

2009-2010

NIAGARA INTERNATIONAL MOOT COURT COMPETITION

**A Dispute Arising Under the
Statute of the International Court of Justice**

February 2010

THE GOVERNMENT OF CANADA

(Applicant)

v.

THE GOVERNMENT OF THE UNITED STATES

(Respondent)

MEMORIAL OF THE RESPONDENT

TEAM#: 2010-02R

TABLE OF CONTENTS

A. The United States’ luring of Emanuel Rutaganda to affect his arrest was lawful because:.....1

1. the United States did not violate Canada’s sovereignty by:.....1

 i. *breaching its territorial integrity and forcibly abducting Rutaganda,....1*

 ii. *ii. it did not use force in Canada based on “irresistible coercion” or precedent,.....2*

 iii. *violating their mutual extradition treaty because it was not violated, as outlined infra;.....5*

2. the United States did not violate its extradition treaty with Canada because luring is not explicitly prohibited by its terms, nor is it a violation of customary international law so as to justify reading an implied prohibition against it into the treaty;.....5

3. the United States did not violate the January 11, 1988 Exchange of Letters between Canada and the United States on Transborder Abduction because the letters did not address luring and Rutaganda was not physically abducted by bounty hunters;.....7

4. the United States did not violate the International Covenant on Civil and Political Rights because:.....8

 i. *the United States did not forcibly kidnap Rutaganda,.....8*

 ii. *the United State’s luring did not violate its extradition treaty with Canada,.....8*

iii. *the United States' luring did not invade the sovereignty of Canada, and.....8*

iv. *the United States' luring method did not "shock the conscience;"9*

5. finally, the United States did not violate customary international law.....9

II. THE RENDITION OF EMANUAL RUTAGANDA FROM THE UNITED STATES TO RWANDA FOR TRIAL WOULD NOT VIOLATE INTERNATIONAL LAW.

a. The absence of an extradition treaty between Rwanda and either Canada or the United States does not prohibit Emanuel Rutaganda's rendition to Rwanda..... 11

i. *United States law permits extraditions in the absence of a treaty.....12*

b. The current trend in international law, along with strong public policy rationales, supports the finding of criminal culpability for a fifteen year-old child-soldier..14

c. Rwanda's courts are capable of providing Rutaganda a fair trial.17

TABLE OF AUTHORITIES

Cases:

- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Nov. 5 2003, 43 I.L.M. 774 (784-85) [hereinafter Al-Moayad].....passim
- Corfu Channel Case (U.K. v. Albania), 1949 I.C.J. 35.....2
- Casorella v. R* (1997), 2 B.H.R.C. 23 (S.C.C.)
- Pham Hoang, 16 Eur. Ct. H.R. at para. 37.
- Ntakirutimana v. Reno*, 184 F.3d 419 (5th Cir. 1999).
- Valentine v. United States*, 299 U.S. 5 (1936)
- The Lotus Case (France v. Turkey), [1927] P.C.I.J. (ser. A) NO.10 at 18 [hereinafter Lotus].....2, 3
- In Re Schmidt*, (1994) 1 A.C. 339, 379-80 (H.L.).....4, 9
- Prosecutor v. Mrkšić, Radić, Šljivančanin and Dokmanović, Case No. IT-95-13a-PT, Decision on the Motion for Release by the Accused Slavko Dokmanović, ¶¶ 76, 77 (Oct. 22, 1992) [hereinafter Dokmanović].....passim
- United States v. Alvarez-Machain*, 504 U.S. 655, 668 n.14 (1992).....5,6, 7
- Re Hartnett*, [1973] 1 O.R.2d 206, 209 (Can.).....6, 7
- Stocké v. Germany*, 199 Eur. Ct. H.R. (ser. A) (1991) ¶27 [hereinafter Stocké].....5
- Swiss Federal Court, Judgment of 15 July 1982, Europäische Grundrechtszeitung 1983 p 435 et seq.....9

Books and Treatises

- Blackstone's Commentaries (1941).
- Geoff Gilbert, *Aspects of Extradition Law* (1991).
- Gregor Urbas, *The Age of Criminal Responsibility*, Australian Institute of Criminology (2000),

Law Reviews:

- Paul Mitchell, *English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction After Alvarez-Machain*, 29 Cornell Int'l L.J. 383 (1996) [hereinafter Mitchell]....2,6, 9

Treaties:

Convention on the Rights of the Child, Optional Protocol 2, G.A. res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49), U.N. Doc. A/54/49 (2000)

Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), 75 UNTS 287 (1949).

International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc A/6316 (Dec. 16, 1966).

The Rome Statute of the International Criminal Court , UN Doc. A/CONF. 183/9; 37 I.L.M. 1002 (1998)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985).

Extradition, U.S.-Can., Jun. 28, 1974, 27 U.S.T. 983.....5

Exchange of Letters, US.-Can., Jan. 11, 1988 *available at*
http://www.oas.org/juridico/mla/en/traites/en_traites-ext-usa-can.pdf.....7

International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc A/6316 (Dec. 16, 1966), art. 10 [hereinafter ICCPR].....7

Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331.....6

Domestic Laws and Statutes

8 U.S.C. §3181 et seq.

18 U.S.C. § 3181 (1982).

An Act respecting the criminal law, R.S.C. 1985, c. C-46.

Extradition Act, S.O. 1997, c. 40.

Organic Law, No. 16/2004, Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994, June 19, 2004, art. 14, available at www.inkiko-gacaca.gov.rw/pdf/newlaw1.pdf

Pub. L. 104-106, § 1342, 110 Stat. 486, Section 1342(a)(1)

Internet Sources

Amnesty International, *Betraying the Young*, [http://www.amnestyusa.org /document.php?id=D94FCE82406321E18025690000692DCA&lang=e](http://www.amnestyusa.org/document.php?id=D94FCE82406321E18025690000692DCA&lang=e).

Amnesty International, *The State of the World's Human Rights*, <http://report2009.amnesty.org/sites/report2009.amnesty.org/files/documents/air09-en.pdf>.

Eunice Musiime, *Rwanda's Legal System and Legal Materials*, <http://www.nyulawglobal.org/globalex/rwanda.htm>.

“Gacaca Courts Wind Up Proceedings, available at <http://www.hirondellenews.com/content/view/13080/1159/>.

