

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#: 2010-09R

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
QUESTIONS PRESENTED	vii
JURISDICTIONAL STATEMENT	viii
STATEMENT OF FACTS	ix
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. THE UNITED STATES PROPERLY APPREHENDED EMANUAL RUTAGANDA IN ACCORDANCE WITH INTERNATIONAL LAWS.	2
A. The alleged “luring” of Rutaganda to the United States from Canada through “Operation Motown Express” did not violate Canada’s territorial sovereignty.....	2
B. The implementation of “Operation Motown Express” by United States authorities neither violated the U.S.-Canada Extradition Treaty nor the January 11, 1988 Exchange Letters on Transborder Abduction.....	4
1. The U.S.–Canada Extradition Treaty is not applicable to a suspect who voluntarily submits to the domestic jurisdiction of the United States.....	4
2. The January 11, 1988 Exchange Letters on Transborder Abduction are not applicable as they apply only to kidnapping of suspects by civilian “bounty hunters.”	6
C. The “luring” and apprehension of Rutaganda were consistent with human rights protections and obligations of the International Covenant on Civil and Political Rights and of customary international law	7
1. The arrest of Rutaganda did not infringe upon any human rights under the International Covenant on Civil and Political Rights because his arrest was not arbitrary.	7
2. Customary international law does not prohibit the use of “luring” tactics to obtain custody of a criminal suspect.....	8

II.	RENDITION OF EMANUAL RUTAGANDA IS LAWFUL UNDER INTERNATIONAL LAW BECAUSE THE UNITED STATES HAS A LEGAL BASIS TO EXTRADITE, RUTAGANDA IS CRIMINALLY CULPABLE, AND RWANDAN COURTS ARE FAIR UNDER INTERNATIONAL STANDARDS.	9
A.	Rendition of Rutaganda is proper under international law because there is a legal basis for extradition within multilateral conventions.	9
	1. The United States and Canada are members of several international treaties that provide a legal basis for the extradition of genocide crimes.....	9
	2. Both the United States and Canada have an obligation as member states of Interpol to arrest the accused with the view to extradite.	11
B.	International law will not be violated with the rendition of Rutaganda because he has criminal culpability to be tried in a Rwandan Court	12
	1. International law and custom recognizes criminal culpability at age fifteen.....	12
	2. States have the independent ability to create appropriate guidelines for prosecution of minors who commit criminal acts	13
C.	Extradition to Rwanda is proper because the Rwandan courts meet international fair trial standards.	15
	1. Rutaganda will receive a fair trial under international standards because will be tried in the conventional court system	15
	2. In the alternative, if Rutaganda is tried in a traditional gacaca court he will receive a fair trial under international standards	16
	3. Though an alternative to extradition, a trial in another country based on universal jurisdiction should not be enacted to bring Rutaganda to justice	19
	CONCLUSION.....	20

TABLE OF AUTHORITIES

International Materials

Treaties, Conventions, & Declarations

African [Banjul] Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58	18
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment art. 8(2), June 26, 1987, 1465 U.N.T.S. 85	10, 11
Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 U.N.T.S. 277	8, 10, 11
Convention on the Rights of the Child, Sept. 2, 1990, 1577 U.N.T.S. 3	13, 14
International Covenant on Civil and Political Rights art. 9(1), Dec. 16, 1966, 999 U.N.T.S. 171	7
Protocol Amending the Extradition Treaty, Exchange Letters on Transborder Abduction, Jan. 11, 1988, U.S.-Can., S. Treaty Doc. No. 101-17	6
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609	13
U.S.–Canada Extradition Treaty, Dec. 3, 1971, U.S.-Can., 27 U.S.T. 983	5

Statutes

Statute of the International Court of Justice arts. 36, 40, June 26, 1945, 59 Stat. 1055	v
--	---

Cases

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) 1993 I.C.J. 325 (Sept. 13)	19
S.S. Lotus (Fr. V. Turk.), 1927 P.C.I.J. (ser. A) No 10, at 14 (Sept. 7, 1927)	3

United Nations Materials

G.A. Res. 3074 (XXVIII), ¶¶ 2, 5, U.N. Doc. A/RES/3074 (Dec. 3, 1973)	18
Charter of the United Nations art. 2(1) & 2(7), June 26, 1945, 1 U.N.T.S. XVI	2
Human Rights Dilemmas Forum, <i>Explore Themes: Arbitrary Arrest and Detention</i> , United Nations Global Compact, 2009	7

United Nations Commission on Human Rights, <i>Report of the Working Group on Arbitrary Detention</i> , 139, U.N. Doc. E/CN.4/1994/27 (1993)	3, 4
United Nations Crime and Justice Information Network, <i>Bilateral Agreements on Extradition, Judicial/Legal Assistance, Control of Narcotic Drugs, and Prisoner Transfer by Country</i> , Introduction (1996), http://www.uncjin.org/Laws/extradit/extindx.htm	5
United Nations Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), Nov. 8, 1994	13
United Nations Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as last amended on 30 November 2000), May 25, 1993	13
United Nations Security Council, Statute of the Special Court for Sierra Leone, art. 7 (Jan. 16, 2002). [hereinafter, “Special Court for Sierra Leone”].....	13
United Nations Treaty Collection, Database, < http://treaties.un.org/Pages/View.Details.aspx?src=UNTSO&tabid=2&mtdsg_no=IV-&chapter=4&lang=en#Participants >	10

Domestic Statues

Rwanda

Organic Law N° 10/2007 (March 1, 2007).....	14
Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States, Organic Law N° 11/2007 Art. 2 (March 16, 2007)	15, 16

United States

18 U.S.C. § 3184 (1996)	10
-------------------------------	----

Domestic Cases

<i>Grin v. Shine</i> , 187 U.S. 181, 191 (1902).....	11
<i>Jaffe v. Smith</i> , 825 F. 2d 304 (11th Cir. 1987).....	3, 6
<i>U.S. v. Alvarez-Machain</i> , 504 U.S. 655 (1992)	3
<i>Valentine v. U.S. ex rel. Neidecker</i> , 299 U.S. 5 (1936).....	10

