

**2009-2010**  
**NIAGARA INTERNATIONAL MOOT COURT COMPETITION**

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**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#: 2010-12R**

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## **QUESTIONS PRESENTED**

- I. Whether the arrest of Emanuel Rutaganda 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, or the internationally protected human rights of Emanuel Rutaganda guaranteed by 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 would violate international law because: neither the United States nor Canada have an extradition treaty with Rwanda; as a child soldier Emanuel Rutaganda lacked criminal culpability; and/or the courts of Rwanda are not capable of providing Emanuel Rutaganda a fair trial?

## **JURISDICTIONAL STATEMENT**

The parties, through special agreement, submit this dispute to the International Court of Justice for a binding declaratory judgment pursuant to Article 36(1) of the *Statute of the International Court of Justice*. Article 36(1) confers upon the court the jurisdiction to resolve specific issues as described in the compromis.

## STATEMENT OF FACTS

Emanuel Rutaganda is a Canadian citizen by birth, born September 10, 1978. He also has Rwandan citizenship as his parents were Rwandan nationals of Hutu ethnicity, and soon after Mr. Rutaganda's birth his family returned to Rwanda. His father was a Colonel in the Rwandan army and died during a helicopter accident in 1993. At the age of 14, Mr. Rutaganda joined a paramilitary organization associated with the Hutu army. During the Rwandan genocide from April to August of 1994, Mr. Rutaganda was in the *Interwamwe* paramilitary.<sup>1</sup>

After the fall of the Hutu government in August of 1994, Mr. Rutaganda and his mother moved back to Canada where he resided until time this dispute arose.<sup>2</sup> Mr. Rutaganda has been accused of taking part in the genocidal massacre of some 275 Tutsi children during the time he spent in a Hutu paramilitary. The Rwandan government issued an indictment against him and six other identified as members of the militia involved in the notorious slaughtering.<sup>3</sup> The Canadian government has refused to produce Mr. Rutaganda for Rwandan authorities based on the lack of an Extradition Treaty between nations and also based on domestic Canadian law regarding the age of men at the time of joining the military.<sup>4</sup>

Seeing an opportunity to apprehend Mr. Rutuganda, the American authorities embarked on a mission coined "Motown Express." The idea was to lure Mr. Rutaganda onto American soil so that he could be arrested without violating any treaty obligations or the territorial sovereignty

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<sup>1</sup> *Compromis*, ¶ 2.

<sup>2</sup> *Compromis*, ¶ 3.

<sup>3</sup> *Compromis*, ¶ 4.

<sup>4</sup> *Compromis*, ¶ 5.

of Canada.<sup>5</sup> Mr. Rutaganda entered the United States at the Windsor-Detroit border using a borrowed passport; upon arrival he was arrested. Through a series of immigration and judicial decisions, it was affirmed that Mr. Rutaganda could be removed to Rwanda to face trial.

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<sup>5</sup> *Compromis*, ¶ 8, 9.

## SUMMARY OF ARGUMENT

Emanuel Rutaganda voluntarily and illegally entered the United States. By entering, Mr. Rutaganda personally availed himself to the jurisdiction of the United States. The argument that he was “lured” into American territory in violation of the U.S.-Canada Extradition Treaty and Exchange of Letters Between the Canada and the United States on Transborder Abduction fails on the premise that neither the treaty nor Exchange Letters specifically ban the using strategies of deception or luring which lead to a lawful arrest. More importantly, the actions taken by the United States were in furtherance of international multilateral treaties regarding genocide and the punishment of actors perpetrating such crimes against humanity. The international community places the crime of genocide on a pedestal apart from almost all others. Since the end of World War II, the international community has a history to seeing that anyone standing accused of such heinous crimes against humanity will see their day in court. Canadian refusal to produce the fugitive Emanuel Rutaganda is inconsistent with international law and should not be tolerated, or even worse, emboldened by a finding against the United States in the present dispute.<sup>6</sup>

The extradition of Emanuel Rutaganda from the United States to Rwanda and finally holding him accountable for the act of genocide that took the lives of 275 children is what international law was envisioned to provide. Rwanda’s failed extradition requests to Canada do not allow for the core principles afforded to members of the United Nations. The international community requires its members to act when crimes against humanity have been committed.