Int'l Inst. for Democracy & Electoral Assistance & Stockholm Univ., Africa, in Global Database of Quotas for Women, http://www.quotaproject.org/country_by_region.cfm#Africa (last visited Jan. 20, 2010).

Matt Rosenberg, *Countries Without Diplomatic Relations with the United States* (2006), available at <http://geography.about.com/od/politicalgeography/a/nodiplomatic.htm>.

Constitutions

Rwandan Const.

STATEMENT OF FACTS

Emanuel Rutaganda (Rutaganda) was born on September 10, 1978¹ in Montreal, Québec and is a dual citizen of Canada and Rwanda.² He returned to Rwanda as an infant in 1979, growing up in Kigali with his parents who were both Rwandan citizens of Hutu ethnicity.³ His father died in a helicopter accident in 1993 as a member of the Rwanda army.⁴ Prior to his death, Rutaganda, at the age of 14, was recruited into the *Interhamwe* militia group, a paramilitary organization associated with the Hutu army.⁵ He continued to serve in the *Interhamwe* during the Rwandan genocide from April-August 1994.⁶

After the Hutu government fell in August 1994, Rutaganda and his mother fled the country for Canada, where they maintain a successful African curio shop in Windsor, Ontario.⁷ Rutaganda has never been subject to any criminal proceedings in Canada.⁸

In 2001, the Tutsi-dominated government of Rwanda indicted Rutaganda and six other identified members of the *Interhamwe* militia who were involved in the notorious Boudaire High School massacre, one of the worst atrocities committed during the 1994 genocide.⁹ According to

¹ 2009-10 Niagara International Moot Court Competition Correction (Jan. 18, 2010)

² 2009-Compromis Between Canada (Applicant) and the United States of America (Respondent) to Submit to the International Court of Justice Their Differences Regarding the Bernier, ¶ 2 [hereinafter *Compromis*].

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at ¶3.

⁸ *Id.*

⁹ *Id.* at ¶4

the indictment, in May 1994, the Hutu army established a detention center for Tutsi children at the High School in Boutaire province of Rwanda.¹⁰ In June 1994, Rutaganda and a dozen other members of the *Interhamwe* militia positioned themselves at the exits of the Boutaire High School to ensure that no one could leave the facility, and then set the two-story wooden building on fire, and shot anyone attempting to escape the blaze.¹¹ Some 275 Tutsi children were killed in the fire and Rutaganda and the six other identified *Interhamwe* militia members who are alleged to have been involved in the massacre have been charged with 275 counts of murder by the Rwandan district court in Boutaire.¹²

Since 2001, the Rwandan government has repeatedly requested that Canada surrender Rutaganda to Rwanda for prosecution, but the Canadian government has persistently denied these requests on the ground that Canada does not have an extradition treaty with Rwanda, Canada views child soldiers as victims not criminals, and Canada believes that the courts of Rwanda are not equipped to provide Rutaganda a fair trial.¹³ At the request of the Rwandan government, in January 2002, INTERPOL issue a Red Notice, seeking Rutaganda's arrest from any country in the world in whose territory he should happen to be found.¹⁴

In February 2009, the U.S. created the "Inter-Agency Working Group for Human Rights Violators" in order to implement the Genocide Accountability Act of 2007.¹⁵ This group included the State Department Ambassador at Large for War Crimes Issues, the Deputy Counsel

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Compromis* at ¶6.

of the National Security Council, the Section Chief of the Department of Homeland Security Immigration and Customs Enforcement’s Human Rights Violators and War Crimes Unit, the Director of the Department of Justice Office of Special Investigations, and the Director of the Department of Justice Office of International Affairs.¹⁶

On July 7, 2009, NBC’s “The Wanted” television series aired an episode about Emanuel Rutaganda, describing his role in the 1994 genocide and noting his current status as a free citizen living in Canada.¹⁷ The American public soon became outraged, and the Inter-Agency Group (IAG) began to hone in on Rutaganda case.¹⁸

On July 21, 2009, ICE informed IAG that Rutaganda’s mother had traveled to Detroit, Michigan from Canada for a medical procedure at the Detroit Clinic. IAG devised a plan, dubbed *Operation Motown Express*, to apprehend and transfer Rutaganda to Rwanda,¹⁹ which President Obama signed off on the next morning²⁰ Plans to lure and apprehend Rutaganda were quickly put into place, involving not only the U.S. government but the Detroit Clinic as well.²¹

On July 22 at 12:30 p.m., ICE agents sent an email to Rutaganda’s personal blackberry, stating that his mother’s health was failing and that she was asking for him to come immediately if he wanted to see her once again before she died. (This was untrue; his mother was fine and was expected to make a full recovery from her procedure).²²

¹⁶ *Id*

¹⁷ *Id.* ¶7.

¹⁸ *Id.*

¹⁹ *Id* ¶8..

²⁰ *Id.* ¶9.

²¹ *Id.*

²² *Id*

That same day, Rutaganda borrowed a passport from a Canadian friend and entered the U.S. through the Windsor Detroit tunnel and headed directly to the Detroit Clinic to see his mother.²³ Upon arrival at the Clinic, he was immediately arrested by ICE agents and taken into custody.²⁴ An order of removal was then issued for Rutaganda based on his illegal entry into the U.S.²⁵ Canada was given sufficient notice of the situation per the 2004 Canada-US Consular Notification Agreement.²⁶ The U.S. through several immigration and federal judicial decisions, affirmed that Rutaganda could be removed to Rwanda.²⁷ Canada submitted Amicus briefs arguing for Rutaganda's release at all stages of the proceedings.²⁸

On September 15, 2009, the U.S. Supreme Court denied Rutaganda's petition for certiorari.²⁹ The Canadian Government, however, was unwilling to concede defeat, claiming that the United States' luring and apprehension of Rutaganda violated Canada's territorial sovereignty, the US-Canada Extradition Treaty and the 1988 Exchange of Letters on Transborder Abduction as well as the rights of its citizen under international law not to be subjected to arbitrary arrest.³⁰ In addition, the government of Canada argued that the U.S. would violate international law if it transferred Rutaganda to Rwanda.³¹

²³ *Id.* ¶10

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* ¶11.

