

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 APPLICANT

TEAM#: 2010-12A

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JURISDICTIONAL STATEMENT

Canada and the United States have brought their case before this Court under Article 36(1) of the International Court of Justice Statute.

QUESTIONS PRESENTED

1. When the United States lured Emanuel Rutaganda from Canada to the United States, did the United States violate Canada's territorial sovereignty?
2. Did the United States violate the U.S.-Canada Extradition Treaty when it lured Emanuel Rutaganda from Canada to the United States?
3. When the United States lured Emanuel Rutaganda from Canada to the United States did it violate the January 11, 1988 Exchange of Letters Between Canada and the United States on Transborder Abduction?
4. Were Emanuel Rutaganda's internationally protected human rights guaranteed by the International Covenant on Civil and Political Rights and customary international law violated when the United States lured Emanuel Rutaganda from Canada to the United States?
5. Is Emanuel Rutaganda's removal from the United States to Rwanda is an unlawful violation of international law given that neither the United States nor Canada have an extradition treaty with Rwanda, and given that as a child soldier, Mr. Rutaganda lacked criminal culpability?

STATEMENT OF FACTS

Emanuel Ruaganda was born in Montreal, Quebec on September 10, 1978.¹ He is both a Canadian and Rwandan citizen as his parents were from Rwanda of the Hutu ethnicity.² Mr. Rutaganda returned to Rwanda with his parents as an infant in 1979 where he grew up at his parents' home in Kigali, Rwanda.³ When he was fourteen years old his father died in a helicopter accident after which he was recruited into the *Interhamwe* militia group.⁴ Mr. Rutaganda served with *Interhamwe* during the Rwandan genocide that took place between the months of April and August 1994.⁵

When he was fifteen Mr. Rutaganda and his mother fled to Canada after the fall of the Hutu government in August 1994.⁶ With financial backing of other Hutu exiles, he and his mother established a successful African curio shop in Windsor, Ontario. After fifteen years of living in Canada, Mr. Rutaganda has not been subject to so much as a traffic ticket or any other criminal proceeding.⁷

Rwanda's Tutsi-dominated government issued an indictment in 2001 for Mr. Rutaganda and six other members of the *Interhamwe* militia who have been identified as being involved in

¹ *Compromis*, ¶ 2.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at ¶ 3.

⁷ *Id.*

the Boudaire High School massacre, which was committed during the genocide in 1994.⁸ The indictment states that in May 1994 the Hutu army established a detention center for Tutsi children at the high school.⁹ The alleged massacre took place in June 1994 where Mr. Rutaganda and about a dozen other members of *Interhamwe* set the two-story wooden building ablaze while standing at the exits ensuring no one could escape and shooting anyone attempting to flee the fire.¹⁰ Approximately 275 Tutsi children were killed and as a result Mr. Rutaganda and the other six have been charged with 275 counts of murder by Rwandan district court in Boudaire.¹¹

The Tutsi-controlled Rwandan government has requested that Canada send Mr. Rutaganda to Rwanda for prosecution, but the Canadian government has denied the several requests.¹² These denials are based on the lack of extradition treaty between Canada and Rwanda, Canada's view that child soldiers are not criminals but victims in such situations, and Canada's belief that Rwandan courts are not capable of providing Mr. Rutaganda with a fair trial.¹³ In January 2002 after requests from the Rwandan government, INTERPOL issued a Red Notice seeking Mr. Rutaganda's arrest from any country he happens to be in.¹⁴

On July 7, 2009 "The Wanted," a new NBC television series aired an episode about Mr. Rutaganda bringing to the attention of the American public the fact that he was an indicted

⁸ *Id.* at ¶ 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at ¶ 5.

¹³ *Id.*

¹⁴ *Id.*

Rwandan genocide perpetrator and was living without restraint in Canada.¹⁵ Following the episode there were numerous editorials in American newspapers condemning the current state of affairs.¹⁶

In February 2009 the United States government established the “Inter-Agency Working Group for Human Rights Violators” in order to best implement the Genocide Accountability Act of 2007.¹⁷ The US Immigration and Customs Enforcement notified the Inter-Agency Working Group on July 21, 2009 that Mr. Rutaganda’s mother traveled to Detroit to receive a specialized medical procedure.¹⁸ The Inter-Agency Working Group created a plan called “Operation Motown Express” to apprehend Mr. Rutaganda and send him to Rwanda, which was sent to the President for approval.¹⁹ President Obama approved the plan the next day and a strategy was established to “lure” and apprehend Mr. Rutaganda with the cooperation of the Detroit Clinic in which his mother was attending.²⁰

On July 22 at 12:30 PM Immigration and Customs Enforcement agents sent an email from the Detroit Clinic to Mr. Rutaganda’s personal BlackBerry²¹ the email falsely informed him that his mother’s health was quickly deteriorating and she was asking for him, it also deceitfully

¹⁵ *Id.* at ¶ 7.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 6.

