

**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#: 2010-16R**

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## **STATEMENT OF JURISDICTION**

The parties to this dispute, Canada and the United States, present this matter to the International Court of Justice pursuant to Article 36(1) of the Statute of the International Court of Justice.<sup>1</sup> The Parties have met all the requirements of Article 36(1). Both parties have stipulated to the Court's jurisdiction and agree to adhere to the conclusion of this Court.

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<sup>1</sup> Statute of the International Court of Justice, art. 36, June 26, 1945; 59 Stat. 1055.

## STATEMENT OF FACTS

Emanuel Rutaganda was born in Canada and grew up in Kigali, Rwanda.<sup>2</sup> At age fifteen, he was recruited by the *Interhamwe* militia, and remained a member during the Rwandan genocide of 1994.<sup>3</sup> That same year, he and his mother relocated to Canada.<sup>4</sup>

In 2001, an indictment was issued for the arrest of Rutaganda and six other members of the *Interhamwe* for their murder of 275 Tutsi children during the Boutaire High School massacre.<sup>5</sup> Since 2001, Rwanda has made numerous requests to the Canadian government for Rutaganda's extradition, and these requests have been ignored.<sup>6</sup> A Red Notice was issued by INTERPOL in 2002 seeking Rutaganda's arrest, and he was subsequently featured on the NBC television show "The Wanted."<sup>7</sup> Following notification that Rutaganda's mother was entering the United States for a specialized medical procedure, Immigration and Customs Enforcement (ICE) created a plan to apprehend Rutaganda, which was subsequently approved by President Obama.<sup>8</sup> Following surgery, ICE sent an email to Rutaganda's BlackBerry instructing him that his mother was near death and asking for him.<sup>9</sup> Using a passport that was not his own, Rutaganda entered the United States and arrived at the hospital, where he was arrested by ICE

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<sup>2</sup> Compromis, ¶ 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶ 3.

<sup>5</sup> *Id.* at ¶ 4.

<sup>6</sup> *Id.* at ¶ 5.

<sup>7</sup> *Id.* at ¶ 5, 7.

<sup>8</sup> *Id.* at ¶ 8, 9.

<sup>9</sup> *Id.* at ¶ 9.

authorities.<sup>10</sup> Canada was notified, and subsequent immigration and judicial decisions have affirmed Rutaganda's extradition.<sup>11</sup>

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<sup>10</sup> *Id.* at ¶ 10.

<sup>11</sup> *Id.*

## **QUESTIONS PRESENTED**

- I. Whether 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/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 Rutaganda lacked criminal culpability; and/or the courts of Rwanda are not capable of providing Rutaganda with a fair trial.

## SUMMARY OF THE ARGUMENT

The government is attempting to shield a genocide suspect under the concept of sovereignty, yet they cannot point to any instance of Americans exacting a specific effect on Canada. The only action the Canadian government can point to in attempting to establish a violation of sovereignty is an email sent to Rutaganda's BlackBerry by American agents on American soil. This action had no significant effect on Canada, and a number of courts have established that luring is an acceptable method of bringing an individual to trial. The U.S. also did not violate any of its obligations under the U.S.-Canada Extradition Treaty, because there can be no good faith violation of the Treaty when Canada is required to extradite Rutaganda upon request. Additionally, the Treaty is void to the extent it conflicts with peremptory norms condemning genocide under the Geneva Conventions. Under the Geneva Conventions and the Rome Statute of the International Criminal Court, the U.S. has a duty to punish or extradite Rutaganda, and there is no indication that Rutaganda will not receive a fair trial in Rwanda, because Rwanda's constitution has provisions affording fair trials to defendants, and these provisions are in practice.