Articles, Reports, & Books

- Amnesty International. *Rwanda abolishes the death penalty*, (Aug. 2, 2007), <http://www.amnesty.org/en/news-and-updates/good-news/rwanda-abolishes-death-penalty-20070802>.....20
- Amnesty International U.S.A., Program for International Justice and Accountability, *Universal Jurisdiction* (n.d.), <http://www.amnestyusa.org/internationaljustice/pdf/UniversalJurisdiction.pdf>19
- Cecile Aptel, *Closing the U.N. International Criminal Tribunal for Rwanda: Completion Strategy and Residual Issues*, 14 NEW ENG. J. INT’L & COMP. L. 169, 179 (2008).....17
- F.A. Mann, *Reflections on the Prosecution of Persons Abducted in Breach of International Law*, in *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne*, 407, 408 (Ed. Yoram Dinstein 1989).....8, 9
- Human Rights Watch. *Law and Reality: Challenges to Fair Trial Standards*, Human Rights Watch (July 24, 2008), <<http://www.hrw.org/en/node/62097/section/10>> 17
- Interpol, *Fugitive Investigative Services* (Sept. 18, 2009), <http://www.interpol.int/Public/Wanted/fugitiveInvestServ.asp>11
- Interpol - General Assembly. *Increased ICPO-Interpol Support for the Investigation and Prosecution of Genocide, War Crimes and Crimes Against Humanity*, 73rd Session, Res. No. AG-2004-RES-17 (Oct. 8, 2004)11
- Interpol, *Interpol member countries*, <http://www.interpol.int/Public/Icpo/Members/default.asp>.12
- Interpol, *The Investigation and Prosecution of Genocide, War Crimes, Crimes Against Humanity* (Oct. 16, 2009), <http://www.interpol.int/Public/CrimesAgainstHumanity/default.asp>8
- Interpol, *Wanted* (Oct. 16, 2009), www.interpol.int/Public/Wanted/Default.asp.....12
- Jean-Marie Henckaerts, *Study on Customary International Human Rights Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict*, INT’L REV. OF THE RED CROSS, No. 857, 175, 178, Mar. 31, 20058
- Lyn Graybill & Kimberly Lanegran, *Truth, Justice, and Reconciliation in Africa: Issues and cases*, 8 AFR. STUD. Q. 1 (Fall 2004)17
- Matthew Happold, *Child Soldiers: Victims or Perpetrators?* 29 U. LA VERNE L. REV. 56, 70 (2008)13
- Maya Goldstein-Bolocan, *Rwandan Gacaca: An Experiment in Transitional Justice*, 2004 J. DISP. RESOL. 355 (2005)17

Satya Deva Bedi, *Extradition in International Law and Practice* 28 (1968)2

The Right to a Fair Trial: The Dakar Declaration, 45 J. OF AFR. L. 1, 140-142 (2001).....18

U.S. Department of State, *2008 Human Rights Report: Rwanda* (Feb. 25, 2009),
 <<http://www.state.gov/g/drl/rls/hrrpt/2008/af/119019.htm>.>17

William J. Aceves, *The Legality of Transborder Abductions: A Study of United States v. Alvarez-Machain*, 3 SW. J.L. & TRADE AM. 101, 139-140 (1996)3

Other Materials

Compromis Between Canada (Applicant) and The United States of America (Respondent) to
 Submit to the International Court of Justice Their Differences Regarding Emanuel Rutaganda,
 (jointly notified to the Court October 24, 2009) *passim*

QUESTIONS PRESENTED

- I. Whether the alleged “luring” of a genocide suspect, Emanuel Rutaganda, from Canada to the United States violated Canada’s territorial sovereignty, the U.S.-Canada Extradition Treaty, the January 11, 1988 Exchange Letters Between Canada and the United States on Transborder Abduction, and/or the human rights of Emanuel Rutaganda under the International Covenant on Civil and Political Rights and customary international law.

- II. Whether the rendition of Emanuel Rutaganda from the United States to Rwanda for trial for genocidal acts would be consistent with international law when the United States is a party to international conventions allowing extradition, a soldier of fifteen years can be criminal culpable for war crimes, and the Rwandan court system is capable of providing a fair trial.

JURISDICTIONAL STATEMENT

The Republic of Canada (“the Applicant” or “Canada”) and the United States of America (“the Respondent” or “United States”), have submitted their differences regarding Emanuel Rutaganda to the International Court of Justice in accordance with Articles 40(1) and 36(1) of the Statute of the International Court of Justice.¹ The parties have agreed to the contents of the Compromis and any clarifications. Each party will accept the judgment of this Court as final and binding.

¹ Statute of the International Court of Justice arts. 36, 40, June 26, 1945, 59 Stat. 1055.

STATEMENT OF FACTS

I. The Genocide

During the summer of 1994, the African nation of Rwanda was torn apart as its two major ethnic groups, the Hutu and the Tutsis, clashed in a brutal genocide. Due to widespread news coverage, the world watched as Hutu militia forces slaughtered over 800,000 Tutsi and moderate Hutu citizens in less than one hundred days. One of the most infamous acts of the genocide was the Boudaire High School Massacre in June 1994.² There, members of the notorious Hutu militia group called the *Interhamwe* set fire to a detainment center for Tutsi children and stationed themselves at doors of buildings, shooting anyone who tried to escape the burning building.³ Approximately 275 Tutsi children were killed during the massacre.⁴ When the genocide ended with the fall of the Hutu government in August of 1994, many of Hutu fled Rwanda.⁵ In the years since the genocide, Rwandan and international forces have sought to heal Rwanda through the difficult task of bringing the perpetrators of the genocide to justice.⁶

II. Emanuel Rutaganda

Emanuel Rutaganda was born September 10, 1978 in Canada, while his parents were

² See *Compromis Between Canada (Applicant) and The United States of America (Respondent) to Submit to the International Court of Justice Their Differences Regarding Emanuel Rutaganda, 4 (jointly notified to the Court on 24 October 2009) [hereinafter, "Compromis"]*.

³ *Compromis, supra* note 2, 4.

⁴ *Id.*

⁵ *See id.* 3.