³⁰ *Id.*

³¹ *Id.*

QUESTIONS PRESENTED

1. Did the luring of Emanuel Rutaganda violate the sovereignty of Canada?
2. Did the luring of Emanuel Rutaganda violate the extradition treaty between the United States and Canada?
3. Did the luring of Emanuel Rutaganda violate the January 11,1988 exchange of letters between the United States and Canada?
4. Did the luring of Emanuel Rutaganda violate the International Covenant on Civil and Political Rights?
5. Did the luring of Emanuel Rutaganda violate customary international law?
6. Did the rendition of Emanuel Rutaganda from the United States to Rwanda for trial violate international law because neither the United States nor Canada has an extradition treaty with Rwanda?
7. Did the rendition of Emanuel Rutaganda from the United States to Rwanda for trial violate international law because as a child soldier Rutaganda lacked criminal culpability?
8. Did the rendition of Emanuel Rutaganda from the United States to Rwanda for trial violate international law because the courts of Rwanda are not capable of providing Rutaganda a fair trial?

STATEMENT OF JURISDICTION

Canada (Applicant) and the United States of America (Respondent), have submitted their dispute regarding Emanuel Rutaganda to the International Court of Justice pursuant to Article 36(1) of the ICJ Statute. The parties have stipulated to the contents of the *Compromis* and the Corrections/Clarifications. Both countries have agreed to fully implement the decision of the Court.

SUMMARY OF ARGUMENT

First, the United States' luring of Emanuel Rutaganda was lawful because it did not violate the territorial sovereignty of Canada. Canada's sovereignty was preserved because the United States' luring did not: breach its territorial integrity by forcibly abducting Rutaganda; use force in Canada based on irresistible coercion or precedent; and, finally, did not violate their mutual extradition treaty. Second, the U.S. luring of Rutaganda was lawful because, by doing so, it did not violate the mutual extradition between the two countries. The extradition treaty was not violated because it does not address luring, nor is luring a violation of customary international law so as to warrant an implied violation. Third, the United States' luring of Rutaganda was lawful because it did not violate the exchange of letters between the two countries on January 11, 1988, since the letters do not apply to luring, but rather only to forcible abduction. Fourth, the United States' luring of Rutaganda was lawful because it did not violate the International Covenant on Civil and Political Rights because Rutaganda was not forcibly kidnapped, his luring did not violate the extradition treaty or Canada's sovereignty, and lured by a method that shocked the conscience. Finally, the United States' luring of Rutaganda was lawful because it did not violate customary international law, which has not prohibited luring.

The rendition of Rutaganda from Rwanda to the U.S. would not violate international law. First, the absence of an extradition treaty between Rwanda and either Canada or the U.S. does not prohibit Emanuel Rutaganda's rendition to Rwanda, because international law contains no general restrictions on the right to extradite. Second, Rutaganda is criminally culpable under international law, which has decided upon the age of 15 as a permissible baseline for criminal culpability in the child-soldier context. Finally, Rwanda's courts, although not ideal, are capable of providing Rutaganda a fair trial. The Rwanda's 2003 Constitution marked a turning point in

Rwandan human rights policies, and in Rwanda's current, more enlightened era, the rights accorded defendants are sufficient under international law.

I. THE UNITED STATES MAY REMOVE EMANUAL RUTAGANDA TO RWANDA TO STAND TRIAL FOR HIS ALLEGED INVOLVEMENT IN THE BOUTAIRE HIGH SCHOOL MASSACRE BECAUSE HIS CAPTURE WAS LAWFUL AND HIS RENDITION WOULD BE PROPER.

A. The United States' luring of Emanuel Rutaganda to affect his arrest was lawful because:

1. the United States did not violate Canada's sovereignty because:

i. *it did not breach its territorial integrity by forcibly abducting Rutaganda,*

“Between independent States, respect for territorial sovereignty is an essential foundation of international relations.”³² Accordingly, “the first and foremost restriction imposed by international law upon a State is that...it may not exercise its power in any form in the territory of another State.”³³ “It is beyond controversy that a state violates customary international law by sending its agents into another state to abduct an individual for trial,”³⁴ “mak[ing] a mockery of state sovereignty.”³⁵ It is indisputable that, in the case of Rutaganda, such a violation of the Canadian territorial sovereignty did not occur. Just as in *Dokmanović*, where the sovereignty of the FRY was preserved because in capturing Dokmanović “there was no actual physical

³² Corfu Channel Case (U.K. v. Albania), 1949 I.C.J. 35.

³³ The Lotus Case (France v. Turkey), [1927] P.C.I.J. (ser. A) NO.10 at 18 [hereinafter Lotus]

³⁴ Paul Michell, *English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction After Alvarez-Machain*, 29 Cornell Int'l L.J. 383 (1996) [hereinafter Michell].

³⁵ *Id.* at 411.

violation of FRY territory,”³⁶ the United States never exercised any of its force or power in Canada by abducting Rutaganda, thereby respecting its sovereignty.

ii. *it did not use force in Canada based on “irresistible coercion” or precedent,*

As provided above, an unauthorized extraterritorial use of force in the territory of another state is a violation of state sovereignty.³⁷ Thus, without an exercise of state force, no violation of state sovereignty can occur. The United States’ luring of Rutaganda did not violate the sovereignty of Canada because it was not an exercise of the United States’ force within Canadian territory that satisfies the “irresistible coercion” standard or is otherwise akin to examples of luring that were also not considered a sufficient use of force.

The German Federal Constitutional Court established that forcible abduction is not the only way a state can violate the sovereignty of another state by exercising force to capture one of its residents. In *Al-Moayad*, the court, in evaluating available precedent, ruled that if a state applies extraterritorial “irresistible coercion,” that its act is the equivalent of a use of force by “breaking [the target’s] will.”³⁸ The court reasoned, however, that irresistible coercion does not occur “[t]o the extent that in the case of the use of trickery, the prosecuted person’s intended border crossing is also motivated by his or her own interests, and to the extent that the possibility exists that the prosecuted person decides against departure.”³⁹ Based on *Al-Moayad*, it is clear

³⁶ Prosecutor v. Mrkšić, Radić, Šljivančanin and Dokmanović, Case No. IT-95-13a-PT, Decision on the Motion for Release by the Accused Slavko Dokmanović, ¶¶ 76, 77 (Oct. 22, 1992) [hereinafter *Dokmanović*].