## ARGUMENT

I. **THE US DID NOT VIOLATE CANADA'S TERRITORIAL SOVEREIGNTY IN LURING RUTAGANDA BECAUSE THERE WAS NO ENTRY INTO CANADIAN TERRITORY, NO EFFECT ON CANADA, AND BECAUSE LURING IS AN ACCEPTABLE METHOD OF BRINGING AN INDIVIDUAL TO TRIAL**

Territorial sovereignty is the principle of international law that permits a country to regulate activities taking place within its territorial boundaries.<sup>12</sup> To establish the United States' (U.S.'s) luring of Rutaganda violates this principle, the action taken by the U.S. must either

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<sup>12</sup> RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402(1).

affect Canadian territory directly by being performed on Canadian soil, or have significant effects within the territory, such as on its economy.<sup>13</sup> The U.S.’s actions offended neither of these principles.

1. *Rutaganda was on U.S. Soil at the Time of His Arrest*

The Compromis establishes we are concerned with the luring of Rutaganda,<sup>14</sup> specifically the email sent to Rutaganda’s BlackBerry.<sup>15</sup> The email was sent by agents on American soil.<sup>16</sup> In order for this email to violate Canada’s sovereignty, Canada must establish the action of the United States had a substantial effect within Canada.<sup>17</sup> Yet, email is worldwide, and millions are sent daily. There can no more be a “significant effect” on Canada through the sending of this email than through the sending of any other email to a Canadian recipient.

2. *Luring is Recognized as an Acceptable Method of Bringing an Individual to Trial*

International law has recognized a distinction between “luring” under false pretenses and forcible abduction.<sup>18</sup> The United States has a long history of finding no violation of rights when an individual is lured into a country, or even when forcibly kidnapped.<sup>19</sup> Courts worldwide have

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<sup>13</sup> *Id. at* 402(1)(c), § 402(2).

<sup>14</sup> Compromis, ¶ 13(a).

<sup>15</sup> *Id. at* ¶ 9.

<sup>16</sup> *Id.*

<sup>17</sup> RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 403(1)(b).

<sup>18</sup> *Prosecutor v. Dokmanovic*, Case No. IT-95-13a-PT, Decision on the Motion for Release (Oct. 22, 1997), in *2 Substantive and Procedural Aspects of International Criminal Law (Documents and Cases)*, 1551 (Gabrielle Kirk McDonald & Olivia Swaak-Goldman, eds. 2000).

<sup>19</sup> See Michael Scharf, “The Tools for Enforcing International Criminal Justice in the New Millennium: Lessons from the Yugoslavia Tribunal.” 49 DePaul L. Rev. 925, 970; *US v. Alvarez-*

agreed on the luring issue, with the German High Court reaching a similar decision in *Stocke v Germany*,<sup>20</sup> and the International Criminal Tribunal in *Prosecutor v. Dokmanovic*.<sup>21</sup> In *U.S. v. Alvarez-Machain*, its seminal extradition case, the U.S. Supreme Court held, “Due process of law is satisfied . . . there is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.”<sup>22</sup> In *Dokmanovic*, Slavko Dokmanovic was lured into Croatia by the United Nations, where he was arrested and brought to trial before the ICTY.<sup>23</sup> While *Alvarez-Machain* has had worldwide effect, *Dokmanovic* represents the first decision by an international tribunal to address a luring issue. The court was careful to distinguish between luring and the forcible abduction, indicating that forcible abduction may be the basis for subsequent reversal.<sup>24</sup>

The U.S.’s act of luring is consistent with international law and the U.S. is justified in arresting Rutaganda and following proper extradition protocol. Precedent dictates that there is no violation of international law when an individual is brought to trial by a country with the right to do so and there is no objection from his country of origin.<sup>25</sup> Canada has objected to

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*Machain*, 504 U.S. 655, 670 (1992); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952); *Ker v. Illinois*, 119 U.S. 436, 444 (1886).

<sup>20</sup> *Stocke v. Germany*, BverfG, Nov. 5, 2003, docket no. 2 BvR 1506/03, at [http://www.bverfg.de/entscheidungen/rs20031105\\_2bvr150603en.html](http://www.bverfg.de/entscheidungen/rs20031105_2bvr150603en.html) (2003).

<sup>21</sup> *Dokmanovic*, Case No. IT-95-13a-PT, at ¶ 57.

<sup>22</sup> 504 U.S. at 662, quoting *Frisbie*, 342 U.S. at 522.