⁶ *See id.*

attending college in Montreal, Quèbec. He maintains Canadian and Rwandan citizenship.⁷ Rutaganda and his parents returned to their home of Kigali, Rwanda in 1979 after college.⁸ After his father's death in 1993, Rutaganda joined the Hutu *Interhamwe* militia, and continued to serve in the militia during the Rwandan genocide from April – August 1994.⁹ In June of the same year, Rutaganda was one of twelve *Interhamwe* militia members who took part in the Boudaire High School Massacre, murdering 275 Tutsi children.¹⁰ After the genocide ended, Rutaganda fled Rwanda and, with the financial help of other Hutu exiles, have lived in Canada ever since.¹¹

The Rwandan government has sought to prosecute Rutaganda since 2001 for his genocidal crimes, particularly his role in the Boudaire High School massacre.¹² Despite repeated attempts to secure Rutaganda's extradition, the Canadian government has refused to honor Rwanda's requests.¹³ Additionally, pursuant to Rwanda's wishes, Interpol issued a Red Notice in 2002 seeking the international community's cooperation in the efforts to prosecute and arrest Rutaganda.¹⁴

III. Operation Motown Express

⁷ *Id.* 2.

⁸ *Id.* 2.

⁹ *Id.*

¹⁰ *Id.* 4.

¹¹ *Id.* 3.

¹² *Id.* 5.

¹³ *Id.*

¹⁴ *Id.*

In February 2009, pursuant to the Genocide Accountability Act of 2007, a group of U.S. government officials formed the “Inter-Agency Working Group for Human Rights Violators” [hereinafter, “Inter-Agency Working Group”] to assist in the prevention and punishment of genocidal acts.¹⁵ After public outcry grew over Canada’s denial of Rwanda’s multiple requests to bring Rutaganda to justice, the Inter-Agency Working Group began focusing on Rutaganda.¹⁶ In July 2009, the Inter-Agency Working Group received information that Rutaganda’s mother would be in Detroit, Michigan for a surgical procedure.¹⁷ Using this information, they formulated “Operation Motown Express” with the approval of President Obama.¹⁸ Under this plan, U.S. authorities would apprehend Rutaganda in Detroit by having him come to the hospital to see his mother.¹⁹ Specifically, U.S. Immigration and Customs Enforcement sent an e-mail to Rutaganda stating that his mother’s health was failing and that she was asking for her son, when in fact she was recovering.²⁰ After receiving that e-mail, Rutaganda came into the U.S. through the Windsor-Detroit tunnel, getting through U.S. Customs using another Canadian’s passport that resembled him.²¹ Upon his arrival at the hospital in Detroit, Immigration and Customs

¹⁵ *Id.* 6.

¹⁶ *Id.* 7.

¹⁷ *Id.* 8.

¹⁸ *Id.* 9.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* 10.

Enforcement agents immediately arrested Rutaganda, and Canada received timely notice of the arrest.²² After apprehending Rutaganda, the U.S. affirmed the decision to remove him to Rwanda.²³ This included decisions by the Federal Court of Appeals, as well as a denial from the Supreme Court of the United States to question the removal decision.²⁴

The government of Canada objects to Rutaganda's arrest and removal to Rwanda.²⁵ The U.S. has agreed to bring this dispute before this Honourable Court, in part to assure the maintenance of close relations with Canada. However, the U.S. also bring this case under threat from the Canadian Prime Minister to remove his country's military support from the War on Terror in Afghanistan earlier than promised if Rutaganda is removed to Rwanda for prosecution.²⁶ The U.S. has agreed to stay Rutaganda's removal and Canada has tentatively withdrawn its threat. The United States of America agrees to fully implement the decision of this Honourable Court.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* 11.

²⁶ *Id.* 12.

SUMMARY OF THE ARGUMENT

The U.S. did not violate Canada's territorial sovereignty, or the 1971 U.S.-Canada Extradition Treaty, because Rutaganda entered the U.S. freely and was only apprehended after his entrance into U.S. territory. Further, the U.S. did not violate the 1988 Exchange Letters on Transborder Abduction because the Letters apply only to actual abductions by civilian bounty hunters, forcefully committed in another country, which is entirely different from this case.

The arrest of Rutaganda also did not violate international human rights laws or conventions because his arrest was pursuant to a Rwandan arrest warrant, as well as an Interpol "Red Notice." As such, his arrest was not arbitrary. Further, international legal custom does not prohibit the use of alternative tactics to obtain custody of foreign criminal suspects.

Additionally, the rendition of Rutaganda upholds international law and conventions supporting the fight against impunity for genocidal acts. Canada, the U.S., and Rwanda are all members of international conventions that allow contracting parties to use the articles in place of an extradition treaty. Rutaganda should be removed to Rwanda under these agreements and conventions, even in the absence of a bilateral treaty. Rutaganda is criminally culpable for the crimes he committed and should be tried in Rwanda, where he will receive a fair trial.

Rutaganda was fifteen during the commission of the Boudaire High School massacre. Under international law, if a person is fifteen or older when he commits a crime, he is culpable for his actions. Furthermore, Rutaganda will receive a fair trial upon his rendition to Rwanda. Under Rwandan law, the entire judicial system is required to follow the due process rights created under international law, so Rutaganda will receive a fair trial, regardless of where the trial takes place. Therefore, the U.S. respectfully requests this Court to determine that the U.S. properly apprehended Rutaganda, and should be allowed to extradite him to Rwanda.

ARGUMENT

I. THE UNITED STATES PROPERLY APPREHENDED EMANUAL RUTAGANDA IN ACCORDANCE WITH INTERNATIONAL LAW.

The alleged “luring” of Emanuel Rutaganda [hereinafter, “Rutaganda”] into the United States of America [hereinafter, “U.S.” or “America”] from The Republic of Canada [hereinafter, “Canada”] did not violate international extradition or humanitarian law. The U.S. did not violate Canada’s territorial sovereignty, the 1971 U.S.-Canada Extradition Treaty, or the 1988 Exchange Letters on Transborder Abduction because Rutaganda entered the U.S. freely and without forceful compulsion by any American authority. Furthermore, the U.S. did not infringe upon Rutaganda’s human rights, or arrest him arbitrarily, because his apprehension was pursuant to Rwandan and international warrants connected with 275 counts of murder charged against him. Lastly, the apprehension was proper under international law because no customary state practice indicates a prohibition against alternative methods of obtaining custody of criminal suspects.

A. The alleged “luring” of Rutaganda to the United States from Canada through “Operation Motown Express” did not violate Canada’s territorial sovereignty.

