity, treaty standardisation, and judicial review. This should be grounded in China's own rule of law traditions and practical needs, while upholding the principle of national sovereignty, thereby achieving a dynamic equilibrium between safeguarding sovereignty and fulfilling international obligations.

### **5.1 Introducing Mandatory Extradition or Prosecution Clauses into Domestic Legislation**

Presently, China's implementation of the 'extradite or prosecute' principle relies entirely on fragmented provisions within bilateral treaties, lacking overarching domestic legislation to provide a comprehensive framework. This results in the efficiency of international cooperation being constrained by treaty negotiation processes and case-by-case diplomatic coordination. Under the existing model, whether China assumes an obligation to extradite or prosecute depends entirely on whether a bilateral treaty containing such provisions has been concluded with a specific state. This ad hoc treaty-dependent approach struggles to meet the challenges of globalised crime and fails to establish effective legal expectations for states that have not yet concluded such treaties with China. To systematically enhance judicial capacity in combating major transnational crimes, the Extradition Law should incorporate universally binding mandatory 'extradite or

prosecute' provisions, thereby internalising this principle of international law as explicit domestic legal obligations.

Future provisions could explicitly target crimes severely jeopardising national security and public welfare, such as corruption and bribery, terrorist activities, drug offences, cross-border telecommunications fraud, and organised crime. Furthermore, provisions may stipulate that competent Chinese authorities (such as those designated by the Supreme People's Court) bear an obligation to initiate criminal proceedings against their own nationals upon receiving case materials and evidence from requesting states. Reasonable time limits for case review and filing (e.g., three months) should be established to balance cooperative efficiency with judicial integrity.

## **5.2 Exception Clauses in Standard Bilateral Treaties**

Presently, bilateral extradition treaties concluded between China and various nations exhibit significant fragmentation in the formulation of exception clauses. These disparities manifest not only in the presence or absence of such clauses but also in their content, triggering conditions, and procedural safeguards. To enhance cooperative efficiency and legal certainty, it is imperative to draw upon international experience and promote the transition of treaty exception clauses from case-specific customisation to standardised modules. This will establish a categorised and tiered standardisation system that upholds principles while maintaining flexibility.

For instance, regarding provisional transfer provisions for individuals implicated in major corruption offences, where evidence is highly time-sensitive and extradition often determines the success of asset recovery, standardised clauses should stipulate that, without prejudice to the requested State's criminal proceedings, its nationals may be provisionally transferred to the requesting State to participate in specific proceedings (such as giving evidence or cross-examination) before being returned.

Regarding evidence-sharing and prosecution priority clauses for non-political crimes such as terrorism, to avoid the pitfall of cooperation stalling due to disputes over the classification of political offences, the treaty should explicitly stipulate that the principle of non-extradition for political offences shall not apply to non-political crimes explicitly defined in international conventions, such as terrorism and drug trafficking.

## **5.3 Establishing Judicial Safeguards Against Political Interference**

To ensure the sound operation of China's extradition exception mechanism, it is imperative to enhance the independence, transparency, and legal persuasiveness of judicial review processes while upholding sovereignty scrutiny. This will forge a rule-of-law barrier that defends against improper interference through procedural justice.

To prevent the principle of non-extradition for political offences from being abused as a universal clause for refusing cooperation, China's Extradition Law should incorporate strict, purpose-based and proportional interpretations of political offences in its implementing regulations or judicial interpretations, drawing upon internationally accepted standards. For instance, it should be explicitly stipulated that acts such as terrorism, war crimes, and corruption shall not be deemed political offences solely on the basis of their political motivation or context. For ordinary crimes involving political factors, the core criteria for determination should be objective elements such as the criminal means employed and the primary legal interests infringed, thereby preventing conceptual overreach and abuse.

To unify the application of legal standards and enhance the authority of reviews, a mechanism should be established whereby the Supreme People's Court conducts judicial review of extradition cases. This would not supersede the administrative review conducted by competent authorities, but rather introduce an additional layer of review centred purely on legal scrutiny following the administrative review (which prioritises policy considerations such as sovereignty and security). Extradition decisions (particularly refusals) must be accompanied by a detailed written statement of reasons. This statement should explicitly cite specific legal provisions, factual evidence, and international law bases, avoiding vague, non-reviewable expressions such as 'insufficient evidence' or 'contrary to national interests'.

## 6. Conclusion

The contemporary practice of the principle of non-extradition of nationals epitomises the profound tension faced by sovereign states in the globalised context as they seek to balance the preservation of judicial sovereignty with the efficiency of international cooperation. The significance of this study lies in its systematic comparative analysis, which not only deepens theoretical understanding of two paradigms of international judicial cooperation—regional supranational collaboration and autonomous cooperation among sovereign states—but also illuminates how deep-seated factors such as legal traditions, conceptions of sovereignty, and judicial cultures shape a nation's extradition policy choices. The EU model demonstrates the potential for maximising judicial efficiency within a highly homogenised region and its reliance on sovereign concessions; the Chinese model, conversely, highlights a pragmatic approach to upholding core sovereign interests within a pluralistic world while engaging in global governance through flexible strategies.

Nevertheless, this study has certain limitations. Firstly, it focuses primarily on legal texts and analysis of landmark cases, with insufficient statistical and empirical examination of the vast number of routine, non-public cases within the extradition practices of both countries. Secondly, as both the international landscape and domestic legal frameworks evolve dynamically, the study's conclusions require ongoing validation and updating in light of future legislative amendments and practical innovations. For instance, the ongoing debates within the EU concerning the application of arrest warrants, alongside new developments in China's judicial cooperation under the Belt and Road Initiative, warrant sustained attention.

Looking ahead, further research could be deepened in the following directions: firstly, conducting in-depth investigations into the specific challenges posed by new forms of transnational crime in the digital age to extradition exception rules, and exploring corresponding responses; secondly, comparing practices across more legal systems and countries (such as those in the Anglo-American legal tradition) to construct a theoretical framework with greater universal explanatory power; thirdly, analysing the practical impact of non-legal factors such as political mutual trust and diplomatic relations on extradition cooperation from an intersectional perspective of international relations and global governance. For China, while upholding national sovereignty and security, the critical task remains to develop systematic and standardised exception mechanisms that are more predictable and operationally feasible. This is essential for effectively combating transnational crime and fulfilling international obligations, necessitating urgent legislative and policy responses.

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## **Conflicts of Interest**

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