<sup>23</sup> *Dokmanovic*, Case No. IT-95-13a-PT, at ¶ 9-11.

<sup>24</sup> *Id.* at ¶ 78.

<sup>25</sup> *U.S. v. Wilson*, 732 F.2d 404 (1984); *Frisbie* at 522; *Ker*, 119 U.S. at 444, *Dokmanovic* at ¶ 61; *Stocke*, docket no. 2 BvR 1506/03, at ¶ 13.

Rutaganda's extradition and subsequent trial; however, the *Ker-Frisbie* doctrine is still applicable. In deciding *Alvarez-Machain*, the court considered this same argument and relied instead on a textual analysis of the extradition treaty between the U.S. and Mexico.<sup>26</sup> There is no extradition treaty between the U.S. or Canada and Rwanda,<sup>27</sup> but the treaty at issue is between the U.S. and Canada.

In *Stocke v. Germany*, the court evaluated the luring of a Yemeni citizen into Germany, where he was arrested and repatriated to the U.S. for prosecution. The court held that

even if a violation of Yemen's sovereignty had occurred . . . by direction of the FBI, in Yemen, this . . . would not be contrary to . . . criminal prosecution and extradition . . . . [N]o general rule of international law exist[s] that would oblige the state . . . to withdraw the charge if a person had been induced to commit the offence, and to enter the state . . . by a so-called agent provocateur, by means of trickery, and violating the territorial sovereignty of a foreign state.<sup>28</sup>

This invalidates Rutaganda's argument that he has been denied his constitutional right to due process by the act of luring.

Of additional concern to the court in *Stocke* was the lack of collusion between Germany and the United States in the luring of Stocke into Germany. The court concentrates on Stocke's voluntary decision to leave Yemen, and finds that the luring falls far short of forceful abduction. As in both *Stocke* and *Dokmanovic*, there is no question that luring occurred, but it is equally clear that Rutaganda made a voluntary choice to leave Canada, and is subjected to U.S. law as soon as he steps onto U.S. soil. This basic jurisdictional fact cannot be avoided by Rutaganda's claim that he was lured into the country.

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<sup>26</sup> 504 U.S. at 663.

<sup>27</sup> *Compromis*, ¶ 13(b).

<sup>28</sup> *Stocke*, docket no. 2 BvR 1506/03, at ¶ 13.

3. *Rutaganda's Capture Does Not Violate His Rights Under Article 9 of the International Covenant on Civil and Political Rights*

Nor does the luring of Rutaganda violate his internationally protected rights under the International Covenant on Civil and Political Rights (ICCPR) or customary international law. Under Article 9 of the ICCPR, Rutaganda retains the right to be free from arbitrary arrest and detention.<sup>29</sup> These rights have absolutely been protected. At the time of his arrest, an INTERPOL Red Notice had been issued for Rutaganda. The purpose of such a notice is intended to “assist national police forces in identifying or locating these persons, with a view to their arrest and extradition.”<sup>30</sup> Once Rutaganda set foot on American soil, the Red Notice was activated, and the U.S. is permitted to take measures to detain and arrest Rutaganda. The fact that Rutaganda was not arrested until he entered U.S. soil further protects these rights.<sup>31</sup> There was no restriction of his person until he was actually arrested at the U.S. hospital. Additionally, at the time of his arrest, Rutaganda was traveling on a fake passport. This attempt to avoid capture is itself a violation of U.S. law, and provides an independent basis for the U.S. to arrest Rutaganda outside of the INTERPOL notice.

4. *Nothing In International Law Prohibits Luring*

There is no principle of international law that prevents luring in order to bring an individual before a tribunal for trial.<sup>32</sup> Nations that have decided cases on luring have found the

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<sup>29</sup> International Covenant on Civil and Political Rights (ICCPR), art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>30</sup> Interpol – Wanted, <http://www.interpol.int/Public/Wanted/Default.asp> (last visited Jan. 13, 2010).

<sup>31</sup> *See, e.g. Dokmanovic*, Case No. IT-95-13a-PT, at ¶ 75.