¹⁸ *Id.* at ¶ 8.

¹⁹ *Id.*

²⁰ *Id.* at ¶ 9.

²¹ *Id.*

informed him that he should come quickly to see her before she died (in reality her surgery was successful and she was expected to fully recover).²²

Within the same day Mr. Rutaganda borrowed a passport from a Canadian friend and entered the United States through the Detroit-Windsor tunnel going directly to the Detroit Clinic to visit what he thought was his dying mother.²³ When he entered the clinic he was arrested instantly and taken by Immigration and Customs Enforcement agents.²⁴ Canada was given timely notification of the incident per the 2004 Canada-U.S. Consular Notification Agreement, including that the Federal Court of Appeals affirmed a decision to remove Mr. Rutaganda to Rwanda.²⁵ At each step in the process Canada submitted Amicus briefs on behalf of Mr. Rutaganda requesting his release until finally on September 15, 2009 the Supreme Court of the United States denied Mr. Rutaganda's petition for *certiorari*.²⁶

Through its embassy in D.C., Canada strongly protested the luring and capture of Mr. Rutaganda which it saw as a violation of its territorial sovereignty, the U.S.-Canada Extradition Treaty and the 1988 Exchange Letters on Transborder Abduction, as well as the human right to be free from arbitrary arrest protected for Mr. Rutaganda as a citizen under international law.²⁷ Canada also argued that the United States would violated international law if it returned Mr.

²² *Id.*

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at ¶ 11.

Rutaganda to Rwanda.²⁸ After being rejected by the United States, the Prime Minister of Canada made threats to withdraw Canadian troops from Afghanistan in 2010 as opposed to the agreed-upon 2011 unless the United States agreed to submit the case to the International Court of Justice for proper adjudication.²⁹

The United States chose to refer legal questions to the International Court of Justice under Article 36(1) of the International Court of Justice Statute in order to maintain close ties to Canada.³⁰ Canada agreed to drop threats of withdrawing troops early, the United States agreed to stay the removal of Mr. Rutaganda to Rwanda pending the result of the International Court of Justice case, and both countries assented to completely implement any decision the International Court of Justice renders in the case.³¹

²⁸ *Id.*

²⁹ *Id.* at ¶ 12.

³⁰ *Id.* at ¶ 13.

³¹ *Id.* at ¶ 14.

SUMMARY OF ARGUMENT

The United States violated Canada's territorial sovereignty by luring Mr. Rutaganda outside the Canadian borders. One of the principal tenets of conventional international law is that each state has the freedom to make its own decisions with regard to domestic matters and international relations. The use of extraterritorial criminal measures by the United States was a violation of Canada's sovereignty. When the United States decided to execute criminal enforcement measures against a Canadian citizen it violated the principle of non-intervention. States are supposed to remain uninvolved in other states' affairs.

In addition to violating Canada's territorial sovereignty, the United States also breached its agreement with Canada for Extraditing fugitives when it unilaterally lured and arrested Mr. Rutaganda in the United States. The U.S.-Canada Extradition Treaty provides procedures and guidelines for the extradition of fugitives between the two states. One of the relevant provisions provides that the executive branch has the authority in deciding whether to extradite. Additionally, the treaty provides procedures for attaining extradition between the two states. The United States lured Mr. Rutaganda from Canada to Detroit rather than following the procedures and adhering to Canada's decision to refrain from extraditing its own citizen.

The United States lack of cooperation with Canada also violated the January 11, 1988 Exchange Letters between Canada and the United States on Transborder Abduction. The letters require that Canada and the United States act bilaterally in seeking extradition of fugitives. Additionally, the use of moral coercion to lure and abduct Mr. Rutaganda directly violated the Letters' provision against such criminal enforcement action.

Finally, the luring of Mr. Rutaganda from Canada to the United States violated his internationally protected human rights. Mr. Rutaganda's right to be free from arbitrary arrest was

violated when the United States coerced him to go to Detroit where he was arrested. Also, unilateral action by the United States violated the human rights inherent in extradition measures. The human rights of Mr. Rutaganda to exercise liberty was clearly violated by the United States.