The lack of a bilateral extradition treaty between the United States and Rwanda does not necessarily mean that Mr. Rutaganda cannot be held accountable for the crime of genocide. The extreme severity of the crime of genocide is recognized by the international community,

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<sup>6</sup> *Compromis*, ¶ 10.

resulting in the Convention on the Prevention and Punishment of the Crime of Genocide. This Convention creates an affirmative duty for nations to extradite fugitives on their soil who have participated in the acts of genocide and seek the protection of their borders to shield them from justice. Mr. Rutaganda's youth at the time of his crimes cannot alleviate him of being held accountable. Rwandan courts can take into consideration his young age but regardless of age, accountability must be found. Justice must be served to the sovereign nation of Rwandan and its people who have suffered at the hands of Mr. Rutaganda.

After protest from Canadian authorities, the two countries eventually agreed to have the dispute settled by the International Court of Justice.<sup>7</sup>

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<sup>7</sup> *Compromis*, ¶ 13.

## ARGUMENT

### I. EMANUAL RUTAGANDA PERSONALLY AVAILED HIMSELF TO THE LAWS OF THE UNITED STATES OF AMERICA WHEN HE ILLEGALLY ENTERED THE COUNTRY

In large part, world history is marred by human conflict and power struggles.

International law will never achieve world order. That is not its purpose. The purpose of international law is to provide the tools help a screw fit when it is not so easy. In evaluating perhaps conflicting legal principles, history and morality are central. History and morality are the very backbone of those legal principles that compose the sometimes amorphous concept of international law. Without history or morality, laws, treaties, or this very court lose their context; without context, half of the toolbox was left at the last jobsite. With this in mind, the wisdom of former U.N. Secretary-General, Dr. Koffi Annan certainly support the position of the United States as related to the fate of Emanuel Rutaganda:

“Fore nearly half a Century...almost as long as the United Nations has been in existence...the General Assembly has recognized the need to establish such a court to prosecute and punish persons responsible for crimes such as genocide. Many thought...that the horrors of the Second World War...the camps, the cruelty, the exterminations, the Holocaust...could never happen again. And yet they have. In Cambodia, in Bosnia and Herzegovina, in *Rwanda*. Our time...this decade even...has shown use that man’s capacity for evil knows no limits. Genocide...is now a word of our time, too, a heinous reality that calls for a historic response.<sup>8</sup>

The world would send a historic message to those committing crimes against humanity in endorsing the criminal proceedings against Emanuel Rutaganda, who is accused of taking part in the massacre of 275 innocent children.

#### A. Emanuel Rutuganda Is Accused Of Genocide And There Exists An International Obligation To See That He Stands Trial For the Alleged Crimes Against Humanity That Were Perpetrated

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<sup>8</sup> Remigius Chibueze, *United States Objection to the International Criminal Court: A Paradox of “Operation Enduring Freedom*, 9 Ann. Surv. Int’l & Comp. L. 19 (2003), 24.

In the aftermath of the atrocities committed during World War II, the international community was swift in establishing a legal framework with which to condemn genocide. In 1946, the General Assembly of the United Nations declared genocide an international crime that is reviled by the civilized world, whether the perpetrators are “private individuals, public officials or statesman.”<sup>9</sup> In supporting the punishment of actors committing such crimes, the General Assembly also affirmed the principles of Article 6 of the Agreement and Charter Establishing the Nuremberg War Crimes Tribunal for punishing “persecutions on political, racial or religious grounds” regardless of whether the offenders acted “as individuals or as members of organizations.”<sup>10</sup>

The Convention on the Prevention and Punishment of the Crime of Genocide provides a more full articulation of the international legal community’s condemnation of genocide.<sup>11</sup> The Convention on Genocide was signed into force in 1951, but the United States did not sign until 1989.<sup>12</sup> Currently ratified by 140 nations, the Convention on Genocide defines “genocide” to mean:

- any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:
- (a) Killing members of the group;
  - (b) Causing serious bodily or mental harm to members of the group;
  - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - (d) Imposing measures intended to prevent births with the group;

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<sup>9</sup> G.A. Res. 96(I), 1 U.N. GAOR, U.N. Doc. A/64/Add.1, at 188-89 (1946).

