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# Research on the Principle of Extradition Restrictions - A Case Study of China-France Judicial Cooperation Practice

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**Abstract:** The principle of non-extradition of political offenders is a pivotal extradition rule- the most universally recognized and legally authoritative of all, even enshrined in numerous national constitutions. However, it faces considerable practical tensions in practice. Taking the Sino-French Extradition Treaty as an example, such conflicts are exemplified by value tensions between national sovereignty and self-determination, human rights protection, and transnational crime governance. Thus, only by interpreting the non-extradition clause in conjunction with the "political persecution exception" can a dynamic balance between national sovereignty and human rights be achieved in extradition cooperation. This further offers a sustainable institutional underpinning for Sino-French collaboration in anti-corruption manhunt, repatriation, and counter-terrorism, making it necessary to explore its modern value for precise application to safeguard the international judicial order.

**Keywords:** Principle of Non-Extradition of Political Offenders; Sino-French Extradition Treaty; Dual Examination; National Sovereignty and Human Rights; Depoliticization

## 1. The Development of the Principle of Non-Extradition of Political Offenders

The embryonic form of the principle of non-extradition of political offenders first appeared at the end of the 18th century, and its development has been closely linked to the practice of extradition cooperation between China and France. It was first stipulated in the French Constitution of 1793. Prior to this, political offenders could be extradited in the same way as other criminals. Article 120 of the 1793 French Constitution stated: "France grants asylum to foreigners who have fled to France in pursuit of freedom." This provided the earliest codified legal source for the establishment of the principle.

In 1833, Belgium enacted the world's first domestic law explicitly prohibiting the extradition of political offenders. In 1834, France and Belgium signed an extradition treaty that, for the first time in an international treaty, explicitly established the principle of non-extradition of political offenders, marking the transition of the principle from domestic law to the field of international law.

In China, this principle has been confirmed through domestic legislation and international treaties. Article 32, Paragraph 2 of the Constitution of the People's Republic of China provides: "The People's Republic of China may grant the right of asylum to foreigners requesting it for political reasons." Article 8 of the Extradition Law further stipulates that extradition requests "for political offenses" should be refused.

At the bilateral treaty level, on March 20, 2007, the People's Republic of China and the French Republic signed the Extradition Treaty between the People's Republic of China and the French Republic in Paris, which officially came into effect on July 17, 2015. Article 3, Paragraph 1 of the treaty explicitly lists "the offense subject to the extradition request is a political offense" as a reason for refusal of extradition. The entry into force of the China-France extradition treaty marks a new stage in judicial cooperation between the two countries, particularly in the joint fight against crime and in anti-corruption efforts involving fugitive pursuit and asset recovery.

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## **2. Disputes and Limitations Regarding the Type of the China-France Extradition Treaty**

Scholars generally classify political offenses into four categories:

"Absolute political offenses" - acts opposing or attacking the existing state;

"Composite political offenses" - acts such as the murder of state leaders or their family members, which are special offenses combining ordinary criminal elements within an "absolute political offense";

"Related political offenses" - crimes committed in preparation for or in assistance of an "absolute" or "composite" political offense, or in protecting those who commit absolute or composite political offenses;

"Relative political offenses" - ordinary crimes carried out under conditions with a clear political background.

At present, there is relatively little controversy over refusing extradition for purely political offenses. However, the application of the principle to relative political offenses, such as politically motivated assassination or arson, faces increasing opposition. Critics argue that these relative political offenses can cause extremely serious consequences and should not be legitimized merely because of their political motivation. Both the Inter-American Convention on Extradition and the European Convention on Extradition explicitly exclude relative political offenses from the scope of the non-extradition principle for political offenders.

According to the practice under the China-France Extradition Treaty, the application of the principle of non-extradition for political offenders is not absolute, and its scope is subject to multiple limitations:

Exceptions within the treaty itself: Article 3, Paragraph 7 of the treaty provides that for offenses potentially punishable by death, extradition should be refused unless the requesting party provides sufficient guarantees that the death penalty will not be imposed or carried out. This reflects the restriction imposed by the "non-extradition for the death penalty" principle on extradition cooperation. It is an independent consideration in extradition practice, interwoven with issues concerning political offenses.