The U.S. did not violate or offend the territorial sovereignty of Canada by electronically conveying information to Rutaganda, which led him to enter American territory. Conventional principles of international law characterize territorial sovereignty as the right of a state to govern all individuals and property within its territory.²⁷ These protections apply to all nations and preserve the rights of self-determination and supreme domestic jurisdiction from foreign interference.²⁸ Thus, a violation of a nation’s territorial sovereignty occurs when another nation

²⁷ See Satya Deva Bedi, *Extradition in International Law and Practice* 28 (1968).

²⁸ See Charter of the United Nation art. 2(1) & 2(7), June 26, 1945, 1 U.N.T.S. XVI [hereinafter, U.N. Charter].

intrudes upon or usurps such a power that the offended nation has a right to exclusively enjoy.²⁹

For example, transborder abductions of foreign suspects violate a state's territorial sovereignty.³⁰ Questions of territorial sovereignty arise in these cases because abductions constitute one nation's exercise of police power within another nation.³¹ U.S. courts generally allow transborder abductions as valid means of arresting criminal suspects.³² However, no question exists regarding the international community's criticism of these tactics.³³ The international community considers the physical abduction of a foreign national from his own country a violation of territorial sovereignty, not only in terms of the physical integrity of the nation's borders, but also in the direct deprivation of that person's freedoms.³⁴

The issues of transborder abductions are discussed here to illustrate the stark contrast between the argued violations of territorial sovereignty in abduction cases, and those alleged in the present case. Here, the use of e-mail to convey information does not exemplify an analogous encroachment on Canada's territorial sovereignty. The primary objections to transborder abductions arise from the physical intrusion and exercise of one nation's sovereign power in the

²⁹ S.S. Lotus (Fr. V. Turk.), 1927 P.C.I.J. (ser. A) No 10, at 14 (Sept. 7, 1927).

³⁰ See *U.S. v. Alvarez-Machain*, 504 U.S. 655 (1992); See generally *Jaffe v. Smith*, 825 F. 2d 304 (11th Cir. 1987).

³¹ William J. Aceves, *The Legality of Transborder Abductions: A Study of United States v. Alvarez-Machain*, 3 Sw. J.L. & TRADE AM. 101, 139-140 (1996).

³² *Id.*

³³ *Id.* at 122, 124.

³⁴ U.N. Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, 139, U.N. Doc. E/CN.4/1994/27 (1993) [hereinafter, "Report of the Working Group"].

territory of another.³⁵ No such intrusion occurred in the alleged “luring” and execution of “Operation Motown Express,” either to the integrity of Canada’s borders or to its domestic jurisdiction over people and places in its territory. Rather, the extent of any “intrusion” into Canadian territory was merely one e-mail sent to Rutaganda’s Blackberry.³⁶ The choice to leave Canada and enter the U.S. was his own.³⁷ Only upon his voluntary entrance into the U.S. was Rutaganda apprehended.³⁸ The e-mail did not constitute any inherently coercive action sufficient to “force” Rutaganda into America. While the e-mail contained information designed to entice him to come to the U.S., this is not comparable to forceful coercion by transborder abduction.

At no time did any U.S. authority enter Canadian territory or infringe upon Rutaganda’s liberty while within Canada’s borders. Though his decision to enter the U.S. was based on erroneous information relating to his mother’s health, his presence was a product his independent choice. Therefore, the U.S. took no action in the apprehension of Rutaganda sufficient to constitute a violation of Canada’s territorial sovereignty under international standards.

B. The implementation of “Operation Motown Express” by United States authorities neither violated the U.S.-Canada Extradition Treaty nor the January 11, 1988 Exchange Letters on Transborder Abduction.

1. *The U.S.–Canada Extradition Treaty is not applicable to a suspect who voluntarily submits to the domestic jurisdiction of the United States.*

“Operation Motown Express” did not violate the U.S.-Canada Extradition Treaty of 1971 [hereinafter, “the Extradition Treaty”] because the Extradition Treaty is not applicable to cases in

³⁵ See Report of the Working Group at 139-140.

³⁶ Compromis, *supra* note 2, ¶ 9.

³⁷ *Id.*

³⁸ *Id.* ¶ 10.

which the suspect voluntarily leaves his country and enters another, thereby knowingly and freely subjecting himself to foreign jurisdiction. An extradition treaty, such as the one between the U.S. and Canada, allows one nation to obtain custody of a suspect even though that suspect is outside that nation's domestic jurisdiction.³⁹ However, when a suspect freely enters a country seeking his arrest, formal extradition proceedings are not necessary because he has submitted himself to that nation's jurisdiction. Except the amendments that address transborder abductions, no provision in the Extradition Treaty explicitly prohibits the requesting state to attempt alternative means of obtaining custody of a suspect.⁴⁰ If the requesting state is able to obtain custody of a suspect without infringing on foreign sovereignty, the protections afforded by the Extradition Treaty are immaterial. The controversy presently before the court is such a case.

The "luring" methods used by the U.S. to affect Rutaganda's presence in U.S. territory would not contradict the Extradition Treaty because no exercise of U.S. domestic authority within Canada occurred. U.S. authorities arrested Rutaganda in Detroit, Michigan, after he entered the U.S. through the Windsor-Detroit Tunnel.⁴¹ He did so under his own free will, without forceful compulsion from other authority.⁴² Once he left Canada and entered the U.S., the provisions of the Extradition Treaty were inapplicable as Rutaganda knowingly submitted himself to the domestic authority of America.

³⁹ United Nations Crime and Justice Information Network, *Bilateral Agreements on Extradition, Judicial/Legal Assistance, Control of Narcotic Drugs, and Prisoner Transfer by Country*, Introduction (1996), <http://www.uncjin.org/Laws/extradit/extindx.htm>.

⁴⁰ See generally U.S.–Canada Extradition Treaty, Dec. 3, 1971, U.S.–Can., 27 U.S.T. 983 [hereinafter, "Extradition Treaty"].

⁴¹ Compromis, *supra* note 2, ¶ 10.