<sup>10</sup> G.A. Res. 95(I), 1 U.N. GAOR, U.N. Doc. A/64/Add.1, at 188 (1946).

<sup>11</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277. [hereinafter the “Convention on Genocide”].

<sup>12</sup> See U.S. Dept. of State, *Treaties in Force* 368 (2009).

(e) Forcibly transferring children of the group to another group.<sup>13</sup>

The allegations pitted against Mr. Rutaganda that he and six other Hutu paramilitary members were involved in the notorious Boudaire High School massacre of some 275 Tutsi children would clearly amount to participation in an act of genocide.<sup>14</sup> The contracting parties to the Convention on Genocide undertake to “prevent and to punish genocide.”<sup>15</sup>

One of the questions the United States and Canada agreed to submit for review by the International Court of Justice is whether American authorities in the arrest of Mr. Rutaganda violated the International Covenant on Civil and Political Rights.<sup>16</sup> The inquiry into this issue does not require much time nor effort because the Covenant on Civil and Political Rights is express in its inapplicability when the crime of genocide is the subject matter. Part III, Article 6 states:

“When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.”<sup>17</sup>

Beyond the invalidity of Canada’s assertion that the Covenant on Civil and Political Rights provides Mr. Rutaganda protections that were not afforded to him by his arrest, the provision quoted above further evidences the international community’s position that the crime of genocide is in a category of crimes apart from the rest.

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<sup>13</sup> Convention on Genocide, 78 U.N.T.S. 277, art. II.

<sup>14</sup> *Compromis*, ¶ 4

<sup>15</sup> 78 U.N.T.S. 277, art. I.

<sup>16</sup> *Compromis*, ¶ 13(a).

<sup>17</sup> International Covenant on Civil and Political Rights, 6 I.L.M. 360 (1966), Part III. Sec. 6(3).

## **B. The United States Did Not Impede The Territorial Sovereignty Of Canada When Operation Motown Express Led To the Arrest Of Emanuel Rutaganda On American Soil**

Canadian territorial sovereignty was not infringed upon when Mr. Rutaganda was arrested on American soil. It is undisputed that Mr. Rutaganda voluntarily, and illegally, entered the United States.<sup>18</sup> International law does not generally prohibit the application of a state's laws or the jurisdiction of its courts over non-citizens or acts committed outside of its territory.<sup>19</sup> Every state remains "free to adopt the jurisdictional principles which it regards as best and most suitable."<sup>20</sup> Universal jurisdiction over certain offenses is established in international law through universal condemnation of the acts involved and general interest in cooperating to suppress them, as reflected in widely accepted international agreements and resolutions of international organizations.

As emphasized earlier, the work of the United Nations and its various organizations after World War II exemplifies the interest in the international community in the prosecution of criminals accused of committing crimes against humanity such as genocide.<sup>21</sup> In cases brought before United States military tribunals where charges of war crimes were heard, jurisdictional objections were overruled, even though the crimes committed did not occur in U.S. territory. In finding jurisdiction over acts of war committed against the nationals of any country, at any place, one court stated:

"Any violation of the law of nations encroaches upon and injures the interest of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a *matter resting within the discretion of a state*.

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<sup>18</sup> *Compromis*, ¶ 10

<sup>19</sup> *The Case of S.S. Lotus (France. v. Turkey)*, P.C.I.J. Ser. A. , No. 10 (1927), at 19.

<sup>20</sup> *Id.*

<sup>21</sup> 78 U.N.T.S. 277.

