

INTERNATIONAL CRIMINAL COURT

Article 98

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

Effected by Exchange of Notes at Bandar Seri Begawan
February 3 and March 3, 2004



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.”

BRUNEI

International Criminal Court: Article 98

*Agreement effected by exchange of notes at Bandar Seri Begawan
February 3 and March 3, 2004;
Entered into force March 3, 2004.*

Note No. 04-09

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of Brunei and refers to discussions between representatives of the Government of the United States of America and the Government of Brunei regarding the surrender of persons to international tribunals.

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

Considering that the Government of the United States of America and the Government of Brunei have each expressed their intention to, where appropriate, investigate and prosecute war crimes, crimes against humanity, and genocide alleged to have been committed by their respective officials, employees, military personnel, and nationals,

DIPLOMATIC NOTE

The Embassy proposes the following agreement:

1. For the purposes of this Agreement, "persons" of either Party include all nationals of that Party and, for the Government of the United States of America, also include current and former non-U.S. national U.S. military personnel with respect to acts or omissions allegedly committed or occurring while they are or were U.S. military personnel.

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

(a) be surrendered or transferred by any means to any international tribunal for any purpose, unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei are parties, 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 any international tribunal; unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei are parties.

3. When the Government of the United States of America extradites, surrenders, or otherwise transfers a person of Brunei to a third country, the Government of the United States of America will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei are parties, absent the express consent of the Government of Brunei.

4. When the Government of Brunei extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Brunei will not agree to the surrender or transfer of that person by the third country to any international tribunal,

unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei are parties, absent the express consent of the Government of the United States of America.

5. Each Party agrees, subject to its international legal obligations, not to knowingly facilitate, consent to, or cooperate with efforts by any third party or country to effect the extradition, surrender, or transfer of a person of the other Party to any international tribunal, unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei are parties.

6. This Agreement may be amended upon written agreement of the Parties.

7. This Agreement shall remain in force until one year after the date on which one party notifies the other of its intent to terminate the 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.

If the proposal set forth herein is acceptable to the Government of Brunei, this note and the Ministry's affirmative note in reply shall constitute an agreement between our two Governments which shall enter into force on the date of the Ministry's note.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of Brunei the assurances of its highest consideration.



Embassy of the United States of America,

Bandar Seri Begawan, February 3, 2004.



The Ministry of Foreign Affairs of Brunei Darussalam presents its compliments to the Embassy of the United States of America in Bandar Seri Begawan and has the honour to refer to the Embassy's Note 04-09 dated 3 February 2004 proposing an agreement on the surrender of persons to international tribunals between the two Government of Brunei Darussalam and the Government of the United States of America, as follows: -

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

Considering that the Government of the United States of America and the Government of Brunei Darussalam have each expressed their intention to, where appropriate, investigate and prosecute war crimes, crimes against humanity and genocide alleged to have been committed by their respective officials, employees, military personnel, and nationals,

The Embassy proposes the following agreement:

1. *For the purposes of this Agreement, "persons" of either Party include all nationals of that Party and, for the Government of the United States, also include current and former non-U.S. national U.S. military personnel with respect to acts or omissions allegedly committed or occurring while they are or were U.S. military personnel.*
2. *Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,*
 - (a) *be surrendered or transferred by any means to any international tribunal for any purpose, unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei Darussalam are parties, or*
 -) *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 transfer to any international tribunal, unless otherwise obligated to do*

so by an international agreement to which both the United States of America and Brunei Darussalam are parties.

3. When the Government of the United States of America extradites, surrenders, or otherwise transfers a person of Brunei Darussalam to a third country, the Government of the United States of America will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei Darussalam are parties, absent the express consent of the Government of Brunei Darussalam.

4. When the Government of Brunei Darussalam extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Brunei Darussalam will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei Darussalam are parties, absent the express consent of the Government of the United States of America.

5. Each Party agrees, subject to its international legal obligations, not to knowingly facilitate, consent to, or cooperate with efforts by any third party or country to effect the extradition, surrender, or transfer of a person of the other Party to any international tribunal, unless otherwise obligated to do so by an international agreement to which both the United States of America and Brunei are parties.

6. This Agreement may be amended upon written agreement of the Parties.

7. This Agreement shall remain in force until one year after the date on which one Party notifies the other of its intent to terminate the 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.

If the proposal set forth herein is acceptable to the Government of Brunei, this note and the Ministry's affirmative note in reply shall constitute an agreement

between our two Governments which shall enter into force on the date of the Ministry's note."

The Ministry has the further honour to convey that the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam is agreeable to the said proposal and the Embassy's Note together with this Note in reply shall constitute an agreement between the two Governments, which shall enter into force on the date of this Note.

The Ministry of Foreign Affairs of Brunei Darussalam avails itself of this opportunity to renew to the Embassy of the United States of America in Bandar Seri Begawan the assurances of its highest consideration.

Embassy of the United States of America
Bandar Seri Begawan

Ref: JPK 69/2004
Date: 3 March 2004