⁴² *Id.*

2. *The January 11, 1988 Exchange Letters on Transborder Abduction are not applicable as they apply only to kidnapping of suspects by civilian “bounty hunters.”*

The January 11, 1988 Exchange Letters on Transborder Abduction [hereinafter, “Exchange Letters”] were not violated by “Operation Motown Express” because these documents address an entirely different type of case than the one presently before the Court.⁴³ The Exchange Letters were implemented to stop civilian bail bondsmen, or “bounty hunters,” from kidnapping Canadian suspects wanted in America.⁴⁴ These kidnappings became a subject of concern after an American bounty hunter kidnapped a Canadian suspect wanted in Florida from his home in Toronto.⁴⁵ In response to Canada’s condemnation of these tactics, the U.S. agreed, in the Exchange Letters, to deter future kidnappings and to extradite any American citizen participating in abductions.⁴⁶ The agreement exclusively refers to transborder abductions by civilian bail bondsmen, and both countries’ promises to deter and punish that behavior.⁴⁷ Moreover, the Exchange Letters do not “create or otherwise alter legal obligations for either Government,” and thus have no mandatory legal effect.⁴⁸

The present case is entirely unrelated to the Exchange Letters, as Canada has not alleged that any American authority, either civilian or governmental, kidnapped Emanuel Rutaganda.

⁴³ *See generally* Protocol Amending the Extradition Treaty, Exchange Letters on Transborder Abduction, Jan. 11, 1988, U.S.-Can., S. Treaty Doc. No. 101-17 [hereinafter, “Exchange Letters”].

⁴⁴ *See id.* ¶ 2.

⁴⁵ *See Jaffe*, *supra* note 7 at 304.

⁴⁶ *Id.*, at Schultz to Clark ¶ 5-6.

⁴⁷ *See id.* ¶ 5-7.

⁴⁸ *Id.* at Schultz to Clark ¶ 7 & Clark to Schultz, response ¶ 1.

Echoing earlier discussion, Rutaganda entered the U.S. of his own free will in response to the e-mail he received regarding his mother's health, but no civilian or official American authority coercively brought him into U.S. territory. Therefore, the U.S. did not violate the Exchange Letters in the execution of "Operation Motown Express."

C. The "luring" and apprehension of Rutaganda was consistent with human rights protections and obligations of the International Covenant on Civil and Political Rights and of customary international law.

1. *The arrest of Rutaganda did not infringe upon any human rights under the International Covenant on Civil and Political Rights because his arrest was not arbitrary.*

The "luring" and arrest of Rutaganda did not violate his internationally protected human rights as guaranteed by the International Covenant on Civil and Political Rights [hereinafter, "ICCPR"] as he was not subjected to arbitrary arrest. Under Article 9 of the ICCPR, individuals have a right to liberty, security of person, and to be free from arbitrary arrest or detention.⁴⁹ An arbitrary arrest occurs when a person is apprehended and detained without a proper legal basis.⁵⁰ However, when a valid charge of criminal activity exists against the suspect, an arrest made pursuant to the charge is not arbitrary.⁵¹

In the present case, the arrest of Rutaganda was far from arbitrary. As a suspect of genocidal acts in the Boudaire High School massacre, Rutaganda's arrest and prosecution has been sought by Rwanda since 2001.⁵² Moreover, Interpol issued a Red Notice for Rutaganda's

⁴⁹ International Covenant on Civil and Political Rights art. 9(1), Dec. 16, 1966, 999 U.N.T.S. 171.

⁵⁰ Human Rights Dilemmas Forum, *Explore Themes: Arbitrary Arrest and Detention*, United Nations Global Compact, 2009.

⁵¹ *See id.*

⁵² Compromis, *supra* note 2, ¶ 5.

arrest in January 2002.⁵³ Interpol issues “Red Notices” to member nations so that, through international cooperation, individuals wanted for war crimes can be located and provisionally apprehended.⁵⁴ There is a legitimate legal basis for Rutaganda’s arrest because he is accused of murdering 275 Tutsi children during the Rwandan Genocide, which is a violation of international humanitarian law.⁵⁵ Therefore, Rutaganda’s arrest through “Operation Motown Express” did not violate his human rights protected by the ICCPR.

2. *Customary international law does not prohibit the use of “luring” tactics to obtain custody of a criminal suspect.*

The “luring” of Rutaganda by the U.S. was legitimate because customary international law does not prohibit enticement tactics as a method of obtaining custody of a criminal suspect. Customary international law is generally established by typical state conduct or practice, accompanied by a sense of obligation to engage in the practice as a matter of law.⁵⁶ No obligatory state practice is conclusive as to the legality of “luring” tactics under international law.⁵⁷ Methods such as by transborder abductions have been commonly recognized as violations

⁵³ *Id.*

⁵⁴ Interpol, *The Investigation and Prosecution of Genocide, War Crimes, Crimes Against Humanity* (Oct. 16, 2009), <http://www.interpol.int/Public/CrimesAgainstHumanity/default.asp>.

⁵⁵ *See e.g.* Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 U.N.T.S. 277 [hereinafter, “Convention on Genocide”]; *See* Compromis ¶ 5-7.

⁵⁶ Jean-Marie Henckaerts, *Study on Customary International Human Rights Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict*, INT’L REV. OF THE RED CROSS, No. 857, 175, 178, Mar. 31, 2005.

⁵⁷ *See* F.A. Mann, *Reflections on the Prosecution of Persons Abducted in Breach of International Law*, in *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne*, 407, 408 (Ed. Yoram Dinstein 1989).

of customary international law because nations consistently condemn such tactics.⁵⁸ In contrast, there is insufficient international discourse or state practice related to enticement of foreign suspects to indicate that these strategies violate customary law. Therefore, the alleged “luring” of Rutaganda to the U.S. is not manifestly inconsistent with obligatory state practices such that “Operation Motown Express” constituted a breach of customary international law.

II. RENDITION OF EMANUAL RUTAGANDA IS LAWFUL UNDER INTERNATIONAL LAW BECAUSE THE UNITED STATES HAS A LEGAL BASIS TO EXTRADITE, RUTAGANDA IS CRIMINALLY CULPABLE, AND RWANDAN COURTS ARE FAIR UNDER INTERNATIONAL STANDARDS.

Extraditing Rutaganda is proper under international extradition and due process law. Even in the absence of an extradition treaty, multiple international conventions provide for extradition of human rights violators. Further, prosecution of Rutaganda is proper because he was at a criminally culpable age at the commission of the crime. Lastly, the nation of Rwanda should have the ability to prosecute Rutaganda because he will receive a fair trial under Rwandan law and international due process rights.

A. Rendition of Rutaganda is proper under international law because there is a legal basis for extradition within multilateral conventions.