³⁷ *Lotus* at 18.

³⁸ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Nov. 5 2003, 43 I.L.M. 774 (784-85) [hereinafter *Al-Moayad*].

³⁹ *Id.* at 785

that the United States' luring of Rutaganda was not irresistible coercion.

In *Al-Moayad*, the court determined that no “irresistible coercion” had occurred where the targeted individual “travelled to [Germany] on account of an autonomous decision in order to pursue specific own interests there.”⁴⁰ In ruling that the targeted individual’s luring was not a bar to his extradition, the court concluded that while he was “deceived by trickery” and motivated by “deception,” “he was not subjected to direct force aimed at bending his will.”⁴¹ Mirroring *Al-Moayad*, Rutaganda came to the United States based on his own interests, and, while motivated by “deception,” could have decided not to depart Canada at any time. Nevertheless, he independently decided to enter the country. Accordingly, the United States’ luring of Rutaganda should not be considered an act of irresistible coercion, and, therefore was not an act of unauthorized extraterritorial force.

Furthermore, beyond irresistible coercion, available precedent in addition to *Al-Moayad* (likely the same precedent analyzed by the *Al-Moayad* court) also supports the argument that the United States’ luring was not an act of unauthorized extraterritorial force. To begin, in *Dokmanović*, the court did not take issue with the luring that led to an arrest, noting that Dokmanović chose to enter the territory “of his own free will...due to his belief that he was going to a meeting to discuss his property rights.”⁴² The court concluded that this “[*did*] not...amount[] to a forcible abduction or kidnapping”⁴³ and that he was not “coerced in a way that would justify” such a comparison.⁴⁴

⁴⁰ *Id.*

⁴¹ *Id.* at 783.

⁴² *Dokmanović* at ¶57.

⁴³ *Id.* at ¶57

⁴⁴ *Id.* at ¶57 n. 73.

Similarly, in *In Re Schmidt*, where England lured a man from Ireland into its territory to extradite him to Germany by a telephone call, the luring was not considered an act of force or coercion.⁴⁵ The trickery employed was a request that the man enter England for questioning based on a non-existent investigation, and threatening that if he refused to do so that he would be arrested the next time he entered the country. The court concluded that, despite such trickery, “[t]here was...no question of forceable abduction,” and that “to suggest that he had no alternative but to come to [England] and was thereby coerced seem[ed]...to be unrealistic.”⁴⁶ The man, “[a]t the very worst...was tricked...but not coerced.”⁴⁷

As summarized above, the case at bar mirrors both *Dokmanović* and *In re Schmidt*, establishing that this court should find that the United States’ luring of Rutaganda did not involve force. Just as the target in *In re Schmidt* relied on a phone call and ruse, Rutaganda voluntarily entered the United States based on the deceptive e-mail he received. Just like *Dokmanović* and *In Re Schmidt*, he entered the territory under his own power and by his own choosing, without external force. These similarities warrant this court’s conclusion that the United States’ luring of Rutaganda was without force and, therefore, could not have violated the sovereignty of Canada as an unauthorized extraterritorial use of force in its territory. By example, one of the reasons the court in *Dokmanović* concluded that state sovereignty had not been harmed was that the luring had not amounted to force.⁴⁸ Additionally, juxtaposed to its conclusion that luring did not amount to force, the court in *Al-Moayad* opined that it was hard to

⁴⁵ *In Re Schmidt*, (1994) 1 A.C. 339, 379-80 (H.L.).

⁴⁶ *Id.* at 379.

⁴⁷ *Id.*

⁴⁸ *Dokmanović* at 491.

imagine just how luring, “unlike the use of force[,] can be regarded as an act...contrary to international law at all,”⁴⁹ which presumably would include state sovereignty.

By comparison, this court should consider *Stocké*, where a man was tricked by one of his travel companions into boarding an airplane, against his will,⁵⁰ travelling to Germany where he was arrested.⁵¹ While no violation of state sovereignty was found because Germany could not be connected to the abduction, the European Court of Human Rights cited the case as an example where an individual was “forc[ed]...against his will to enter the respondent State in a manner that [was] inconsistent with the sovereignty of his host State.”⁵² This could be an example of “irresistible coercion,” in that while the man was travelling for his own interests, he did not have any say in his departure back to Germany. Similarly, it is different than *Dokmanović* because *Dokmanović* knew what territory he was entering and he entered it voluntarily, just as the man in *In re Schmidt*, and Rutaganda in the case at bar. If *Stocké* stands as a borderline case, dividing a trick that uses force from one that does not, then the case at bar, being more so like *Al-Moayad*, *Dokmanović*, and *In re Schmidt*, should not be found to constitute force.

iii. *violating their mutual extradition treaty*,⁵³ *because it was not violated per, infra, §A(2)*;

2. the United States did not violate its extradition treaty⁵⁴ with Canada because luring is not explicitly prohibited by its terms, nor is it a violation of customary international law so as to justify reading an implied prohibition against it into the treaty;

⁴⁹ *Al-Moayad* at 784

⁵⁰ *Stocké v. Germany*, 199 Eur. Ct. H.R. (ser. A) (1991) ¶27 [hereinafter *Stocké*].

⁵¹ *Id.* at ¶18.

⁵² *Al-Moayad* at ¶81.

⁵³ *United States v. Alvarez-Machain*, 504 U.S. 655, 668 n.14 (1992).

⁵⁴ *Extradition, U.S.-Can.*, Jun. 28, 1974, 27 U.S.T. 983.

First, the treaty interpretation employed by the United States Supreme Court in *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), despite its criticisms,⁵⁵ is sound and establishes that because luring went unaddressed in the treaty, the United States' luring of Rutaganda was not a violation. "Extradition treaties exist so as to impose mutual obligations to surrender individuals in certain defined sets of circumstances, following established procedures."⁵⁶ In the same way as the extradition treaty between the United States and Mexico, the extradition treaty between the United States and Canada "says nothing about the obligations of the United States and [Canada] to refrain from [luring]...or the consequences under the Treaty if such a[] [luring] occurs."⁵⁷ Furthermore, the treaty does not say that it operates exclusive of all other methods, especially those, like luring, that can be done without violating State sovereignty.⁵⁸ This interpretation also makes sense "in light of its object and purpose,"⁵⁹ because luring is not a new problem between the United States and Canada, and it has been ignored;⁶⁰ if the "object and purpose" of the treaty was intended to include a prohibition of luring, the parties would have chosen to address the issue in the amendment of the treaty that occurred by an exchange of letters in June 1974, approximately nine months after *Re Hartnett*,⁶¹ a luring case, was issued, or in a subsequent exchange of letters, as completed to address physical abductions.