Mr. Rutaganda has been illegally removed from the United States to Rwanda. As discussed more comprehensively below, Mr. Rutaganda's removal from the United States to Rwanda is an unlawful violation of international law because of two tremendously important reasons.

First, neither the United States nor Canada have an extradition treaty with Rwanda and thus, there is no authority on which the United States may rely upon in order to extradite Mr. Rutaganda to Rwanda. It is a fundamental principal of international law that it does not require the surrender of a fugitive, whether a citizen or an alien, to a foreign government in the absence of a treaty stipulation requiring it. Further, Canada's Extradition Act requires that in order for Canada to extradite an individual to another country, there must be an agreement between Canada and the receiving country, whether by treaty, multilateral convention, or person-specific agreement. Similarly, it is well-settled law in the United States that the country can not extradite an individual found within its borders without authority found in statute or treaty. In applying these fundamental principals of international law as pronounced by the United States and Canada to the case at bar, it is clear that since neither the United States nor Canada have an extradition treaty with Rwanda, Mr. Rutaganda's extradition to Rwanda is an unlawful violation of international law.

Second, as a child soldier, Mr. Rutaganda lacked criminal culpability, and therefore cannot be tried for 275 counts of murder. Although admittedly, the incident at Boutaire High School was unfortunate and there were many victims, Mr. Rutaganda, being only a child at the time of the incident, was a victim as well. His tender age allowed for the heinous individuals in charge of the *Interhamwe* paramilitary organization to take advantage of the naïve Emanuel, and most likely, involuntarily recruit him into the organization. Lacking the requisite mindset to

commit the crimes he is accused of committing, the fifteen year old Emanuel Rutaganda lacked the criminal culpability and thus, cannot be tried for 275 counts of murder.

Accordingly, Mr. Rutaganda's removal from the United States to Rwanda is an unlawful violation of international law because neither the United States nor Canada have an extradition treaty with Rwanda, and as a child soldier, Mr. Rutaganda lacked criminal culpability.

ARGUMENT

I. THE LURING OF CANADIAN CITIZEN EMANUAL RUTAGANDA FROM CANADA TO THE UNITED STATES VIOLATED CANADA’S TERRITORIAL SOVEREIGNTY.

A. Extraterritorial Criminal Enforcement by the United States Violated Canada’s Sovereignty.

Customary international law prohibits one state to exercise its sovereign powers while in the territory of another.³² While a state’s ability to proscribe certain conduct outside of its territory with criminal sanctions is undisputed, the exercise of enforcement jurisdiction in the territory of another state is prima facie wrongful.³³ Pursuing criminal enforcement, such as the abduction of a suspect from within the territory of the asylum state without that state’s permission, clearly breaches this prohibition.³⁴ If states were permitted to send their agents into other states to abduct fugitives the foundation of international legal order would become a mockery. While some states’ domestic courts have continued to assert jurisdiction over suspects seized in violation of international law, states that do so must “justify their conduct by reference to a new right” at international law in order to amend or establish exceptions to the recognized customary law.³⁵ The domestic courts that utilize the *male captus bene detentus* doctrine do so based on domestic precedent, not international law, and these courts have acknowledged that the

³²The Case of S.S. “Lotus” (France v. Turkey), Judgment of 7 September 1927, PCIJ Series A, No. 10 at 34-35; Oppenheim’s International Law, at 295 (H. Lauterpacht, 8th ed. 1955).

³³ Paul Michell, *English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction After Alvarez-Machain*, 29 Cornell Int’l L.J. 383, 411 (1996).

³⁴ *Id.* at 410 (1996).

³⁵ Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States), 1986 I.C.J. 14 at 108-09.

conduct excepted by this doctrine may very well be divergent to international law.³⁶ If Canada had consented to the transborder criminal enforcement action of the United States there would have been no breach of territorial sovereignty.³⁷ However, because Canada did not give the United States permission to remove Mr. Rutaganda via criminal enforcement tactics, the United States clearly violated Canada's territorial sovereignty.

B. The United States' Unilateral Execution of Criminal Enforcement Measures Violated the International Principle of Non-Intervention.

The principle of non-intervention protects the authority of states to make their own choices about matters within their sovereign jurisdiction.³⁸ The pursuit of criminal enforcement measures is a sovereign act.³⁹ Other states and international law is to respect political integrity and autonomy.⁴⁰ Canada decided at its highest level of government that it did not have the inclination to prosecute Mr. Rutaganda. The United States' luring of Mr. Rutaganda amounted to a direct obstruction with Canada's control over its autonomous legal and political affairs.