[emphasis added]... This is true, irrespective of when or where the crime was committed, the belligerency status of the punishing power, or the nationality of the victims.”<sup>22</sup>

Moreover, the Genocide Convention expresses the duty of parties of the treaty to provide criminal punishment for those committing the crimes enumerated in the treaty; in response, the United States enacted the Genocide Accountability Act of 2007.<sup>23</sup>

Section 1091(d) of the Genocide Accountability Act was amended in 2007 to include jurisdiction over a foreign person alleged to be an offender if “after the conduct required for the offenses occurs, the alleged offender is brought into, or found in, the United States, even if that conduct occurred outside of the United States.”<sup>24</sup> The language of section 1091(d) would reasonably suggest that if an alleged perpetrator was “brought into” the United States via extradition, jurisdiction would be proper; moreover, being “found in” the United States also provides jurisdiction. Mr. Rutaganda was “found in” the United States. In seeking the detention of Mr. Rutaganda, American officials were simply fulfilling their duties as a party of the Genocide Convention and lawfully operating under the color of American jurisprudence.<sup>25</sup> That manipulation or coercion were elements of Operation Motown Express does not diminish the normative background with which the decision was made to use such tactics. The normative background being the treaty obligations agreed to in the various multilateral agreements the United States has entered into concerning genocide.

### **C. The Arrest of Mr. Rutaganda Did Not Violate The Extradition Treaty Or Exchange Letters Between The United States and Canada**

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<sup>22</sup> *U.S. v. Waldek, et al.*, Case No. 000-50-9 (DJAV, Nov. 17, 1947), at 34.

<sup>23</sup> Genocide Accountability Act of 2007, 18 U.S.C.A. 1091 (2009).

<sup>24</sup> *Id.*, sec. (d)(5), amended by Genocide Accountability Act of 2007, Pub. L. 110-51, sec. 2, 121 Stat. 1821.

<sup>25</sup> Foreign Relations Law of the United States Restatement (1987), sec. 404, Comment (a).

The Canadian government's best argument is that the "luring" of Mr. Rutaganda was a transnational forcible abduction. This argument fails. The boundary between domestic and international law is unclear at times. To be sure, international legal norms and domestic norms often come into conflict. The adjudication of this case should rely strongly on customary international law's historical condemnation of the crime of genocide.

The process of returning a fugitive from one state to another is generally known as the act of "rendition." Rendition can be subdivided into three categories: extradition, deportation, and abduction.<sup>26</sup> The United States does not oppose the proposition that the usual method to secure a fugitive's presence for trial is through extradition. The present case of Mr. Rutaganda is complicated by the fact that no international legal obligation exists to extradite or prosecute a fugitive in the absence of an extradition treaty between the asylum state and the state attempting to extradite the individual.<sup>27</sup> Canada's refusal to extradite Mr. Rutaganda on the grounds no extradition treaty exists between Canada and Rwanda and the view that child soldiers are victims not criminals, forced the United States to take alternative action in upholding its own international treaty obligations.<sup>28</sup> Faced with Canada's reluctance to extradite the fugitive, Operation Motown Express was the most viable option to ensure that Mr. Rutaganda had his day in court.

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<sup>26</sup> Paul Michell, *English Speaking Justice: Evolving Responses to Transnational Forcible Abduction After Alvarez-Machain*, 29 Cornell Int'l L.J. 383 (1996), 388.

<sup>27</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, art. 7, 78 U.N.T.S. 277, 282.

<sup>28</sup> Id.; *Compromis*, ¶ 5.