⁵⁵ See Michell, *supra* note 17.

⁵⁶ *Alvarez-Machain*, 504 U.S. at 664.

⁵⁷ *Id.* at 663

⁵⁸ See *id.* at 664

⁵⁹ Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331.

⁶⁰ *Re Hartnett*, [1973] 1 O.R.2d 206, 209 (Can.).

⁶¹ *Id.*

Second, unlike *Alvarez-Machain*, customary international law does not prohibit luring, per §5 *infra*, making its application as an implied term of the extradition treaty an even “larger inferential leap” than the Court’s refusal to apply an implied prohibition against extraterritorial abduction that was, in its opinion, supported by “only the most general international law principles.”⁶² As outlined in §A(1), barring forcible abduction or action akin to “irresistible coercion,” luring does not “involve[] a violation of the territorial integrity of that other country, with which this country has signed an extradition treaty,”⁶³ nor rises to the level of a use of force that threatens a similar reciprocal use of “self-help”⁶⁴ by the offended country since reciprocal action cannot be automatic, but rather depends on the independent decisionmaking of the target.

3. the United States did not violate the January 11, 1988 Exchange of Letters between Canada and the United States on Transborder Abduction because the letters did not address luring and Rutaganda was not physically abducted by bounty hunters;

In the exchange of letters, “Canada and the United States agree[d] to cooperate to deter...transborder abductions” by bounty hunters and provided for their extradition.⁶⁵ Applying the same interpretation as above, the letters never address luring, so should not be interpreted as having any influence on the issue, nor is luring a violation of customary international law comparable to transborder abduction that warrants any implied implications, *infra* § 5. Furthermore, a transborder physical abduction by bounty hunters, indisputably, did not occur in the case at bar. The letters are inapplicable and, therefore, were not violated.

4. the United States did not violate the International Covenant on Civil and Political Rights because:

⁶² *Alvarez-Machain*, 504 U.S. at 669

⁶³ *Id.* at 670 (Stevens, J., dissenting).

⁶⁴ *Id.* at 674 (Stevens, J., dissenting)

⁶⁵ Exchange of Letters, US.-Can., Jan. 11, 1988 *available at* http://www.oas.org/juridico/mla/en/traites/en_traites-ext-usa-can.pdf

i. *the United States did not forcibly kidnap Rutaganda,*

“[T]he forcible abduction of a person from one State to another for the purpose of his or her detention constitutes an arbitrary arrest and detention and violates Article 9(1).”⁶⁶ In this case, as explained in §A(1)(i), there was no forcible abduction and thereby no violation of the ICCPR on this ground.⁶⁷

ii. *the United State’s luring did not violate its extradition treaty with Canada,*

Article 9(1) “illegality of arrest” includes “violations of specific, established procedures for obtaining custody of a suspect (often relating to an extradition treaty).”⁶⁸ As outlined in §A(2), this is not an issue in this case because the United States’ luring of Rutaganda did not violate the extradition treaty. Furthermore, there is no allegation that the United States’ courts or officials have deprived Rutaganda of due process through his arrest or avilment of a judicial remedy.

iii. *the United States’ luring did not invade the sovereignty of Canada, and*

In the context of the similarly worded European Code of Human Rights Article 5(1), “‘lawfulness’ also implies absence of any arbitrariness, extraterritorial measures...which entail[] clear violations of international law,” including state acts that are “inconsistent with the sovereignty of [the] host State.” If the same applies to ICCPR Article 9(1), it is not an issue in this case because, per §A(1), the United States’ luring of Rutaganda did not violate the sovereignty of Canada.

⁶⁶ Dokmanović at ¶66

⁶⁷ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc A/6316 (Dec. 16, 1966), art. 10 [hereinafter ICCPR].

⁶⁸ Dokmanović at ¶67

iv. *the United States' luring method did not "shock the conscience;"*

Pursuant to ICCPR Article 9(1), "deprivation of liberty provided for by law cannot be unjust, unpredictable, manifestly unproportional, discriminatory, or inappropriate to the circumstances."⁶⁹ Just as in *Dokmanović*, where "there was nothing about the arrest to shock the conscience,"⁷⁰ there was none in this case. "There was no cruel, inhumane and outrageous conduct...under *Toscanino*,"⁷¹ and Rutaganda's arrest "was...ordinary...by most standards,"⁷² resulting from similar, unobjectionable luring as exercised in *Dokmanović*, *Al-Maoyad*, and *In Re Schmidt*, *supra*.

5. finally, the United States did not violate customary international law.

"[I]t is...doubtful under which preconditions the luring of a prosecuted person out of his or her state of residence by means of trickery – unlike the use of force – can be regarded as an act that is contrary to international law at all."⁷³ Especially since, when it comes up, the majority of courts "have already refused, in principle, to acknowledge the fact that a person has been lured out of a state as being a reason for an obstacle precluding extradition or even criminal prosecution."⁷⁴ It has only posed a problem where "there existed an established extradition treaty that was...circumvented or there was unjustified violence used against the suspect," neither of which is the case here because the extradition treaty was not violated per §A(2) and no violence,

⁶⁹ *Id.* at ¶60

⁷⁰ *Id.* ¶75

⁷¹ *Id.* (quoting *United States v. Yunis*, 681 F Supp 909, 920 (D.D.C. 1988).

⁷² *Id.*

⁷³ *Al-Moayad* at 784

⁷⁴ *Al-Moayad* 783

at all, was employed to invoke *Toscanino* per §A(4).⁷⁵ Furthermore, when courts and commentators choose to address luring and treat it the same as extraterritorial forcible abduction, with all the necessary results of qualifying as such a plain violation of international law,⁷⁶ they have not been followed.⁷⁷ Thus, since luring is largely ignored and does not involve a use of force or coercion, no violation of customary international law occurred in this case.