Although the International Court of Justice in *Nicaragua* referred to an element of coercion within the bad against non-intervention, it restricted its exposition of principle to those elements necessary to the case before it.⁴¹ The sovereign freedom of state decision-making, the core principle protected by this exclusion, may be imperiled equally by the use of force or

³⁶ *United States v. Alvarez-Machain*, 505 U.S. 655, 667 (1992); and *In re Hartnett*, 1 O.R. 2d 206, 209 (1973).

³⁷ *Michell*, *supra* note 2, at 420.

³⁸ *Elettronica Sicula SpA (ELSI) Case (United States v. Italy)* 1981 ICJ 15.

³⁹ *Handyside v. United Kingdom*, Ser A, No. 24, 1 EHRR 737 (1979).

⁴⁰ *Nicaragua*, 1986 I.C.J. at 106.

⁴¹ *Id.* at 108.

fraud.⁴² Additionally, unlike consensual extradition processes, unilateral extraterritorial criminal enforcement measures such as abduction or luring essentially hamper the internal affairs of other states. When it fraudulently undermined Canada's legal and political decisions, the United States subordinated Canada's sovereign will in a manner that conflicted with the sovereign equality of states.⁴³

II. THE UNITED STATES VIOLATED THE U.S.-CANADA EXTRADITION TREATY WHEN IT LURED CANADIAN CITIZEN EMANUAL RUTAGANDA FROM CANADA TO THE UNITED STATES.

On December 3, 1971 the US-Canada Extradition Treaty went into effect.⁴⁴ The Extradition Treaty was later amended and made public in March of 1976.⁴⁵ The states agreed to extradite persons found within its territory that have been charged or convicted of any of the offenses covered by this treaty.⁴⁶ This treaty provides that when an offense for which extradition is requested is political in nature or extradition is sought to punish the individual for a political offense, extradition shall not be granted.⁴⁷ Courts around the world have recognized political offenses to be those in which a common crime is so connected with a political act that the entire offense is regarded as political.⁴⁸ In the U.S.-Canada Treaty the decision whether to extradite to

⁴² *Id.*

⁴³ United Nations Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, 9 I.L.M. 1292, 1296 (Nov. 1970).

⁴⁴ Treaty on Extradition Between the United States of America and Canada, TIAS 8237 (March 22, 1976) [hereinafter U.S.-Canada Treaty].

⁴⁵ *Id.* at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

the requesting state is placed in the hands of the executive.⁴⁹ Based on the language of the treaty, one can imply that the executive has the authority to determine when a fugitive has committed a political offense and is exempt from extradition. Canada likely made a similar determination when it determined that extradition of Mr. Rutaganda was improper.

When the United States decided unilaterally to lure Mr. Rutaganda from Canada to the United States and arrest him it violated the tenets of the U.S.-Canada Treaty. The U.S.-Canada Treaty specifies the steps necessary in order for one of the states to seek extradition from the other.⁵⁰ The United States acted on its own using moral coercion to lure Mr. Rutaganda to Detroit where he was subsequently arrested and abducted from Canada where he was a citizen. In a similar case, the British Columbia Supreme Court determined that because the United States law enforcement measures were so egregious as to constitute an abuse of the process, which justified Canada's stay of extradition proceedings.⁵¹ In this case the Drug Enforcement Agency of the United States set up a meeting with a Canadian national for drug purchase and sale in the United States.⁵² The suspect stated that he would never have entered the United States if he had not been induced to do so by the DEA agent.⁵³ The Court in this case examined all of the relevant facts and conduct by the United States and explained that deviations from the U.S.-

⁴⁸ United States: Court of Appeals for the Seventh Circuit Decision in *Eain v Wilkes*, 21 I.L.M. 342, 346-47(1982).

⁴⁹ U.S.-Canada Treaty, *supra* note 14 at 3.

⁵⁰ *Id.* at 4-6.

⁵¹ *In the Matter of the Extradition Act and In the Matter of United States of American and Brent Anthony Licht*, 2002 BCSC 1151.