On January 11, 1988, a protocol was signed that amended the Treaty for Extradition between the United States and Canada.<sup>29</sup> The thrust of this protocol was to effectively eliminate transborder abductions by civilian American bounty hunters of fugitives who jumped bail in the United States and fled to Canada.<sup>30</sup> Under the protocol, bounty hunters who attempted to apprehend fugitives in Canada are now committing an offense that is subject to extradition in both countries.<sup>31</sup> Neither the Extradition Treaty between Canada and the United States, nor its subsequent protocols, expressly render the action of the United States as related to Mr. Rutaganda to be illegal or inconsistent with treaty obligations. If Canada believes that the Extradition Treaty should include a protocol prohibiting the “luring” of fugitives by executive powers of either government, diplomatic channels should be opened to reach an agreement. The diplomatic channels route, not court adjudication, is consistent with the development of the Extradition Treaty between both nations. That said, the Supreme Court of the United States has outlined the applicable principles at law that further support Operation Motown Express.

The leading U.S. case on forcible abduction by government agents is *United States v. Alvarez-Machain*.<sup>32</sup> Alvarez-Machain, a Mexican physician was indicted in the U.S. on charges relating to the kidnapping, torture, and murder in Mexico of an undercover DEA agent and Mexican pilot. The DEA arranged to have Mexican agents kidnap and fly him to Texas, where he was arrested upon arrival.<sup>33</sup> This case is critical to the present dispute because the Supreme

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<sup>29</sup> Protocol Amending the Extradition Between the United States and Canada, Jan. 11, 1988, United States-Canada, 101<sup>st</sup> Cong., 2d. Sess. (1990).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *U.S. v. Alvarez-Machain*, 504 U.S. 644 (1992).

<sup>33</sup> *Id.*, at 657.

Court set forth the guiding principles for extradition treaty analysis. The majority began its interpretation of the Extradition Treaty between the U.S. and Mexico by stating,

“The Treaty says nothing about the obligations of the United States and Mexico to refrain from forcible abductions of people from the territory of the other nation, or the consequences under the Treaty if such abduction occurs.”<sup>34</sup>

It would be absurd to propose that forcible abduction is appropriate under the U.S. and Canada Extradition Treaty, but the facts of this case are distinguishable. Mr. Rutaganda was “lured” or perhaps even tricked; nothing in the Extradition Treaty or Exchange of Letters prohibits such conduct. In *Alvarez-Machain*, the Court concludes that the Treaty does not prohibit abductions outside of its terms.<sup>35</sup> When the United States and Canada signed an Extradition Treaty, they agreed to a procedural framework by which each state may request that a fugitive present in the other state be extradited to the requesting state to face charges relating to a crime. This procedural framework was not a viable option for the United States based on the Canadian responses to the numerous extradition requests from Rwanda.

## **II. EMANUAL RUTAGANDA’S RENDITION FROM THE UNITED STATES TO RWANDA FOR THE ATROCIOUS CRIME OF GENOCIDE WOULD NOT BE A VIOLATION OF INTERNATIONAL LAW**

Accountability is not limited to the laws of one nation. Accountability extends to the laws of humanity. There exist such crimes that are so atrocious and disheartening that a consensus lies in taking whatever steps necessary to prevent them from ever occurring again. Genocide is one of these crimes. The world, as a whole, through its designated representatives, has agreed to take steps to prevent the needless mass extinction of human life. However, when we fail and genocide

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<sup>34</sup> *Alvarez-Machain*, 504 U.S. at 663.

<sup>35</sup> *Alvarez-Machain*, 504 U.S. 644, at 666.

does take place, international law requires a nation to hold the perpetrators accountable. The world has grown tired of being helpless when it comes to holding people accountable for the needless destruction of human life. International law has also recognized that at times it must defer to the laws of the nations crippled the most by the act of genocide. When the perpetrators of genocide include child soldiers, the requirement of accountability does not change.