It is appropriate for both the U.S. and Canada to extradite Rutaganda to Rwanda for trial based on his alleged genocidal acts because both countries have entered into conventions that allow extradition, and both can extradite based on the Red Notice issued by Interpol.

1. *The United States and Canada are members of several international treaties that provide a legal basis for the extradition of genocide crimes.*

Neither the U.S. nor Canada would violate international law by extraditing Rutaganda because extradition is legal under international conventions. A country can use international

⁵⁸ *See id.* at 407-409.

agreements as a legal basis for extradition to another state if the contracting parties do not have an extradition treaty.⁵⁹ Under the Convention on the Prevention and Punishment of the Crime of Genocide [hereinafter, “Convention on Genocide”], a country that signs the treaty pledges to grant extradition to a requesting state so long as extradition is allowed under the granting state’s laws.⁶⁰ Here, the U.S., Canada, and Rwanda have signed the convention, obligating all to assist in the apprehension and punishment of suspected war criminals.⁶¹ Furthermore, refusal to extradite a genocide suspect constitutes a violation of international conventions that each country has voluntarily obliged itself to follow.⁶²

Moreover, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter, “Convention against Torture”] explicitly provides a legal basis for extradition in the absence of a treaty.⁶³ The U.S., Canada, and Rwanda are all parties to this convention.⁶⁴ Furthermore, under domestic law, when a convention exists between the U.S. and a foreign government on extradition, the U.S. can take appropriate action to arrest a suspect.⁶⁵ After the accused is given his full judicial rights, the U.S. may extradite.⁶⁶

⁵⁹ See e.g. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment art. 8(2), June 26, 1987, 1465 U.N.T.S. 85, [hereinafter, “Convention against Torture”].

⁶⁰ Convention on Genocide, *supra* note 32, at art. VII.

⁶¹ *Id.*; United Nations Treaty Collection, Database, http://treaties.un.org/Pages/View.Details.aspx?src=UNTSOnline&tabid=2&mtdsg_no=IV-&chapter=4&lang=en#Participants.

⁶² Convention on Genocide, *supra* note 32, at art. IV-V.

⁶³ Convention against Torture, *supra* note 36, at art. 8(2).

⁶⁴ *Id.*

⁶⁵ 18 U.S.C. 3184; *Valentine v. U.S. ex rel. Neidecker*, 299 U.S. 5, 9 (1936).

In this case, the U.S. and Rwanda are parties to conventions that allow extradition in the case of crimes against humanity.⁶⁷ Rutaganda is a suspect of genocidal acts and Rwanda has requested his extradition.⁶⁸ Rutaganda was arrested in the U.S. and went before the Federal Court of Appeals, where he was given all the protections of the U.S. judicial system necessary to determine if he could be extradited to Rwanda.⁶⁹ Thus, regardless of an extradition treaty, the rendition of Rutaganda pursuant to the Convention on Genocide and the Convention against Torture does not violate international law.

2. *Both the United States and Canada have an obligation as member states of Interpol to arrest the accused with the view to extradite.*

Interpol resolution AG-2004-PRES-17 calls all member states, such as the U.S. and Canada, to help bring justice in the aftermath of genocide crimes.⁷⁰ Member states of Interpol commit to participation in international cooperative efforts to assist in the apprehension and punishment of internationally wanted individuals.⁷¹ When a person is sought for international arrest and extradition, Interpol issues Red Notice that is circulated to all member-states. Pursuant to the Red Notice, countries have an obligation to locate the individual with the intent to arrest

⁶⁶ *Grin v. Shine*, 187 U.S. 181, 191 (1902).

⁶⁷ Convention against Torture, *supra* note 36; Convention on Genocide, *supra* note 32, at art. VII.

⁶⁸ *Compromis*, *supra* note 2, ¶ 5.

⁶⁹ *Id.* ¶ 10.

⁷⁰ Interpol-General Assembly. *Increased ICPO-Interpol Support for the Investigation and Prosecution of Genocide, War Crimes and Crimes Against Humanity*, 73rd Session, Res. No. AG-2004-RES-17 (Oct. 8, 2004).

⁷¹ See Interpol, *Fugitive Investigative Services* (Sept. 18, 2009), <http://www.interpol.int/Public/Wanted/fugitiveInvestServ.asp>.

and extradite back to the requesting jurisdiction.⁷²

In this case, the U.S., Canada, and Rwanda are all member-states of Interpol.⁷³ At Rwanda's request, Interpol issued a Red Notice in January 2002 seeking the arrest of Rutaganda from any country in the world.⁷⁴ As member-states of Interpol, the Red Notice obligates the U.S. and Canada to arrest Rutaganda with the intent to extradite him. In accord with these and other international obligations, which the U.S. and Canada voluntarily assumed, objecting to the extradition request would fly in the face of multiple commitments assumed by both governments to participate in the fight against impunity for genocidal acts. Therefore, rendition of Rutaganda, regardless of an extradition treaty, does not violate international law, but upholds it pursuant to the commitment to Interpol's goal of international justice.

B. International law will not be violated with the rendition of Rutaganda because he has criminal culpability to be tried in a Rwandan Court.

Rutaganda has the criminal culpability necessary to be held responsible for his actions, therefore, he should be returned to Rwanda to face trial. Under customary international law and established conventions and treaties, international criminal culpability is recognized at age fifteen. Also, international law recognizes the importance of honoring a state's determination of criminal culpability, so long as it does not violate international law.

1. International law and custom recognizes criminal culpability at age fifteen.

Many international conventions and treaties do not give a specific age of criminal culpability. For instance, in the Special Court of Sierra Leone, the United Nations and Sierra

⁷² Interpol, *Wanted* (Oct. 16, 2009), www.interpol.int/Public/Wanted/Default.asp.

⁷³ Interpol, *Interpol member countries*, <http://www.interpol.int/Public/Icpo/Members/default.asp>.

⁷⁴ Compromis, *supra* note 2, ¶ 5.

Leone established that a child must be at least fifteen to be tried for a crime.⁷⁵ The International Criminal Tribunals for Rwanda and the former Yugoslavia have no age restrictions on who may be tried in the court.⁷⁶ Furthermore, countries have the ability to recruit fifteen year olds into armed forces.⁷⁷ The recruitment age of fifteen shows that international law establishes that anyone fifteen and older has the maturity and mental capacity to participate in an armed conflict and potentially take a life.⁷⁸

In this case, although Rutaganda joined the *Interhamwe* militia at the age of fourteen, he committed genocidal acts at age fifteen. Under international law, he had reached an age of maturity that could render him culpable of the crimes he committed. Consequently, he must be held responsible for his actions. Therefore, his rendition to Rwanda does not violate international law because he is criminally culpable.