⁵² *Id.*

⁵³ *Id.*

Canada Treaty and conventional extradition procedures justify a stay in the extradition proceedings allowing the accused to remain in Canada.⁵⁴ The case at hand is highly similar. In this case, Mr. Rutaganda was lured by the United States' use of his mother's deteriorating health and sending information from her medical facility to his personal email. The United States luring Mr. Rutaganda to Detroit to comfort his mother during failing health was unilateral moral coercion outside the procedures required in the U.S.-Canada Treaty for extradition. It is safe to argue that were this Canada luring a U.S. citizen into its territory the United States would be outraged and immediately seek the safe return of its citizen.

III. WHEN THE UNITED STATES LURED CANADIAN CITIZEN EMANUAL RUTAGANDA FROM CANADA TO THE UNITED STATES IT VIOLATED THE JANUARY 11, 1988 EXCHANGE LETTERS BETWEEN CANADA AND THE UNITED STATES ON TRANSBORDER ABDUCTION.

A. *The United States' Lack of Cooperation with Canada Violated the January 11, 1988 Exchange Letters Between Canada and the United States.*

The letters ratified by both the United States and Canada relating to transborder abductions exude an overall attitude of cooperation. One of the stated purposes for the amendments to the U.S.-Canada Extradition Treaty was to improve law enforcement cooperation and fight terrorism.⁵⁵ The increase in global transportation has increased the number of fugitives who can flee to other countries in hopes of escaping their transgressions. In certain cases, both the United States and Canada have jurisdiction over such a fugitive who is being sought in his home country. In such an instance, the executive authority of the requested state is supposed to consult with the executive authority of the requesting state and make a decision whether to

⁵⁴ *Id.*

⁵⁵ Protocol Amending the Extradition Treaty with Canada, 1988 U.S.T. Lexis 182, at 1 January 11, 1988.

extradite the fugitive or whether to submit the case to competent authorities for prosecution.⁵⁶ In the instant case the United States did not comply with the Letters requirement for bilateral decision-making. Instead, the executive authority chose to violate the fundamental principle of the Letters by organizing and authorizing a transborder abduction of Mr. Rutaganda. Even after this abduction the United States failed to comply with the terms of the agreement requiring an effort to return the abducted person to Canada. The violation of these letters is largely evident by the United States' decision to engage in a clandestine operation to lure Mr. Rutaganda out of Canada.

B. The United States Directly Violated the January 11, 1988 Exchange Letters Between Canada and the United States When it Lured Mr. Rutaganda Out of Canada.

The Letters specifically note that both the United States and Canada acknowledge that such abduction of persons is an extraditable offense under the treaty.⁵⁷ Additionally, the United States stated that it would cooperate in efforts to deter such operations and apprise interested parties of the positions set forth in these amending letters.⁵⁸ The United States has employed tactics that directly conflict with its obligations under the amended treaty letters. Not only did the United States directly violate the words of the letters, it also failed to comport with its requirements once a transborder abduction has occurred. The letters require that the United States and Canada agree to cooperate and have the abducted person escorted back to Canada pending the outcome of a formal extradition hearing.⁵⁹ The United States executive authority

⁵⁶ *Id.* at 8.

⁵⁷ *Id.* at 9-10.

⁵⁸ *Id.* at 10.

permitted the luring and abduction of Mr. Rutaganda from Canada to the United States directly depriving Mr. Rutaganda of his protected human right to liberty. Where there is a deprivation of liberty and one's ability to freely exercise his liberty, luring and physical abductions cannot be distinguished.

IV. EMANUAL RUTAGANDA'S INTERNATIONALLY PROTECTED HUMAN RIGHTS GUARANTEED BY THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND CONVENTIONAL INTERNATIONAL LAW WERE VIOLATED WHEN THE UNITED STATES LURED HIM OUT OF CANADA INTO THE UNITED STATES.

A. *The United States was Prohibited From Arbitrarily Arresting Mr. Rutaganda Based on International Law.*

Similar to freedom of expression, the prohibition against arbitrary arrest has fallen into place as an aspect of customary international law as evidenced by an equally astounding body of domestic and transnational human rights instruments.⁶⁰ Alternatively, even if the prohibition is not a part of international convention, it is sufficiently essential to the International Covenant on Civil and Political Rights that its breach will unavoidably give rise to a violation of Article 18 of the Vienna Convention on the Law of Treaties.⁶¹ The criteria for arbitrariness encompasses any legal deprivation that it unjust, unpredictable, manifestly disproportionate, discriminatory, or

⁵⁹ *Id.* at 10-11.