**A. Emanuel Rutaganda May Still Be Extradited To Rwanda Even If No Treaty Currently Exists Between Either the United States or Canada and Rwanda**

Traditionally, extraditions have been pursuant to bilateral treaties that are in effect between the nation holding the fugitive and the nation requesting extradition of the fugitive. The laws of the United States also recognize that to surrender an alleged fugitive to another nation, a treaty in effect governs the request.<sup>36</sup> If the extradition is granted, the Secretary of State is to then hand over the fugitive to the agent of the foreign government, pursuant to the provisions within the treaty.<sup>37</sup> The Third Restatement of the Foreign Relations Law of the United States reiterates this understanding:

A state party to an extradition treaty is obligated to comply with the request of another state party to that treaty to arrest and deliver a person duly shown to be sought by that state

- (a) for trial on a charge of having committed a crime covered by the treaty within the jurisdiction of the requesting state, or
- (b) for punishment after conviction of such a crime and flight from that state<sup>38</sup>

However, when no bilateral treaty specifically regarding extradition exists, and a request to extradite a fugitive is made by another nation where a serious crime took place, the nation holding the fugitive may still grant the extradition.

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<sup>36</sup> 18 U.S.C.S. § 3184 (2009).

<sup>37</sup> 18 U.S.C.S. § 3186 (2009).

<sup>38</sup> Restatement (Third) of Foreign Relations Law of the United States § 475 (1987).

Other treaties, besides bilateral treaties concerning extradition, are often times in effect and allow for the extradition of fugitives. International Criminal Tribunals are often granted jurisdiction over fugitives who flee a nation after committing serious crimes against humanity, including genocide. Currently, a treaty is in effect between the United States of America and an International Criminal Tribunal for the prosecution of the act of genocide that took place between January and December of 1994 in Rwanda.<sup>39</sup> This treaty obligates the United States to surrender to the Tribunal for prosecution persons found in the United States accused of violating the Statutes of the Tribunal.<sup>40</sup> It is clear the international community requires holding those accountable for genocide and bringing them to justice through extradition.

The fact that no bilateral extradition agreement exists with Rwanda does not prevent the United States from extraditing Mr. Rutaganda. Nevertheless, because Rwanda, and not the Tribunal, has requested the extradition of Mr. Rutaganda, it may not be appropriate to utilize the Tribunal agreement as grounds to extradite Mr. Rutaganda to a Rwandan Court. However, there are other methods to extradite pursuant to customary international law.<sup>41</sup> Reciprocity and comity allow for the extradition where no treaty is present.<sup>42</sup> Reciprocity is simply an exchange of fugitives between two nations. It also allows for extradition conditioned on promise that in the

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<sup>39</sup> Agreement on Surrender of Persons Between the Government of the United States and the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Jan. 24, 1995, T.I.A.S. No. 12601 [hereinafter referred to as the “Tribunal”].

<sup>40</sup> *Id.* at art. I.

<sup>41</sup> Christopher M. Supernor, *International Bounty Hunters for War Criminals: Privatizing the Enforcement of Justice*, 50 A.F. L. Rev. 215, 224 (2001).

<sup>42</sup> *Id.*

future the favor will be returned.<sup>43</sup> Comity is the act of extradition chosen on grounds of goodwill or courtesy.<sup>44</sup> These methods of extradition are not often utilized by nations but where the charge of genocide is made and no bilateral extradition treaty exists, these methods can be appropriately utilized to prevent injustice from occurring.

Another instrument to validate the extradition of Mr. Rutaganda can be found in the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>45</sup> The Genocide Convention has been ratified by the United States and acceded to by Rwanda. Article VI of the Genocide Convention provides that:

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Given the seriousness of the crime of genocide, the United Nations and all its members feels it is necessary to place the obligation of holding fugitives accountable onto every member of the Convention.

The duty to hold fugitives like Mr. Rutaganda accountable is an affirmative one. Nations who harbor these fugitives prevent justice from being served to all the victims that died at the hands of these fugitives. The authority to extradite in the Genocide Convention and in the customary international law principals of reciprocity and comity exist to prevent nothing from taking place. The international community is well aware that every nation may not have bilateral extradition treaties with one another. Provisions such as Article VI of the Genocide Convention

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<sup>43</sup> Id. at 225.

<sup>44</sup> Id.

<sup>45</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec, 9, 1948, 78 U.N.T.S. 277 [hereinafter referred to as the “Genocide Convention”].

are created for this purpose. The intent of Rwandans and the international community is clear, perpetrators of genocide must be held accountable, if not by an International Tribunal then by the justice system of the nation who has suffered these crimes against it.