Depoliticization of international crimes: The international community has excluded certain offenses from the category of political crimes through conventions. For example, the Beijing Convention explicitly excludes serious crimes involving aircraft from being treated as political offenses, requiring contracting states not to refuse extradition on political grounds. This trend is particularly pronounced in combating terrorism, corruption, and related crimes. When China incorporated the Beijing Convention into domestic law, corresponding provisions were added. Studies indicate that in China's extradition practice with France and other countries, the scope of the "non-extradition for political offenses" principle has increasingly been restricted, especially in relation to transnational organized crime, terrorism, and corruption, reflecting a tendency toward "depoliticization."

Therefore, under the framework of the China-France Extradition Treaty, the scope of so-called "political offenses" has been substantially narrowed. Even offenses with a political background or motivation, such as war crimes, acts of terrorism, or corruption-related crimes, may not be recognized as "political offenses" eligible for protection under this principle.

## **3. Implementation Challenges and Review Mechanisms of Non-Extradition for Political Offenders under the China-France Extradition Treaty**

### *3.1 Ambiguity of Definition and Lack of Determination Standards\**

Since its inception, the principle of non-extradition for political offenders has faced practical difficulties, making it one of the most complex and uncertain principles within the extradition system. Although the China-France Extradition Treaty stipulates non-extradition for political offenders, it does not define the concept of "political offense," directly leading to ambiguity in identification. As early as 1886, legal scholars noted the

widespread doubts and debates it triggered: "No rule has provoked as much uncertainty, error, and discussion as this rule [1]." Observing recent international practice, the application of this principle has become increasingly inconsistent, often influenced by political factors outside the law, which risks turning it into a tool for new forms of political negotiation.

Historically, extradition itself was often used as a political bargaining instrument. In medieval Europe, monarchs specifically targeted political offenders for extradition. Scholars have noted: "Thieves and robbers could easily flee abroad, but insurgents were arrested—all despotic rulers' interests coincided in this regard [2]." With the evolution of extradition, its political nature gradually weakened while its legal character became more prominent. As a key principle in the extradition system, the non-extradition of political offenders has similarly evolved over time.

In the 21st century, although its political character has diminished, the number of exceptions to the principle has increased, the boundary between political offenses and terrorism has blurred, and extradition has sometimes been applied arbitrarily. Once extradition legislation explicitly stipulates the principle, it can be applied directly. Compared with relatively objective criteria in the China-France Extradition Treaty—such as the "dual criminality principle" and the minimum penalty thresholds for extraditable offenses—the identification of political offenses lacks a unified standard. This uncertainty profoundly affects the practical operation of the principle. Unlike other principles influenced by external politics, the political nature of this principle is rooted in the inherent vagueness of its concept.

### *3.2 Subjectivity of Determination and China's Dual Review Mechanism\**

In handling extradition requests, including those under the China-France Extradition Treaty, China has established a review mechanism. Modern extradition commonly adopts a dual-review system. According to China's Extradition Law and practice, review of foreign extradition requests involves both administrative and judicial authorities. Typically, judicial authorities first review the request from a legal perspective. For example, Article 21, Paragraph 1 of the 1954 Taiwan Extradition Law provides: "After the court produces a decision, the case shall be submitted by the procuratorate to the Ministry of Justice, which will then forward it to the Ministry of Foreign Affairs, and ultimately to the Executive Yuan for submission to the President for approval [2]." Taiwanese scholars explain that if the court determines an act constitutes a political offense, extradition may be refused under Article 3 of the same law; conversely, if the court finds the act is not a political offense, the President may still refuse extradition on political grounds under Article 22.

In practice, China applies a dual-review mechanism for foreign extradition requests. The Ministry of Foreign Affairs reviews the political nature of the request, while the Supreme People's Court evaluates whether there is a risk of political persecution in the requesting state. This mechanism seeks to balance legal judgment with political and diplomatic considerations.

Disagreements between judicial and administrative bodies in extradition cases are difficult to resolve, stemming from their functional differences: judicial bodies adjudicate according to law, whereas administrative bodies must consider international politics and national relations, often prioritizing political consequences over legal ones. Scholars argue that judicial institutions are generally more reliable in protecting individual rights, while administrative authorities focus more on maintaining diplomatic relations with the requesting country.