⁶⁰ *Id.* at 3-4; See UDHR N. Sea Continenta Shelf (W. Ger. V. Den., W. Ger v. Neth.) 1969 I.C.J. 3 (Feb. 1969), art. 9; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXII), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1976) available at www1.umn.edu/humanarts/instree/b3ccpr.htm (Last visited Jan. 26, 2010), at art. 9(1); Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 1, 1998, art. 10, at art. 5(1); American Convention on Human Rights "Pact of San Jose, Costa Rica," art. 13, at art. 7; Canadian Charter of Rights and Freedoms, Constitution Act, 1982 at art. 9. Available at laws.justice.gc.ca/en/charter/ (Last visited Jan. 26, 2010)

⁶¹ 2002 Philip C. Jessup International Moot Court Competition in the International Court of Justice at the Peace Palace, 9 ILSA J. Int'l & Comp. J. 289, at 312 (2002).

inappropriate to the circumstances of the case.⁶² The United States acted unjustly when it violated its extradition treaty with Canada in luring Mr. Rutaganda to Detroit and the criminal enforcement measures used here were highly unpredictable.

The arrest of Mr. Rutaganda was arbitrary based on case law that states that forcible abduction has been deemed manifestly arbitrary.⁶³ Nothing realistically distinguishes luring as fraudulent inducement “robs the victim of the power of autonomous decision and action as sure as does physical coercion.”⁶⁴ If one views in positive terms of the right to liberty, both luring and abduction deny an arrested fugitive of the power to exercise that right in an independent fashion; thus luring is arbitrary.

The prohibition on arbitrary arrest in conventional international law is informed by a continuum of coercion.⁶⁵ The United States preyed on Mr. Rutaganda’s goodwill and feeling of responsibility toward his mother. There was no exploitation of greed or other incriminating information used to lure Mr. Rutaganda to Detroit, moral coercion was effective weapon of choice. If the use of moral coercion is determined to be consistent with international human rights norms, in the future people will be deterred from providing assistance to people and places based on an apprehension that each piece of bad news or opportunity to aid others is nothing more than a ploy set up for their capture.

⁶² Prosecutor v. Slavko Dokmanovic, Decision on the Motion for Release by the Accused Slavko Dokmanovic, No. IT-95-13a-PT, T Ch. 11 at 484 October 1997.

⁶³ Prosecutor, No. IT-95-13A-PT, T Ch. 11 at 487.

⁶⁴ *In re Schmidt*, 1 AC at 359 per Sedley J (1995).

⁶⁵ Prosecutor, No. IT-95-13A-PT, T Ch. 11 at 483; Michell, *supra*, at 490-91.

Arrests circumventing the established methods for obtaining custody, such as extradition treaties, have also been regarded manifestly arbitrary.⁶⁶ Extradition processes contain imperative due process safeguards for the accused, and hence have a significant human rights dimension.⁶⁷ The advent of new developments in extradition law, such as the specialty principle and the principle of double criminality, indicates an increasing concern for the due process rights of the accused individuals being extradited.⁶⁸ When a state bypasses extradition by luring or abducting an individual there is an implicit violation of the human rights of the fugitive because it denies him the procedural safeguards otherwise available under an applicable extradition treaty.⁶⁹ Unilateral measures, such as luring and abduction, are wholly unconstrained, the very definition of arbitrary. The absence of permission to use the extradition treaty between the United States and Canada does not permit the United States to employ unilateral, arbitrary measures to lure and arrest Mr. Rutaganda.

B. Mr. Rutaganda's Individual Human Rights Were Protected by International Law, Not Derived From Canada's International Rights.

International human rights law offers advantages to the fugitive in an abduction or luring situation. International law does not require the injured state to protest in order to invoke the protection of international human rights norms for the fugitive.⁷⁰ The invocation of these norms

⁶⁶ Prosecutor, No. IT-95-13A-PT, T Ch. 11 at 487

⁶⁷ Michell, *supra* note 2, at 437-38.

⁶⁸ *Id.* at 438.

⁶⁹ *Id.*

⁷⁰ *Id.* at 439.

guarantee rights which are inalienable and unaffected by consent of the injured state.⁷¹ International human rights law gives individuals legal rights, these significant rights are not derived from states and affected individuals need not wait for the injured state to invoke them on his behalf. In addition to these guaranteed rights, conventional international law also mandates that fugitives need not rely upon a violation of an extradition treaty to show their abduction violates international laws.⁷² It is not the circumvention of extradition proceedings so much as it is the improper exercise of jurisdiction over individuals that violates international human rights.⁷³

The two major sources of international human rights law are custom and convention.⁷⁴ The International Covenant on Civil and Political Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms are the most significant international human rights law instruments to date.⁷⁵ Canada is a signatory to the International Covenant as is the United States.⁷⁶ While neither Canada nor the United States is a signatory of the European Convention, it has been an important source of human rights jurisprudence due to the cultural,

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ International Covenant on Civil and Political Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 21, at 52, U.N. Doc. A/6316 (1967); Convention on the Protection of Human Rights and Fundamental Freedoms [European Convention] Nov. 4, 1950, 213 U.N.T.S. 222.