<sup>32</sup> *See Alvarez-Machain*, 504 U.S. at 663; *see also Dokmanovic*, Case No. IT-95-13a-PT, at ¶ 57; *Stocke*, docket no. 2 BvR 1506/03, at ¶ 56.

practice to be acceptable when there is no forcible abduction or infringement on voluntary choice.<sup>33</sup> Despite the luring that occurred here, Rutaganda's choice to leave Canada was voluntary.

There is no general duty to extradite in the absence of a treaty,<sup>34</sup> but "just as customary international law imposes no duty on a state to extradite, it also puts on it no obligation not to extradite."<sup>35</sup> This exactly describes the proposed rendition of Rutaganda. Further, the U.S. may handle its own affairs without interference from Canada.<sup>36</sup> It has been stated that, in accordance with the Charter of the United Nations, "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State."<sup>37</sup>

5. *The U.S. is Not Interfering in Canada's Affairs Because the U.S. Has Territorial Sovereignty Over its Nation and Those Found Within*

While Rutaganda resided in Canada, Canada was under no obligation to extradite him to Rwanda. The U.S. respects Canada's decisions regarding its own citizens. Once Rutaganda

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<sup>33</sup> See, e.g., *Dokmanovic*, Case No. IT-95-13a-PT, at ¶ 68; *Stocke*, docket no. 2 BvR 1506/03, at ¶ 57.

<sup>34</sup> GEOFF GILBERT, *TRANSNATIONAL FUGITIVE OFFENDERS IN INTERNATIONAL LAW: EXTRADITION AND OTHER MECHANISMS* 47, Kluwer Law International (1998); S. PRAKASH SINHA, *ASYLUM AND INTERNATIONAL LAW* 73, Martinus Nijhoff (1971); JOHN DUGGARD, *INTERNATIONAL LAW: A SOUTH AFRICAN PERSPECTIVE* 210, Juta & Co. Ltd., (2005).

<sup>35</sup> S. PRAKASH SINHA, *ASYLUM AND INTERNATIONAL LAW* 73, Martinus Nijhoff (1971).

<sup>36</sup> Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV) at 121, UN GAOR, 25<sup>th</sup> Sess., Supp. No. 28, UN Doc. A/8028 (Oct. 24, 1970).

<sup>37</sup> *Id.*

voluntarily entered the U.S. on a false passport,<sup>38</sup> he became subject to the jurisdiction of the U.S. While Canada may claim a violation of their sovereignty,<sup>39</sup> the U.S. has an absolute right to regulate what happens in its territory, including the expulsion of people entering illegally.<sup>40</sup> The right of States to exclusive territorial jurisdiction has been recognized by all States.<sup>41</sup> Nothing about the U.S.'s planned rendition of Rutaganda in and of itself violates international law, and nothing about the planned rendition violates Canada's sovereignty or international law.

The luring and extradition of Rutaganda from Canada to the U.S., for subsequent extradition to Rwanda, does not violate Canada's territorial sovereignty because there was no effect on Canada's territory that resulted from the luring. Luring has repeatedly been held to be an acceptable method of capture, and there is no violation of Rutaganda's political or civil rights under either the ICCPR or customary international law.

## **II. THE U.S.'S LURING DOES NOT VIOLATE ITS OBLIGATIONS UNDER THE U.S.-CANADA EXTRADITION TREATY**

### *1. Canada's Obligation to Prevent Genocide Invalidates the U.S.-Canada Extradition Treaty to the Extent it Allows Canada to Shelter Rutaganda*

Canada is a party to the Vienna Convention on the Law of Treaties,<sup>42</sup> which voids any

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<sup>38</sup> Compromis, ¶ 10.

<sup>39</sup> Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV) at 121, UN GAOR, 25<sup>th</sup> Sess., Supp. No. 28, UN Doc. A/8028 (Oct. 24, 1970).

<sup>40</sup> RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402(1) (1987).

<sup>41</sup> M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 Law & Contemp. Probs. 63, 73 (1996).