Thus, behind the disputes between judicial and administrative departments, the decisive factor is the national interest. As Engels noted: "The economic relations of every society first appear as interests." Despite the China-France Extradition Treaty providing a legal framework for cooperation, the ultimate decision to extradite—especially in borderline cases involving potential political factors—may still be influenced by non-legal factors such as bilateral relations and the international situation.

#### **4. Balancing Sovereignty and Human Rights and the Trend of "Depoliticization"**

"Political offenses touch the most sensitive points of a state, which raises doubts about the impartiality of criminal judgments and the independence of courts, and gives reason to fear that penalties may be driven more by revenge than by law, resulting in excessive punishment [3]." Similarly, in the China-France Extradition Treaty, the identification of political offenses is often regarded as a sensitive issue involving national sovereignty and interests. Political offenses strike at a state's most sensitive nerves, prompting concerns about judicial fairness and court independence, and fears that punishments may be retaliatory rather than legally grounded.

The establishment of the principle of non-extradition for political offenders aims to safeguard the basic human rights of political offenders while respecting national sovereignty [4]. It allows states to independently evaluate extradition requests based on their own policies and ideological considerations, avoiding entanglement in the internal affairs of other countries or acts of interference.

However, due to the ambiguity and indeterminacy of the concept of "political offender," the principle increasingly becomes an obstacle to international criminal judicial cooperation. A notable trend in modern extradition cooperation, as exemplified by the China-France Extradition Treaty, is "depalletization", whereby certain types of offenses are excluded from the category of political crimes through international conventions or treaty practice. For example, the Convention Against Illicit Traffic in Narcotic Drugs and the International Convention for the Suppression of the Financing of Terrorism both stipulate that the offenses established therein shall not be considered political crimes, thereby excluding them from the scope of the non-extradition principle for political offenders.

Article 44, Paragraph 4 of the United Nations Convention Against Corruption provides: "When using this Convention as the basis for extradition, any offense established under this Convention shall not be considered a political offense, provided that the domestic law of the requested state permits." Although this provision does not completely eliminate the principle, it greatly restricts its application in anti-corruption matters and provides a clear framework for China and France to cooperate in extradition for corruption-related offenses.

To date, no definitive international definition of political offenses exists. States interpret the concept according to their own sovereignty, laws, and political intentions, which hinders the effective punishment of crimes, allows offenders to escape accountability, and can harm both the sovereignty of other states and the human rights of victims [5].

#### **5. Coordinating Paths for the Principle of Non-Extradition for Political Offenders under the China-France Extradition Treaty**

##### *5.1 Promoting Consensus in Treaty Practice and Clarifying Review Standards\**

To date, political offenses still lack a uniform legal definition and there is no comprehensive international convention, which hinders coordinated action and cooperation in the international community [6]. This is also a practical issue in China-France extradition cooperation. Therefore, it is necessary to establish a definition of political offense that is widely accepted by states and to develop a comprehensive international convention. At the bilateral level [7], it is particularly important to gradually form a consensus through treaty practice and case-by-case negotiation on whether specific types of acts constitute political offenses.

It is undeniable that the extradition system, as part of diplomatic activity, inevitably carries political attributes. The difference between modern extradition and its historical form lies in the relative weight of political considerations, with greater emphasis now on safeguarding the common interests of the international community [8].

On one hand, ideological uniformity is difficult to achieve, and limiting the scope of the principle will remain a persistent legal-political challenge. On the other hand, social

development and the emergence of new types of crime make it impossible for any general or specific provision to perfectly reflect the system's value. Nevertheless, safeguarding human rights and political freedoms as comprehensively as possible should serve as the fundamental baseline [9]. Institutional construction requires states to seek common ground while respecting differences to achieve relatively satisfactory standards. Therefore, international coordination and cooperation in the extradition field should be strengthened, focusing on common interests, clarifying the baseline standards of non-extradition for political offenders, and standardizing state practices. China has already paid attention to refining review standards in the revision and implementation of its Extradition Law, which helps provide clearer guidance in applying the China-France Extradition Treaty.