⁷⁶ Marion Nash Leich, *Contemporary Practice of the United States Relating in International Law*, 89 Am. J. Int'l L. 96, 109 (1995); D.P. Stewart, *U.S. Ratification of the Covenants on Civil and Political Rights: The Significance of the Reservations, Understandings and Declarations*, 14 Hum. Rts. L. J. 78 (1993).

social, and political similarities between North America and the European States.⁷⁷ Since the United States and Canada are signatories to the International Covenant and being apprised of the protections within the European Convention, they both know the rights Mr. Rutaganda was to have protected. With this in mind, the United States cannot claim ignorance to the existence of his rights nor can it assert that it did not directly violate these rights. Because international human rights law does not require these individual rights to be triggered by a protest of the harmed state, the United States cannot maintain that Mr. Rutaganda's rights were not yet available to him. The United States directly and seriously violated the human rights Mr. Rutaganda possessed during and after the luring from Canada to Detroit.

V. THE RENDITION OF EMANUAL RUTAGANDA FROM THE UNITED STATES TO RWANDA FOR TRIAL IS A VIOLATION OF INTERNATIONAL LAW.

Mr. Rutaganda has been illegally removed from the United States to Rwanda. Mr. Rutaganda, a dual citizen of both Canada and Rwanda, has never had any ties to the United States before, as discussed above, he was wrongfully lured in to the United States by the United States Immigration and Customs Enforcement. Due to the United States' wrongful luring and subsequent detainment of Mr. Rutaganda, he has found himself in the position that he is in today; faced with the possibility of never seeing his wife and children again, and of being illegally extradited by the United States to Rwanda. As discussed more comprehensively below, Mr. Rutaganda's removal from the United States to Rwanda is an unlawful violation of international law because of two tremendously important reasons. First, neither the United States nor Canada have an extradition treaty with Rwanda and thus, there is no authority on which the United States may rely upon in order to extradite Mr. Rutaganda to Rwanda. And second, as a child soldier,

⁷⁷ Michell, *supra* note 2, at 439-40.

Mr. Rutaganda lacked criminal culpability, and therefore cannot be tried for 275 counts of murder. It is for these reasons that the United States' extradition of Mr. Rutaganda to Rwanda should be prohibited, allowing for Mr. Rutaganda to be turned over to Canadian authorities.

A. Neither the United States nor Canada have an extradition treaty with Rwanda and thus, there is no authority on which the United States may rely upon in order to extradite Mr. Rutaganda to Rwanda.

It is a fundamental principal of international law that it does not require the surrender of a fugitive, whether a citizen or an alien, to a foreign government in the absence of a treaty stipulation requiring it.⁷⁸ Further, Canada's Extradition Act requires that in order for Canada to extradite an individual to another country, there must be an agreement between Canada and the receiving country, whether by treaty, multilateral convention, or person-specific agreement.⁷⁹ Similarly, it is well-settled law in the United States that the country **can not** extradite an individual found within its borders without authority found in statute or treaty.⁸⁰ (emphasis added). Specifically, the United States Supreme Court has held that "in the absence of a conventional or legislative provision, there is no authority vested in any department of the government to seize a fugitive criminal and surrender him to a foreign power."⁸¹ What is more, the United States Supreme Court has added that "as the legal authority does not exist save as it is given by act of Congress or by the terms of a treaty, it is not enough that statute or treaty does

⁷⁸ 31A Am Jur 2d Extradition § 14

⁷⁹ Canadian Extradition Act, (S.C. 1999, c. 18), available at <http://laws.justice.gc.ca/eng/E-23.01/index.html>

⁸⁰ *Valentine v. United States*, 299 U.S. 5 (1936)

⁸¹ *Id.* at 9

not deny the power to surrender. It must be found that statute or treaty confers the power.”⁸² Additionally, American federal law **forbids** extradition in the absence of a valid treaty of extradition with the demanding government.⁸³ (emphasis added).