**B. Even As a Child Soldier, Emanuel Rutaganda, Must Still Be Held Accountable For his Role in the Genocide of the Tutsi Children**

It is unfortunate that children around the world are recruited to serve in national armies and paramilitaries. Protecting child soldiers has become such a high priority, the United Nations created the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,<sup>46</sup> which the United States and Rwanda have both adopted. Article III requires that special protection be afforded to persons under the age of 18. Declarations are also required upon ratification or accession holding what age voluntarily recruitment will be set by the nation.<sup>47</sup> There are a number of nations that have set the age of voluntarily recruitment below the age of 18. However, this Convention was intended to hold the recruiters and exploiters of child soldiers accountable, not the child soldiers themselves.

Sierra Leone suffered a similar tragedy to that of the Rwandan genocide. During Sierra Leone's civil war, child soldiers were recruited both voluntarily and involuntarily to inflict some of the most violent crimes against their fellow citizens.<sup>48</sup> Regardless of the fact that many of the crimes were committed by children, citizens of Sierra Leone wanted the child soldiers to be held

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<sup>46</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, G.A. Res. 54/263, Doc. A/54/49.

<sup>47</sup> Id. at art. 3(2).

<sup>48</sup> Matthew Happold, *Child Soldiers: Victims or Perpetrators?*, 29 U. La Verne L. Rev. 56, 79, (2008).

accountable.<sup>49</sup> After much discussion over what age should child soldiers be held accountable and to what extent, the United Nations and the government of Sierra Leone reached an agreement.<sup>50</sup> Article 7 of the Statute for the Special Court of Sierra Leone governed the Court's jurisdiction for persons over 15 years of age:<sup>51</sup>

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

It is important to note that accountability does not equate to incarceration. As evidenced from Article 7 of the Statute for the Special Court of Sierra Leone, it is more important for the citizens of Sierra Leone to know that child soldiers can be held accountable than it is to incarcerate them. Further, paragraph 2 of Article 7 prevents incarceration of juveniles while promoting rehabilitation. When the victims of human right violations feel they have no recourse for the suffering they have endured and when the victims feel that the perpetrators of the crimes against them will go unpunished, 2 things may happen: "1) civilians will take justice into their own hands if they feel ignored, and 2) children will return to take up arms due to rejection by

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<sup>49</sup> Id. at 80.

<sup>50</sup> Id. at 80-83.

<sup>51</sup> S.C. Res. 1315, (Aug. 14, 2000).

society.”<sup>52</sup> The integrity of the criminal justice system in place also suffers if the people who committed some of the most horrific crimes of a war are not held accountable.

## CONCLUSION

The Extradition Treaty between the United States and Canada is narrow in scope with the sole purpose of imposing obligations regarding the extradition process. As the process required more nuanced terms and provisions, protocols and amendments have been made through the diplomatic channels of the respective nations. For this Court to recognize a treaty violation would interfere with executive branch authority over foreign affairs. The International Court of Justice’s role is not to amend, supplement, or create treaty obligations between the United States and Canada.

The extradition of Mr. Rutaganda from the United States to Rwanda is valid pursuant to the jurisdiction afforded to Rwanda for the acts of genocide committed by Mr. Rutaganda. In addition, the customary international law principals of reciprocity and comity provide for the United States to extradite Mr. Rutanganda without a bilateral extradition treaty in effect with Rwanda. Holding Mr. Rutanganda accountable for his acts of genocide and the death of 275 children is absolutely necessary. Regardless of fact that Mr. Rutanganda was 15 years old at the time of his crimes, the Special Court of Sierra Leone has shown that accountability is necessary to heal a nation. The sovereign nation of Rwanda has a duty to its citizens to see that justice prevails.

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<sup>52</sup> Mark Iacono, *The Child Soldier of Sierra Leone: Are They Accountable for their Actions in War?*, 26 Suffolk Transnat’l L. Rev. 445, 464 (2003).