2. *States have the independent ability to create appropriate guidelines for prosecution of minors who commit criminal acts.*

Several guidelines exist to help states independently determine the appropriate age for prosecution for minors. Under the United Nations Convention on the Rights of the Child, a state shall establish a minimum age below which the child shall be presumed to lack criminal

⁷⁵ U.N. Security Council, Statute of the Special Court for Sierra Leone, art. 7 (Jan. 16, 2002). [hereinafter, "Special Court for Sierra Leone"].

⁷⁶ *See generally*, U.N. Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), Nov. 8, 1994; U.N. Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as last amended on 30 November 2000), May 25, 1993.

⁷⁷ *See e.g.* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609; Convention on the Rights of the Child, Sept. 2, 1990, 1577 U.N.T.S. 3.

⁷⁸ Matthew Happold, *Child Soldiers: Victims or Perpetrators?* 29 U. LA VERNE L. REV. 56, 70 (2008).

culpability.⁷⁹ Rwanda determined that the minimum age for criminal culpability is fifteen.⁸⁰ Thus, all perpetrators who were age fifteen or above at the *commission* of a crime are to be prosecuted (emphasis added).⁸¹

Even though Rwanda has the discretion to determine how to prosecute minors, it has taken special action to ensure that the criminal culpability of a child soldier is taken into account by lessening punishments.⁸² Criminal acts cannot go unpunished simply because the perpetrator was under the age of eighteen. Thus, in recognition of international standards, Rwandan law provides limitations on the punishments received by a person who is between the age of fifteen and seventeen.⁸³ Under the law, if an adult committed murder during the genocide, he or she would be facing the possibility of life in prison. In comparison, murder committed by a fifteen year old would result in a maximum sentence of five years and six months.⁸⁴

In this case, Rutaganda was a child soldier, committing genocidal acts at the age of fifteen. Although, Rutaganda joined the *Interhamwe* militia group at fourteen, he was involved in “one of the worst atrocities” during the genocide at age fifteen.⁸⁵ He barricaded over 275 Tutsi children in a detention center, set the building ablaze, and shot any child who attempted to

⁷⁹ Convention on the Rights of the Child, *supra* note 77, at art. 40(3)(a).

⁸⁰ Organic Law N° 10/2007.

⁸¹ *Id.*

⁸² *See e.g. id.*

⁸³ *Id.*

⁸⁴ *Id.* at art. 14.

⁸⁵ Compromis, *supra* note 2, ¶ 4.

escape.⁸⁶ He is charged with the deaths of 275 Tutsi children. His actions are not that of a confused child. He participated in the ruthless massacre of innocent people. Rutaganda was fifteen years old during the massacre, fully aware of the consequences of his actions. Therefore, he is criminally culpable and his rendition is proper under international law.

C. Extradition to Rwanda is proper because the Rwandan courts meet international fair trial standards.

Rendition of Rutaganda does not violate international law because Rwanda has established fair trials for individuals accused of genocide crimes. Due to the enormous number of genocide suspects, Rwanda was faced with the difficult task of arresting, detaining, and providing fair trials for each person. Rwanda is not simply aiming to punish perpetrators of genocide crimes, but is looking to rebuild the country through reconciliation. Rutaganda will receive a fair trial because he will be tried in a conventional court. In the alternative, if he is not tried in a conventional court, he will receive a fair trial under the gacaca court process.

1. Rutaganda will receive a fair trial under international standards because he will be tried in the conventional court system.

Due to the fact that Rutaganda is being extradited from the U.S., under Rwandan law, he will be given a fair trial in the conventional court system. Organic Law N° 11/2007, regarding the transfers of cases to Rwanda from other states, provides that cases transferred to Rwanda will be first heard by the High Court of the Republic, a conventional court.⁸⁷

The International Covenant on Civil and Political Rights established international due

⁸⁶ *Id.*

⁸⁷ Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States, Organic Law N° 11/2007 Art. 2 (Mar. 16, 2007) [hereinafter, "Organic Law"].

process standards necessary for an accused to receive a fair trial.⁸⁸ These rights are the right to be tried without delay in a fair and public hearing, to be presumed innocent until proven guilty, to be allowed adequate time to prepare a defense, to have legal counsel, to examine witnesses against him and present witnesses for him, and to remain silent.⁸⁹ Without upholding due process requirements, Rwanda would be in violation of international law.

Moreover, Rwanda's domestic laws provide a fair trial for an accused transferred from another country. The trials follow the evidentiary procedures established in Rwanda's Rules of Procedure.⁹⁰ Additionally, the accused is provided all the due process rights guaranteed in international law, and the ability to appeal based on errors of fact or law.⁹¹

In this case, Rutaganda will receive a fair trial. He will be tried in the High Court of the Republic, a conventional court, because he is being transferred from a foreign country. The High Court of the Republic is under statutory obligation to provide Rutaganda with all necessary rights guaranteed to an accused through international and domestic standards.

2. *In the alternative, if Rutaganda is tried in a traditional gacaca court he will receive a fair trial under international standards.*

If Rutaganda is extradited to Rwanda and his case is transferred to a gacaca court, he will still receive a fair trial. The gacaca courts were created to provide reconciliation through restorative justice. Restorative justice looks to the future and attempts to correct problems, whereas, retributive justice attempts to punish previous actions without focusing on healing for

⁸⁸ International Covenant on Civil and Political Rights, *supra* note 26, at art. 14.

⁸⁹ Organic Law, *supra* note 87, at art. 14.

⁹⁰ *Id.* at art. 7.