In applying these fundamental principals of international law as pronounced by the United States and Canada to the case at bar, it is clear that since neither the United States nor Canada have an extradition treaty with Rwanda, Mr. Rutaganda’s extradition to Rwanda is an unlawful violation of international law. When applying Canada’s Extradition Act to this case, any extradition of Mr. Rutaganda to Rwanda would be prohibited as Canada does not have an agreement between Rwanda, either by treaty, multilateral convention, or person-specific agreement. Further, when applying the United States’ own law which was promulgated in *Valentine v. United States* and its progeny, it would be a violation of American law for the country to extradite Mr. Rutaganda to Rwanda, as it does not have the power to do so either by treaty or by statute.⁸⁴ Under American law, the power to extradite an individual out of the United States can only be conferred by treaty or statute, since such a conferral which would allow for the United States to extradite an individual to Rwanda is absent, the United States is without the power to complete Mr. Rutaganda’s extradition. Lastly, since the law of the United States prohibits extradition in the absence of a valid treaty of extradition with the demanding government, the United States should be barred from extraditing Mr. Rutaganda to Rwanda, as there is not a valid treaty of extradition between the two nations. Accordingly, since neither the United States nor Canada have an extradition treaty with Rwanda, Emanuel Rutaganda’s

⁸² *Id.*

⁸³ 18 U.S.C. § 3181

⁸⁴ *Valentine, supra*, note 80.

removal and extradition from the United States to Rwanda is an unlawful violation of international law.

B. As a child soldier, Emanuel Rutaganda lacked criminal culpability, and therefore cannot be tried for 275 counts of murder.

Mr. Rutaganda was only fourteen years old at the time of his recruitment into the *Interhamwe* paramilitary organization, and he was only fifteen years old at the time of his involvement in the incident at Boutaire High School. Although admittedly, the incident was unfortunate and there were many victims, Mr. Rutaganda, being only a child at the time of the incident, was a victim as well. His tender age allowed for the heinous individuals in charge of the *Interhamwe* paramilitary organization to take advantage of the naïve Emanuel, and most likely, involuntarily recruit him into the organization. Lacking the requisite mindset to commit the crimes he is accused of committing, the fifteen year old Emanuel Rutaganda lacked the criminal culpability and thus, cannot be tried for 275 counts of murder.

Child soldiers, such as Mr. Rutaganda, are typically participants who have been involuntarily recruited to serve as objects of their recruiters and protagonists of war.⁸⁵ Most nations' governments focus on and punish those who recruit children, including the United States,⁸⁶ implying that children involved in armed conflict are themselves victims.⁸⁷ Child soldiers such as Mr. Rutaganda often go through processes of indoctrination and severe abuse

⁸⁵ Godfrey M. Musila, *Challenges in Establishing the Accountability of Child Soldiers for Human Rights Violations: Restorative Justice as an Option*, 5 Afr. Hum. Rts. L.J. 321 (2005).

⁸⁶ See Child Soldiers Accountability Act of 2008, 110 P.L. 340, available at <http://www.govtrack.us/congress/billtext.xpd?bill=s110-2135>

⁸⁷ Musila, *supra*, note 85.

intended to maintain control over them.⁸⁸ A child's, such as Mr. Rutaganda, recruitment into war, whether voluntary or involuntary, can never be said to be in the child's best interest as their development is affected negatively.⁸⁹

Clearly, being in the position he was in, Mr. Rutaganda lacked the criminal culpability to be guilty of the crimes he is accused of committing. Mr. Rutaganda, who was a naïve child at the time of the Boutaire High School incident, is a victim himself, and thus cannot be charged with the counts of murder.

Accordingly, Mr. Rutaganda's removal from the United States to Rwanda is an unlawful violation of international law because neither the United States nor Canada have an extradition treaty with Rwanda, and as a child soldier, Mr. Rutaganda lacked criminal culpability.

⁸⁸ *Id.*

⁸⁹ *Id.*

CONCLUSION

For the foregoing reasons, the Applicant, Canada, respectfully requests this Court to:

1. **DECLARE** that the luring of Canadian citizen Emanuel Rutaganda from Canada violated 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 the internationally protected human rights of Emanuel Rutaganda guaranteed by the International Covenant on Civil and Political Rights and customary international law.
2. **DECLARE** that the rendition of Emanuel Rutaganda from the United States to Rwanda for trial would violate international law because: neither the United States nor Canada have an extradition treaty with Rwanda and as a child soldier Rutaganda lacked criminal culpability.