II. THE RENDITION OF EMANUAL RUTAGANDA FROM THE UNITED STATES TO RWANDA FOR TRIAL WOULD NOT VIOLATE INTERNATIONAL LAW.

- a. The absence of an extradition treaty between Rwanda and either Canada or the United States does not prohibit Emanuel Rutaganda's rendition to Rwanda.

The absence of an extradition treaty between the United States or Canada and Rwanda is not, under international law, a legal impediment to Rutaganda's rendition from the U.S. to Rwanda. Customary international law contains no limitations on a State's freedom to extradite, except for fundamental human rights.⁷⁸ While certain countries do prohibit extradition in the absence of a treaty, others overtly authorize the practice, making a nation's decision of whether to permit extraditions in the absence of a treaty one of domestic concern.

International law permits a state, instead "of a relevant treaty...to rely on less formal policies, such as comity or reciprocity, to decide how to respond to individual extradition

⁷⁵ Dokmanović at ¶74

⁷⁶ See Mitchell, *supra* note 17

⁷⁷ Compare *In Re Schmidt* 1 A.C. at 358 (Sedley, J., concurring) with *id.* at 379; Swiss Federal Court, Judgment of 15 July 1982, *Europäische Grundrechtszeitung* 1983 p 435 et seq. with Al-Moayad at 784.

⁷⁸ See Ninth United Nations Congress on the Preservation of Crime and the Treatment of Offenders, International Cooperation and Practical Technical Assistance for Strengthening the Rule of Law: Promoting the United Nations Crime Prevention and Criminal Justice Programme, U.N. ESCOR, 9th Sess. at 5, UN Doc. A/CONF.169/8 (1995) [hereinafter Ninth U.N. Congress].

requests, or national legislation may specify what occurs in the absence of a treaty.”⁷⁹ In some countries, this right is seen as an “established principle,”⁸⁰ but generally it is a country’s legal system which determines its policies toward extraditions in the absence of treaties, with most common law nations forbidding the practice.⁸¹ Canada is a notable exception, as its Extradition Act allows for *ad hoc* extraditions by permitting the “Minister of Foreign Affairs [to] enter into a specific agreement with a State or entity for the purpose of giving effect to a request for extradition in a particular case.”⁸² Conversely, countries founded under the civil law system are generally not prevented from extraditing in the absence of a treaty.⁸³ France, for instance—upon whose legal system Rwanda’s is based⁸⁴—statutorily authorizes extradition in the absence of a treaty, while subordinating such statutory authorizations to any treaty that may apply.⁸⁵

i. *United States law permits extraditions in the absence of a treaty.*

In the U.S., federal treaty laws are prefaced by a caution that their “provisions...shall continue in force only during the existence of any treaty of extradition with such foreign government.”⁸⁶ However, those laws do not address the separate issue of whether *other* provisions of domestic law may permit, and/or govern, U.S. participation in extraditions in the

⁷⁹ Donna E. Arzt, *The Lockerbie "Extradition by Analogy" Agreement: "Exceptional Measure" or Template for Transnational Criminal Justice?*, 18 Am. U. Int'l L. Rev. 163, 174 (2002).

⁸⁰ I.A. Shearer, *Extradition in International Law* 28 (1971).

⁸¹ *Id* at 31.

⁸² *Extradition Act*, S.O. 1997, c. 40.

⁸³ Shearer, *supra* n20, at 29.

⁸⁴ Eunice Musiime, *Rwanda's Legal System and Legal Materials* (2007), available at <http://www.nyulawglobal.org/globalex/rwanda.htm>.

⁸⁵ Geoff Gilbert, *Aspects of Extradition Law* 26 (1991).

⁸⁶ 8 U.S.C. §3181 et seq.

absence of a treaty.⁸⁷ The Supreme Court in *Valentine v. United States* seemed to answer this question affirmatively, holding that the power to extradite may be “confided to the Executive [by] treaty *or* legislative provision.”⁸⁸ The defendant facing extradition from the U.S. to Rwanda in *Ntakirutimana v. Reno* attempted to distinguish *Valentine* by pointing out that in his case, the countries involved were not parties to an extradition treaty. Rejecting this argument, the Court concluded that although “some authorization by law is necessary for the Executive to extradite, neither the Constitution's text nor *Valentine* require that the authorization come in the form of a treaty.”⁸⁹ Thus, the court found that Ntakirutimana’s extradition was permissible solely on the basis of the National Defense Authorization Act, which extended the federal extradition statutes to anyone subject to the jurisdiction of the International Criminal Tribunal of Rwanda (ICTR).⁹⁰ In Rutaganda’s case, it is unclear whether *Operation Motown Express*⁹¹ was authorized by Congress; if it was, his extradition to Rwanda would comport with U.S. law.⁹² However, even without legislative authorization, the Parties have only asked this Court to determine whether Rutaganda’s extradition is invalid due to the lack of an extradition treaty--not on other grounds.⁹³

From a policy perspective, allowing nations to decide whether to engage in extraditions in the absence of a treaty avoids the strain on diplomatic relations that may result in not allowing nations such latitude. The U.S., for instance, has diplomatic relations with all but five

⁸⁷ *Id.*

⁸⁸ *Valentine v. United States*, 299 U.S. 5, 9 (1936) (emphasis added).

⁸⁹ *Ntakirutimana v. Reno*, 184 F.3d 419, 425 (5th Cir. 1999).

⁹⁰ Pub. L. 104-106, § 1342, 110 Stat. 486, Section 1342(a)(1)

⁹¹ *Compromis*, ¶ 8

⁹² See *Ntakirutimana*, *supra* n29, at 425.

⁹³ See *Compromis*, *supra* n31, at ¶16.

countries,⁹⁴ but lacks extradition treaties with 91 countries.⁹⁵ Were international law to prevent a country's extradition of an indicted criminal suspect, the other country would be denied the right to punish violators of its laws which, if particularly egregious, could lead to antagonism, diminished respect for both nations' laws, and perhaps, an end to diplomatic relations. This would signal an end to free trade, travel, and coordination of counterterrorism and disaster relief efforts, which are "crucial to international peace and security."⁹⁶

- b. The current trend in international law, along with strong public policy rationales, supports the finding of criminal culpability for a fifteen year-old child-soldier.