<sup>42</sup> Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 U.N.T.S. 331 [hereinafter VCLT].

treaty in conflict with a peremptory norm of international law at the time of its conclusion.<sup>43</sup> The U.S.-Canada Extradition Treaty<sup>44</sup> entered into force in 1971. Prior to this, Canada signed the Convention on the Punishment and Prevention on the Crime of Genocide.<sup>45</sup> This Convention establishes an obligation among all parties to recognize genocide as “a crime under international law which they undertake to prevent or punish.”<sup>46</sup> Genocide, as the “crime of crimes,”<sup>47</sup> carries a *jus cogens* duty to punish.<sup>48</sup> Killing 275 Tutsi children, as Rutaganda is accused of doing while a member of *Interhamwe*,<sup>49</sup> “a genocidal regime,”<sup>50</sup> certainly qualifies as genocide.<sup>51</sup> By sheltering a perpetrator of genocide, Canada itself is violating the Genocide Convention<sup>52</sup> and is in violation of the peremptory norm against this “crime of crimes.” The U.S.-Canada Treaty on Extradition is void under the Vienna Convention as it pertains to this issue,<sup>53</sup> and therefore the

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<sup>43</sup> VCLT at art. 53.

<sup>44</sup> Extradition Treaty Between the United States of America and Canada, U.S.-Can., Dec. 3, 1971, 27 U.S.T. 983 [hereinafter Extradition Treaty].

<sup>45</sup> Convention on the Punishment and Prevention of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

<sup>46</sup> *Id.* art. 1.

<sup>47</sup> *Prosecutor v Rutaganda* Case No. ICTR 96-3-T, Judgment and Sentence, ¶ 451, December 6, 1999.

<sup>48</sup> Special Rapporteur on State Responsibility, *First Report on State Responsibility*, ¶¶ 97 *et seq.*, delivered to the International Law Commission UN Doc. A/CN.4/490/Add. 1, (July 24, 1988).

<sup>49</sup> *Compromis*, ¶ 4.

<sup>50</sup> H.R. Con. Res. 406, 108th Cong (2004).

<sup>51</sup> Genocide Convention at art. 2(a).

<sup>52</sup> *Id.* at art. 2(e).

<sup>53</sup> *See generally* VCLT.

U.S.'s actions cannot violate the Treaty.

2. *The Luring of Rutaganda Does Not Constitute a Good Faith Violation of the U.S.-Canada Extradition Treaty, as Extradition Would be Required Under its Terms*

According to the Vienna Convention on the Law of Treaties, a treaty's interpretation hinges upon the "ordinary meaning to be given to the terms of the treaty in their context and in the light of its purpose and context."<sup>54</sup> This textual approach is regarded as compelling law before this Court.<sup>55</sup> Canada is a party to the Convention.<sup>56</sup> The U.S. is a signatory, and describes it as "the authoritative guide to current treaty law and practice."<sup>57</sup>

3. *The Only Applicable Provision of the Extradition Treaty is Article 3(2), Which Outlines Extradition Procedures for Those Accused of Crimes Committed Outside the U.S.*

The scope of the Extradition Treaty is limited to two sets of persons: those found in one contracting State accused of an offense committed in the other contracting State (e.g., a Canadian committing robbery in America), and persons accused of committing an offense "outside [the other state] under the conditions specified in Article 3(3) of this Treaty."<sup>58</sup> Rutaganda is accused of committing mass murder of Tutsi children in Rwanda.<sup>59</sup> Interpreted properly, Article 3(3), subsequently amended as Article 3(2), requires Canada to extradite Rutaganda upon request, and using "self-help" to realize the same result cannot give rise to a good faith violation of the Treaty.

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<sup>54</sup> *Id.* art. 31(a).

<sup>55</sup> S.K. VERMA, AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 287 (2004).

<sup>56</sup> *See* VCLT 42.

<sup>57</sup> S. Exec. Doc. L., 92d Cong., 1st Sess. (1971) 1.

<sup>58</sup> Extradition Treaty at art. 3.

<sup>59</sup> *Compromis*, ¶ 4.