#### *5.2 Maintaining the Principle's Mainstream Status and Limiting Abuse through Functional Refinement\**

As the political aspect of the principle has become increasingly prominent while its legal character relatively diminishes, it has faced growing skepticism. Scholars have proposed two main perspectives regarding its future development:

**Abolition Theory:** Some Western international law scholars, such as Evans and Epps, have argued for abolishing the principle, asserting that it has fulfilled its historical mission and now unnecessarily affects international relations. The 61st session of the International Law Association's resolution on extradition reflects this perspective. Article 2, Paragraph 1 of the resolution provides: "If an extradition treaty does not expressly include the right to refuse extradition for political offenses, a state may invoke this defense to support its refusal." Article 5 further stipulates: "Despite Article 2, Paragraph 1, if there is reason to conclude that the requesting state will duly observe all substantive and procedural legal requirements in prosecuting the defendant, the right to refuse extradition on the ground of political persecution shall not be exercised."

**Replacement Theory:** Given the difficulty of defining political offenses, some scholars propose replacing the principle with a "political persecution clause," which allows refusal of extradition when there is reasonable doubt about the fairness of the requesting state's judicial process. Under this approach, the political nature of the offense itself is not the ground for refusal; rather, the risk of unfair trial is decisive. A key condition is that judges must not insert their own political opinions into rulings.

Chinese scholars, after objective analysis, note that both abolition and replacement approaches have shortcomings [10]. The extradition system should continue to rely primarily on the principle of non-extradition for political offenders, with the political persecution clause as a supplement. The principle remains justified by social and anthropological theories and continues to align with the direction of societal development.

In the context of the China-France Extradition Treaty, functional refinement is crucial to prevent abuse. One key aspect is the proper handling of the dual-review system between judicial and administrative authorities. Judicial review should emphasize legal expertise, ensuring independent judgment on the nature of the offense, evidence, and conformity with treaty provisions; administrative review should focus on macro-level political and diplomatic considerations, ensuring transparency and preventing political factors from excessively overriding legal judgment.

#### *5.3 Coordinating Sovereignty and Human Rights through "Depoliticization"\**

The extradition system must balance state sovereignty with human rights protection [11]. The principle of non-extradition for political offenders should develop based on mutual respect for sovereignty and special concern for the human rights of political offenders. Within the China-France Extradition Treaty framework, an effective coordination path is to continue promoting the "depoliticization" of specific crimes.

The international community mainly regulates the application of the principle by limiting the scope of political offenses [12]. Key approaches include:

**Depoliticization of International Crimes:** Through legislation and treaty practice, the international community excludes certain international crimes from the category of political offenses. China's bilateral extradition treaties with Lesotho and the UAE contain

broad provisions of this type. Although the China-France Extradition Treaty does not directly list non-politicalized crimes, shared international conventions-such as the Beijing Convention's depoliticization of aviation crimes-provide guidance for treaty application [13].

Exclusion of Terrorism from Political Offenses: To effectively combat threats to global peace, terrorism is excluded from political offenses. Both China and France are parties to international anti-terrorism conventions and share common interests in combating terrorism. In practice, terrorist crimes are generally not considered eligible for protection under the principle of non-extradition for political offenders [14].

Exclusion of Corruption from Political Offenses: Corruption seriously threatens political, economic, and social stability worldwide. Article 44, Paragraph 4 of the 2003 United Nations Convention Against Corruption stipulates that corruption offenses "shall not be considered political offenses," effectively depoliticizing corruption crimes [15]. This provides an important international legal basis for China-France extradition cooperation in anti-corruption cases [16,17].

## 6. Conclusion

The coordination of the principle of non-extradition for political offenders under the China-France Extradition Treaty requires a multi-dimensional approach. At the value level, both countries should continue to build mutual trust through cooperation and communication based on mutual respect for sovereignty and equality, safeguarding fundamental human rights while respecting each other's judicial independence. At the institutional level, the principle should retain its foundational status within the treaty, with enhanced judicial review and standardized administrative oversight improving the predictability and fairness of extradition cooperation. At the operational level, the international trend of "depoliticization" should be leveraged to ensure effective application of the treaty in areas of shared concern, such as combating terrorism and corruption, while preventing the misuse of the non-extradition principle for political offenders.

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