

**INTERNATIONAL CRIMINAL COURT**

**Article 98**

**Agreement between the  
UNITED STATES OF AMERICA  
and TUVALU**

Effected by Exchange of Notes at Suva and Funafuti  
September 19, 2002 and January 9, 2003



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

**TUVALU**

**International Criminal Court: Article 98**

*Agreement effected by exchange of notes at Suva and Funafuti  
September 19, 2002 and January 9, 2003;  
Entered into force February 3, 2003.*

EMBASSY OF THE  
UNITED STATES OF AMERICA

Note No. 31

The Embassy of the United States presents its compliments to the Department of Foreign Affairs, Immigration, and Labour of the Government of Tuvalu and has the honor to request your Government's consideration of the text, which follows:

**BEGIN TEXT:**

**Agreement between the Government of the United States of America and the Government of Tuvalu regarding the surrender of persons to the International Criminal Court**

The Government of the United States of America and the Government of Tuvalu, hereinafter "the Parties,"

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Recalling that the Rome Statute of the International Criminal Court done at Rome on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Considering that the Government of the United States of America has expressed its intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by its officials, employees, military personnel or other nationals,

Bearing in mind Article 98 of the Rome Statute,

Hereby agree as follows:

1. For purposes of this agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.

2. Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party,

(a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the United States extradites, surrenders, or otherwise transfers a person of the other Party to a third country, the United States will not agree to

the surrender or transfer of that person to the International Criminal Court by the third country, absent the expressed consent of the Government of Tuvalu.

4. When the Government of Tuvalu extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Tuvalu will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the expressed consent of the Government of the United States.

5. This Agreement shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. It will remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

END TEXT.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs, Immigration, and Labour of the Government of Tuvalu the assurances of its highest consideration.

Embassy of the United States of America  
Suva, September 19, 2002



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## GOVERNMENT OF TUVALU

### NOTE NO: DFAT 015/03

The Department of Foreign Affairs of the Government of Tuvalu presents its compliments to the Embassy of the United States of America in Suva and has the honour to refer to the latter's Note Verbale No. 31 of September 19, 2002 submitting the text of the Agreement between the Government of the United States of America and the Government of Tuvalu on the surrender of persons to the International Criminal Court. The Department wishes to confirm the Government of Tuvalu's full acceptance of the Agreement, the text of which is restated below:

#### BEGIN TEXT:

Agreement between the Government of the United States of America and the Government of Tuvalu regarding the surrender of persons to the International Criminal Court

The Government of the United States of America and the Government of Tuvalu, hereinafter "the Parties,"

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Recalling that the Rome Statute of the International Criminal Court done at Rome on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Considering that the Government of the United States of America has expressed its intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by its officials, employees, military personnel or other nationals,

Bearing in mind Article 98 of the Rome Statute,

Hereby agree as follows:

1. For the purposes of this agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.

2. Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party,

(a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the United States extradites, surrenders, or otherwise transfers a person of the other Party to a third country, the United States will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the expressed consent of the Government of Tuvalu.

4. When the Government of Tuvalu extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Tuvalu will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the expressed consent of the Government of the United States.

5. This Agreement shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. It will remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

END TEXT.

The Department has the further honour to advise that Tuvalu has completed the necessary domestic legal requirements to bring the Agreement into force.

The Department of Foreign Affairs of the Government of Tuvalu avails itself of this opportunity to renew to the Embassy of the United States of America in Suva the assurances of its highest consideration.

Department of Foreign Affairs  
Funafuti  
TUVALU

09 January, 2003