4. *Canada is Compelled to Extradite Rutaganda Upon Request, Therefore, the U.S.'s Use of "Self Help" Does Not Violate Any Good-Faith Obligation*

Article 3(2) requires Canada to grant extradition of Rutaganda "if the laws of the requested State provide for jurisdiction over such an offense committed in similar circumstances."<sup>60</sup> In this case, "similar circumstances" would be if Rutaganda, a Canadian citizen,<sup>61</sup> committed genocide in Rwanda and fled to the U.S. Canada's criminal code provides for universal jurisdiction of the crime of genocide committed by a Canadian citizen.<sup>62</sup> As Canada would have jurisdiction in these "similar circumstances," Canada is compelled to extradite Rutaganda upon request.<sup>63</sup> There is nothing in the Treaty which establishes an affirmative obligation to use the extradition process set forth in the Treaty.<sup>64</sup> A good-faith violation can only occur when a treaty provision permits or requires Canada to refrain from extraditing a suspect.<sup>65</sup> While the U.S.'s actions may be irregular, they can not violate an obligation of "good faith"<sup>66</sup> where the Treaty's terms compel the same result.

**III. THE EXCHANGE OF LETTERS REGARDING TRANSBORDER ABDUCTION ARE NON-BINDING AND MERELY CLARIFY THE OBLIGATIONS OF THE EXTRADITION TREATY, AND THERE IS NO INDICATION THAT LURING ENCOURAGES TRANSBORDER ABDUCTION**

The U.S. and Canada executed the Exchange of Letters when they signed the Protocol

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<sup>60</sup> Extradition Treaty at art 3(2).

<sup>61</sup> Compromis, ¶ 2.

<sup>62</sup> Crimes Against Humanity and War Crimes Act, S.C. 2000 c. 34, sec. 6.

<sup>63</sup> Extradition Treaty at art. 3(2).

<sup>64</sup> *See generally* Extradition Treaty.

<sup>65</sup> *E.g.*, Extradition Treaty at art. 4(1), art. 6.

<sup>66</sup> VCLT at art. 26.

Amending the Treaty on Extradition.<sup>67</sup> Amending a treaty is permitted by the Vienna Convention.<sup>68</sup> The Exchange of Letters “concern[s] the protocol amending the treaty on extradition”<sup>69</sup> and constitutes a “related document” under the Vienna Convention.<sup>70</sup> Thus, the same interpretation rules apply.

The Exchange of Letters contains three relevant sections: transborder abduction by bounty hunters is an extraditable offense,<sup>71</sup> the parties agree to deter transborder abduction,<sup>72</sup> and the letter is “not intended to create or otherwise alter legal obligations . . . .”<sup>73</sup> The Vienna Convention requires consideration of the Exchange of Letters as “an agreement relating to the treaty.”<sup>74</sup>

Both Canada and the U.S. acknowledge that the Letters do not create or alter the U.S.’s legal obligations under the Extradition Treaty, they merely clarify them.<sup>75</sup> If there has been no violation of its obligations under the Extradition Treaty, there has also been no violation of the Exchange of Letters. This Court should find no new obligations created by the Exchange of

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<sup>67</sup> Exchange of Letters Constituting an Understanding Between the Government of Canada and the Government of the United States of America Concerning the Protocol Amending the Treaty on Extradition Signed at Ottawa on January 11, 1988, U.S.-Can., Jan. 11, 1988, 27 I.L.M. 422 (hereafter Exchange of Letters).

<sup>68</sup> VCLT at art. 39.

<sup>69</sup> See Exchange of Letters.

<sup>70</sup> VCLT at art. 2(1)(a).

<sup>71</sup> See Exchange of Letters.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> VCLT at art. 3(2)(a).

<sup>75</sup> See Exchange of Letters.

Letters, as “[a] treaty, even if of universal or normative nature, will not bind the non-parties unless expressly or by their conduct, they manifest their intention to be bound . . . .”<sup>76</sup> The U.S. has made it explicit that it does not intend to be bound by any new or changed obligations.<sup>77</sup> Even if this Court finds that the Exchange of Letters requires an additional obligation to cooperate in deterring transborder abductions committed by bounty hunters,<sup>78</sup> there is no suggestion how luring would negatively impact the U.S.’s efforts to deter these abductions.