Provisions allowing 'children in the eyes of the law' to be punished as adults have been in effect since the time of Hammurabi's Code.⁹⁷ Modern examples include the International Covenant on Civil and Political Rights (ICCPR), which requires protections like separation from the general population and a focus on rehabilitation that, when satisfied, may allow for a child to face criminal punishment.⁹⁸ The debate has not been *whether at all*, but *at what point* children must answer to criminal charges, and a general consensus continues to elude the international community.⁹⁹ However, the issue is far clearer in the specific case of child-soldiers, as developments in post-World War II international law clearly favor subjecting child-soldiers ages

⁹⁴ Matt Rosenberg, *Countries Without Diplomatic Relations with the United States* (2006), available at <http://geography.about.com/od/politicalgeography/a/nodiplomatic.htm>.

⁹⁵ See 18 U.S.C. § 3181 (1982) (lists countries).

⁹⁶ Daniel Singerman, *Comment: It's Still Good to be the King: An Argument for Maintaining the Status Quo in Foreign Head of State Immunity*, 21 Emory Int'l L. Rev. 413, 445 (2007).

⁹⁷ Craig J. Herkal, *Comment: You Live, You Learn: A Comment on Oklahoma's Youthful Offender Act*, 34 Tulsa L.J. 599, 599 (1999).

⁹⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc A/6316 (Dec. 16, 1966), art. 10 [hereinafter ICCPR].

⁹⁹ Nienke Grossman, *Article: Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations*, 38 Geo. J. Int'l L. 323, 323 (2007).

15 and older to criminal culpability. Thus, although Rutaganda was only 14 when recruited into the *Interhamwe*, he was 15 when the murders of the 275 Tutsi children took place and was thus capable of criminal culpability at that time.¹⁰⁰

In nations' own domestic criminal justice systems, the age of criminal culpability varies widely.¹⁰¹ Within the U.S., certain states set this age as low as six¹⁰². In Canada, it is as low as 12,¹⁰³ while Belgium sets the bar at age 18.¹⁰⁴ Fundamental differences in the "economic, social, political, cultural, and legal systems of Member States" may explain both the wide range of ages at which individual nations affix criminal culpability, as well as the latitude they accord one another in enacting their own, purely domestic policies into law.¹⁰⁵ This, of course, is not the case with respect to war crimes, which transcend territorial boundaries and involve, either directly or indirectly, any number of nations. To that end, the international community has settled upon 15 as a baseline for affixing criminal culpability for child soldiers. This was first evident in the Fourth Geneva Convention, which refers several times to children under 15 as "protected persons" (while failing to accord such status to older children).¹⁰⁶ Likewise, the

¹⁰⁰ See *Compromis, supra*; 2009/10 Niagara International Moot Court Competition Corrections/Clarifications to the *Compromis* [hereinafter "Clarifications"].

¹⁰¹ Gerry Maher, *Age and Criminal Responsibility*, 2 Ohio State J. Crim. L. 493, 496 (2005)

¹⁰² Amnesty International, *Betraying the Young*, available at <http://www.amnestyusa.org/document.php?id=D94FCE82406321E18025690000692DCA&lang=e>.

¹⁰³ *An Act respecting the criminal law*, R.S.C. 1985, c. C-46.

¹⁰⁴ Gregor Urbas, *The Age of Criminal Responsibility*, Australian Institute of Criminology (2000), available at <http://www.psychinaction.com/uimages/81.pdf>.

¹⁰⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985) [hereinafter Beijing Rules].

¹⁰⁶ Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), 75 UNTS 287 (1949).

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict forbids children under 15 from participating in the armed forces.¹⁰⁷ The Rome Statute of the International Criminal Court also sees 15 as an important threshold, as Article 8 proscribes the recruitment of children younger than that into “the national armed forces or using them to participate actively in hostilities.”¹⁰⁸ Most recently, The Special Court for the Sierra Leone Appeals in 2004 held that children ages 15 and older were subject to its jurisdiction.¹⁰⁹

Three public policy concerns, all of which presume that Rutaganda was recruited into the *Interhamwe* voluntarily, are addressed by finding him criminally culpable. First, it is a universal social norm that one who acts knowingly should be held to answer for his acts.¹¹⁰ Further, “studies that have looked at the decision-making processes of adolescents and adults have found few, if any, differences in cognitive abilities, at least with respect to adolescents from about age 14 and up.”¹¹¹ While child-soldiers may be at a disadvantage as to strength and military training, that they have a “guilty mind” to accompany a “guilty act” is what is dispositive.¹¹²

Secondly, holding older child-soldiers criminally accountable ensures evenhanded justice by avoiding the hypocrisy of punishing murders domestically and ignoring them when committed in the name of war. It also serves the interests of justice by protecting victims from a “second punishment” of having to live side-by-side with their attackers once the violence is over

¹⁰⁷ G.A. res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49 (2000)

¹⁰⁸ UN Doc. A/CONF. 183/9; 37 I.L.M. 1002 (1998)

¹⁰⁹ See <http://www.sc-sl.org/scsl/Public/SCSL-03-08-Norman/SCSL-03-08-PT-129/SCSL-03-08-PT-129-I.pdf>.

¹¹⁰ See generally 1 Blackstone's Commentaries 758 (1941).

¹¹¹ Shoshanna Ehrlich, *Grounded in the Reality of Their Lives: Listening to Teens Who Make the Abortion Decision without Involving Their Parents*, 18 Berkeley Women's L.J. 61, 150 (2003).

¹¹² Wayne R. LaFare, *Criminal Law* 224 (2000).

and victims are trying to return a level of normalcy to their lives.

Finally, holding older child-soldiers criminally accountable should result in the involvement of fewer children in armed conflicts, at least 300,000 of whom are involved in more than 30 military conflicts worldwide.¹¹³ This is because, with respect to those children who join voluntarily, denying them legal immunity would be a powerful disincentive from making such a choice. Failing to prosecute those responsible for serious war crimes “contributes to the phenomenon of impunity, that is, those who have perpetrated serious crimes or might consider doing so will be encouraged to commit further atrocities, knowing that the matter will not be investigated, and that they will not be held accountable.”¹¹⁴ Earning a living, fighting for what might appear to be a noble cause, or exacting vengeance for a loved one’s death is likely not as alluring when accompanied by a lengthy prison sentence or the branding by one’s own government as a cold-blooded criminal.

c. Rwanda’s courts are capable of providing Rutaganda a fair trial.