⁹¹ *Id.* at art. 13, 16.

the victim.⁹² Western standards, which are primarily focused on punishing the offender, cannot be fully applied to the gacaca court system because of the differing goals. Restorative justice requires an interactive process that “engages the victim, the offender, and the whole community in a search for solutions which promote reintegration, repair reconciliation, and reassurance.”⁹³ The gacaca courts allow the convicted to be integrated back into the community while empowering citizens to handle the conflicts resulting from the genocide.⁹⁴

In the past fifteen years, Rwanda has undeniably made great strides to adhere to international fair trial principles in the wake of the genocide.⁹⁵ For instance, the right to counsel is an internationally recognized right, as well as a right recognized in Rwanda. Unfortunately, as a result of the genocide the Rwandan bar association reported only eighty-four lawyers in the country.⁹⁶ Because there simply were not enough lawyers to represent all the parties, Rwanda decided that there should be no lawyers present at the gacaca proceedings on behalf of either the prosecution or the defense.⁹⁷ Rwanda has recognized the importance of the right of equality of arms, and has created solutions to help provide fair trial standards.

⁹² Maya Goldstein-Bolocan, *Rwandan Gacaca: An Experiment in Transitional Justice*, 2004 J. DISP. RESOL. 355 (2005).

⁹³ *Id.* at 362-63.

⁹⁴ Lyn Graybill & Kimberly Lanegran, *Truth, Justice, and Reconciliation in Africa: Issues and cases*, 8 AFR. STUD. Q. 1 (Fall 2004).

⁹⁵ Cecile Aptel, *Closing the U.N. International Criminal Tribunal for Rwanda: Completion Strategy and Residual Issues*, 14 NEW ENG. J. INT’L & COMP. L. 169, 179 (2008).

⁹⁶ Human Rights Watch. *Law and Reality: Challenges to Fair Trial Standards*, Human Rights Watch (July 24, 2008), <<http://www.hrw.org/en/node/62097/section/10>>

⁹⁷ *Id.*; U.S. Department of State, *2008 Human Rights Report: Rwanda* (Feb. 25, 2009), <<http://www.state.gov/g/drl/rls/hrrpt/2008/af/119019.htm>>

Additionally, Rwanda has signed onto multiple international agreements guaranteeing the right to a fair trial in the traditional gacaca courts. The African [Banjul] Charter on Human and Peoples' Rights [hereinafter, "African Charter"] developed human rights guidelines to ensure fair trials.⁹⁸ The rights established in the African Charter are consistent with the due process standards established in the International Covenant on Civil and Political Rights.⁹⁹ Rwanda joined the African Union in 1963, thereby agreeing to uphold the rights established in the charter. Further, under the Dakar Declaration of 1999, traditional courts, such as gacaca, are held to the same standards as a conventional court. The courts are not exempt from fair trial rights under the African Charter or international law.¹⁰⁰

Rwanda has met all requirements for a fair trial under international standards and should be granted the right to prosecute all individuals suspected to have committed crimes within its jurisdiction. Under the U.N. General Assembly Resolution 3074, "every state has the right to try its own nationals for war crimes or crimes against humanity."¹⁰¹ Thus, to deny Rwanda the right to try criminals is a violation of international law as established in the resolution.

The U.S. recognizes the importance of restoring a country, using the means necessary to reach that goal, and establishing systems to meet fair trial standards. Rutaganda's extradition and prosecution pursues these aspirations, which is why the U.S. is seeking to honor the extradition request. If he is transferred out of the conventional courts, he will receive a fair trial in the gacaca courts because there are obligations to meet fair trial standards under international and self-

⁹⁸ African [Banjul] Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58.

⁹⁹ *Id.* at Art. 7(1)(a)-(d).

¹⁰⁰ *The Right to a Fair Trial: The Dakar Declaration*, 45 J. OF AFR. L. 1, 140-142 (2001).

¹⁰¹ G.A. Res. 3074 (XXVIII), ¶¶ 2, 5, U.N. Doc. A/RES/3074 (Dec. 3, 1973).

imposed law. If Rutaganda is not extradited, the reconciliation of Rwanda will be thwarted. As he is accused of committing the murders of 275 children in one community, his extradition is essential to the restoration of that community in the Boutaire Province.¹⁰²

3. *Though an alternative to extradition, a trial in another country based on universal jurisdiction should not be enacted to bring Rutaganda to justice.*

While many countries have the authority to prosecute under universal jurisdiction, invocation of that principle is inappropriate in this case. The Convention on Genocide provides that every country has the responsibility to bring justice to perpetrators of heinous crimes, regardless of where the crime was committed.¹⁰³ Several international courts, including the International Criminal Tribunal of Rwanda, confirm that national courts have the authority to try cases involving grave crimes under international law.¹⁰⁴ However, Amnesty International states that it is more appropriate for an accused to be tried in the place where the crime was committed, as opposed to a foreign court.¹⁰⁵ Further, when the individual will be prosecuted in fair proceedings that will not result in the death penalty, the accused should be extradited to the requesting country, rather being prosecuted under the theory of universal jurisdiction.¹⁰⁶

¹⁰² Compromis, *supra* note 2, ¶ 4.

¹⁰³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) 1993 I.C.J. 325 (Sept. 13).

¹⁰⁴ Amnesty International U.S.A., Program for International Justice and Accountability, *Universal Jurisdiction* (n.d.), <http://www.amnestyusa.org/internationaljustice/pdf/UniversalJurisdiction.pdf>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Currently, Rwanda has eliminated the death penalty and is in the process of eliminating life imprisonment with solitary confinement.¹⁰⁷ Rwanda has established fair trial laws and is following international due process standards. International law dictates that as long as these standards are met, a country has the right to try an accused within its own borders. It is not necessary, nor appropriate, to invoke universal jurisdiction when Rutaganda will be successfully, fairly, and humanely tried in the courts of Rwanda.

CONCLUSION

THEREFORE, the United States respectfully submits that this Honourable Court adjudge and declare that:

(1) The alleged “luring” of Emanuel Rutaganda did not violate the 1971 U.S.-Canada Extradition Treaty or the 1988 Exchange Letters on Transborder Abduction because Rutaganda entered the U.S. of his own accord; (2) Rutaganda’s arrest did not violate his human rights, as it was not arbitrary because he was duly wanted by authorities in connection with genocidal crimes; and (3) rendition is proper because the extradition is valid under international law, Rutaganda was at a criminally culpable age at the commission of the crime, and he will receive a fair trial because Rwandan law guarantees international due process rights.

Respectfully Submitted,

Agents for the Respondent, the United States, Team #2010-09R.

¹⁰⁷ Amnesty International. *Rwanda abolishes the death penalty*, (Aug. 2, 2007), <http://www.amnesty.org/en/news-and-updates/good-news/rwanda-abolishes-death-penalty-20070802>.