**IV. RUTAGANDA COMMITTED A SERIOUS INTERNATIONAL CRIME BY PARTICIPATING IN THE BOUTAIRE HIGH SCHOOL MASSACRE AND THERE IS A CORRESPONDING DUTY TO PUNISH OR EXTRADITE HIM**

According to the Rome Statute of the International Criminal Court (Rome Statute), Rutaganda committed mass murder, a crime against humanity, when he participated in the Boutaire High School massacre.<sup>79</sup> Article 7 of the Rome Statute states that murder is a crime against humanity “when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>80</sup> Rutaganda helped systematically kill 275 Tutsi children, a disfavored ethnic group, by setting their school on fire and shooting anyone trying to escape.<sup>81</sup>

The Preamble to the Rome Statute urges signatories to assure that those who commit

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<sup>76</sup> See Verma at 287.

<sup>77</sup> See Exchange of Letters.

<sup>78</sup> *Id.*

<sup>79</sup> Rome Statute of the International Criminal Court art. 7, ¶ 1(a), July 17, 1998, 2187 U.N.T.S. 90.

<sup>80</sup> *Id.*

<sup>81</sup> Compromis, ¶ 4.

serious international crimes are punished.<sup>82</sup> In the Preamble, the signatories affirmed that “the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.”<sup>83</sup> The signatories also confirmed the duty of every State “to exercise its criminal jurisdiction over those responsible for international crimes.”<sup>84</sup> Under this Statute, there is undoubtedly an international obligation to punish Rutaganda for his actions at the Boutaire High School Massacre.

Rutaganda has also violated the Geneva Convention’s Common Article Three, which prohibits “violence to life and person, in particular murder” of people not actively involved in non-international hostilities.<sup>85</sup> This provision is especially relevant here, because the Rwandan genocide of 1994 was a non-international conflict, and the children killed in the Boutaire High School Massacre were not participants in the conflict.

All four Geneva Conventions impose a duty to prosecute or extradite those who have committed grave breaches of the Conventions, including willful killing.<sup>86</sup> This duty requires that

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High

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<sup>82</sup> *See* Rome Statute.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, ¶ 1(a), Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31.

<sup>86</sup> *Id.* at art. 49, 50; *see also*, M. CHERIF BASSIOUNI & EDWARD M. WISE, *AUT DEDERE AUT JUDICARE: THE DUTY TO EXTRADITE OR PROSECUTE IN INTERNATIONAL LAW* 14-15, Martinus Nijhoff (1995).

Contracting Party has made out a prima facie case.<sup>87</sup>

Further, since both the U.S. and Rwanda are parties to the Geneva Conventions,<sup>88</sup> the U.S. has a duty to either prosecute Rutaganda or extradite him if Rwanda can make a prima facie case. Based on the facts of Rutaganda's indictment, Rwanda has done so. Because the U.S. has made a decision not to prosecute Rutaganda, it is required to extradite him.

## **V. RWANDA HAS PROVISIONS THAT AFFORD FAIR TRIALS TO DEFENDANTS, AND IS IN COMPLIANCE WITH THE ICCPR**

### *1. Rwanda is a Signatory to the ICCPR, and the Covenant Promises a Fair Trial*

Canada, the U.S., and Rwanda are all signatories to the ICCPR.<sup>89</sup> The Covenant states, "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."<sup>90</sup> The Covenant defines specific due process rights under Article 14 that shall be afforded to the accused. These include: the right to be equal before the courts, the right to be presumed innocent until proven guilty, the right to counsel, the right to know the charges, the right to a speedy trial, the right against self-incrimination, and the right to appeal.<sup>91</sup>

Rwanda has committed itself to follow the provisions of the ICCPR. The Rwandan Constitution states that upon publication, "international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than

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<sup>87</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 49, 50, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31.

<sup>88</sup> *Id.*

<sup>89</sup> TREATIES IN FORCE 372-73 (United State Department of State, 2009).