The Constitution of the Republic of Rwanda guarantees Rutaganda all rights that are required to ensure a fair trial under applicable international law. These rights consist of a presumption of innocence, equality before the law, the right to a defense, the right to a fair and a public hearing by a competent, independent, impartial tribunal.¹¹⁵ It must be noted that Rutaganda is entitled to a fair trial, but not “a perfect trial, in which[, for instance,] every piece of relevant information which might or might not affect the defence is diligently piled at the

¹¹³ Marsha L. Hackenberg, *Can the Optional Protocol For the Convention on the Rights of the Child Protect the Ugandan Child Soldier?* 10 *Ind. Int’l & Comp. L. Rev.* 417, 418 (2000).

¹¹⁴ Amnesty International, *The State of the World’s Human Rights* (2009), available at <http://report2009.amnesty.org/sites/report2009.amnesty.org/files/documents/air09-en.pdf>.

¹¹⁵ See African [Banjul] Charter on Human and Peoples' Rights, June 27, 1981, art. 7, O.A.U. Doc. CAB/LEG/67/3 Rev. 5 [hereinafter Banjul Charter]; ICCPR, *supra* n38, art. 14

defence's door.”¹¹⁶

The Rwandan Constitution, as signed in 2003 by President Paul Kagame, began a transition away from the Genocide of 1994 to a new era where every "person is sacred and inviolable.”¹¹⁷ While acknowledging that “genocide occurred and must be addressed as a crime...the Constitution recognizes the need for tolerance and reconciliation, combined with a revival of the traditional values shared by Rwandans irrespective of tribe, clan or gender.”¹¹⁸ Skeptics, however, cautioned that the Constitution would not have real impact unless there was “a commitment of the government to the rights found within the constitution, the interpretation of these rights by those who refuse to ignore historical legacy and social, economic, and cultural realities, and constant vigilance.”¹¹⁹ In fact, constitutional reforms have become a reality in many instances, as Rwanda’s lower house of parliament for instance, is now comprised of over 56 percent women.¹²⁰

As for specific guarantees of rights that are to apply in Rwandan district courts, the Constitution includes the rights to “equal[ity] before the law,¹²¹ a competent judiciary, and the

¹¹⁶ *Casorella v. R* (1997), 2 B.H.R.C. 23 (S.C.C.) .

¹¹⁷ Rwandan Const. title II, ch. one, art. 10.

¹¹⁸ Phyllis E. Bernard, *Article: Begging For Justice? Or, Adaptive Jurisprudence? Initial Reflections on Mandatory ADR to Enforce Women’s Rights in Rwanda*, 7 *Cardozo J. Conflict Resol.* 325, 331 (2006).

¹¹⁹ Bethany Conner, *Comment: "You Made a Mistake - You Selected a Woman!":* The Implementation of Political Gender Quotas in Postconflict African Nations* 17 *Tul. J. Int'l & Comp. L.* 203, 214 (2008).

¹²⁰ Int'l Inst. for Democracy & Electoral Assistance & Stockholm Univ., Africa, in *Global Database of Quotas for Women*, http://www.quotaproject.org/country_by_region.cfm#Africa (last visited Sept. 30, 2008); *Women To Rule Rwanda Parliament*, BBC News, Sept. 17, 2008, <http://news.bbc.co.uk/2/hi/africa/7620816.stm>.

¹²¹ *See* Rwandan Const. *supra* n39, art. 16.

presumption of innocence¹²² While it does not provide an absolute right to legal representation, this is not mandated by the ICCPR, which only requires the appointment of counsel if “the interests of justice so require, and without payment...if he does not have sufficient means to pay for it”¹²³ This non-absolutist view is shared by The European Court of Human Rights, which has stated that the “complexity of the case, the seriousness of the offense, and the potential maximum punishment all contribute to whether the interests of justice require the state to provide legal assistance to the accused.”¹²⁴

Because the U.S. anticipates that Rutaganda will be tried in a conventional court, and not a Gacaca, the alleged shortcomings of the Gacacas are not germane. Even if Rwanda decides to try Rutaganda in a Gacaca court (which appears unlikely, as a Rwandan district court issued his indictment, and because Rwanda intends to end Gacacas by February, 2010¹²⁵) it is still possible for him to receive a fair trial. First, Gacacas provide a right to one’s own defense via their “play of argument and counter-argument, of witness and counter-witness by the community [which] basically amounts to the same as a fair defense [and] may be even better than what the formal justice system has until now produced.”¹²⁶ Secondly, they facilitate equality before the law by

¹²² *Id* art. 19.

¹²³ *Id.*

¹²⁴ Pham Hoang, 16 Eur. Ct. H.R. at paras. 37, 40

¹²⁵ See “Gacaca Courts Wind Up Proceedings, available at <http://www.hirondellenews.com/content/view/13080/1159/>.

¹²⁶ L. Danielle Tully, *Note: Human Rights Compliance and the Gacaca Jurisdictions in Rwanda*, 26 B.C. Int’l & Comp. L. Rev. 385, 410 (2003).

banning lawyers for the prosecution and complex procedural rules that can be stacked against a defendant.¹²⁷ And finally, they ban judges from the bench whose impartiality might be questioned and require them to be minimally competent as provided by law.¹²⁸

CONCLUSION

The luring of Emanuel Rutaganda from Canada did not violate Canada's territorial sovereignty, the U.S.-Canada Extradition Treaty, the January 11, 1988 Exchange of Letters Between Canada and the United States on Transborder Abduction, and/or the internationally protected human rights of Emanuel Rutaganda guaranteed by the International Covenant on Civil and Political Rights and customary international law. Furthermore, the rendition of Rutaganda from the U.S. to Rwanda would conform to international law because the absence of an extradition treaty between the U.S. and Canada is irrelevant; Rutaganda possessed criminal culpability; and the courts of Rwanda are fully capable of providing Rutaganda a fair trial.

Respectfully Submitted,

Agents for the United States, 2010-02R

¹²⁷ *Id.*

¹²⁸ Organic Law, No. 16/2004, Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994, June 19, 2004, art. 14, available at www.inkiko-gacaca.gov.rw/pdf/newlaw1.pdf