<sup>90</sup> ICCPR at art. 14.

<sup>91</sup> *Id.*

organic laws and ordinary laws except in the case of non-compliance.”<sup>92</sup> The ICCPR is the primary source of Rwandan law regarding human rights, and supersedes even domestic law. A country that accords much weight to its treaties is unlikely to ignore them.

2. *Both Rwanda's Constitution and Criminal Code Provide For a Fair and Public Hearing by a Competent Independent and Impartial Tribunal*

Article 18 of the Rwandan Constitution gives the “right to be informed of the nature and cause of charges and the right to [a] defence.”<sup>93</sup> Article 19 requires that “[e]very person accused of a crime . . . be presumed innocent until his or her guilt has been proved . . . in a public and fair hearing in which all the necessary guarantees for defence have been made.”<sup>94</sup> Article 141 demands public trials and decisions.<sup>95</sup> Article 39 of the Rwandan Criminal Code demands the right to counsel, including the right of indigents to have counsel appointed by the state.<sup>96</sup> Article 64 provides counsel with access to the prosecutor’s file to aid in their defense.<sup>97</sup>

These represent the current laws followed by the Rwandan government and judiciary. Canada alleges that these procedures exist, but do not actually occur. There is no indication that Rutaganda will not receive a fair trial in Rwanda. Allegations and speculation are not reasons to refuse extradition.

3. *The U.S. State Department Human Rights Report for Rwanda Establishes that Rwanda Follows Fair Trial Procedures*

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<sup>92</sup> The Constitution of the Republic of Rwanda art. 190.

<sup>93</sup> *Id.* at art. 18.

<sup>94</sup> *Id.* at art. 19.

<sup>95</sup> *Id.* at art. 141.

<sup>96</sup> Code Criminal art. 39 (Rwanda).

<sup>97</sup> *Id.* at art. 64 (Rwanda).

The U.S. State Department has conducted a human rights report on Rwanda, and the findings suggest Rwanda is capable of providing a fair trial and acting in accordance with due process.<sup>98</sup> As previously mentioned, Rwandan courts allow for defendants to be present, cross-examine witnesses, and present witnesses and evidence on their own behalf.<sup>99</sup> Defendants have the right to an attorney, and access to the prosecutor's file.<sup>100</sup> Defendants in the Rwandan court system also have the right to appeal.<sup>101</sup>

This report states that these rights are constitutionally granted to defendants in Rwanda and are being used in trials as a matter of course. With these elements both on paper and in practice, Rutaganda will receive a fair trial by the Rwandan judiciary. Rendition of Rutaganda to Rwanda will not violate his right to a fair trial under the ICCPR.

### **CONCLUSION**

Rendition of Rutaganda to Rwanda does not violate Canada's territorial sovereignty because the sending of an email to Rutaganda's BlackBerry does not represent an entry into Canadian territory or a significant effect on Canada. Luring has been repeatedly found to be an acceptable method of bringing an individual to trial. Nor does rendition violate the U.S.-Canada Extradition Treaty or the Exchange of Letters. The Treaty is void in this instance because Canada is sheltering a known committer of genocide. There can be no good faith violation if Canada is required to extradite Rutaganda upon request, and there is no indication that the U.S.'s

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<sup>98</sup> *U.S. State Department Human Rights Report for Rwanda, 2008.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

luring will encourage transborder abduction by bounty hunters.

Despite the fact that he was a child soldier, Rutaganda is culpable for his actions because he committed serious international crimes against humanity and grave breaches of the Geneva Conventions. Rendition also does not violate Rutaganda's rights under the ICCPR because he was free from arbitrary arrest and detention until arrested on U.S. soil, and because procedures are in place in Rwanda that will guarantee Rutaganda a fair trial.

THEREFORE, we respectfully request this Honorable Court adjudge and declare that:

- I. The "luring" of Rutaganda to the United States from Canada is in compliance with all relevant legislation and international law.
- II. Rendition of Rutaganda from the United States to Rwanda does not run afoul of international law.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

Counsel for the Respondent, the Government of the United States of America (Team #2010-16R)