

INTERNATIONAL CRIMINAL COURT

Article 98

**Agreement between the
UNITED STATES OF AMERICA
and SAINT KITTS AND NEVIS**

Effected by Exchange of Notes at
Washington January 31, 2005



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.”

SAINT KITTS AND NEVIS

International Criminal Court: Article 98

*Agreement effected by exchange of notes at
Washington January 31, 2005;
Entered into force January 31, 2005.*



EMBASSY OF ST. KITTS AND NEVIS

January 31, 2005

Excellency:

I have the honour to refer to recent discussions between representatives of the Government of Saint Kitts and Nevis and the Government of United States of America regarding the surrender of persons to the International Criminal Court.

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 while the Federation of Saint Kitts and Nevis is not a party to the Rome Statute, the Federation still holds the principles and aims of the International Criminal Court in the highest regard,

Considering that the Government of the United States of America remains committed to its legal obligations arising from the 1907 Hague

Her Excellency,

Condoleezza Rice,

Secretary of State.

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Conventions, the 1949 Geneva Conventions, the 1948 Genocide Convention, and the 1984 Torture Convention,

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

Confirming that nothing in this exchange of notes provides impunity with regard to genocide, crimes against humanity and war crimes,

Bearing in mind Article 98 of the Rome Statute,

I have the honour to propose the following agreement:

1. For purposes of this Agreement, "persons" are current or former Government officials or military personnel of one Party, nationals of one Party, or such persons who are so deeply connected to the internal affairs of one Party that the surrender of such persons might present a clear risk to the national security of that Party.

2. Persons of one Party present in the territory of the other Party shall, not without the express 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 Government of Saint Kitts and Nevis extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Saint Kitts and Nevis will not agree to

the surrender or transfer of that person to the International Criminal Court by the third country, without the express consent of the Government of the United States of America.

4. When the Government of the United States of America extradites, surrenders, or otherwise transfers a person of the Federation of Saint Kitts and Nevis to a third country, the Government of the United States of America will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, without the express consent of the Government of Saint Kitts and Nevis.

5. Either Party may request consultation regarding the investigation or prosecution of cases of special interest.

6. This Agreement 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.

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

A handwritten signature in black ink, appearing to read "Harris". The signature is written in a cursive, flowing style.

**DEPARTMENT OF STATE
WASHINGTON**

January 31, 2005

Excellency:

I have the honor to refer to Your Excellency's note of January 31, 2005, which reads as follows:

"Excellency:

I have the honour to refer to recent discussions between representatives of the Government of Saint Kitts and Nevis and the Government of United States of America regarding the surrender of persons to the International Criminal Court.

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

His Excellency,

Dr. Timothy Harris,

Foreign Minister of Saint Kitts and Nevis.

DIPLOMATIC NOTE

Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Considering that while the Federation of Saint Kitts and Nevis is not a party to the Rome Statute, the Federation still holds the principles and aims of the International Criminal Court in the highest regard,

Considering that the Government of the United States of America remains committed to its legal obligations arising from the 1907 Hague Conventions, the 1949 Geneva Conventions, the 1948 Genocide Convention, and the 1984 Torture Convention,

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

Confirming that nothing in this exchange of notes provides impunity with regard to genocide, crimes against humanity and war crimes,

Bearing in mind Article 98 of the Rome Statute,

I have the honour to propose the following agreement:

1. For purposes of this Agreement, "persons" are current or former Government officials or military personnel of one Party, nationals of one Party, or such persons who are so deeply connected to the internal affairs of one Party that the surrender of such persons might present a clear risk to the national security of that Party.

2. Persons of one Party present in the territory of the other Party shall, not without the express 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 Government of Saint Kitts and Nevis extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Saint Kitts and Nevis will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, without the express consent of the Government of the United States of America.

4. When the Government of the United States of America extradites, surrenders, or otherwise transfers a person of the Federation of Saint Kitts and Nevis to a third country, the Government of the United States of America will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, without the express consent of the Government of Saint Kitts and Nevis.

5. Either Party may request consultation regarding the investigation or prosecution of cases of special interest.

6. This Agreement 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.

If the proposal set forth herein is acceptable to the Government of the United States of America, this note and Your Excellency's affirmative Note

in reply shall constitute an agreement between our two Governments which shall enter into force on the date of Your Note.”

I have the honor to inform Your Excellency that the proposed text in Your Note is acceptable to the Government of the United States of America, assuring Your Excellence that Your Note and this Note shall constitute an agreement between our two Governments which shall enter into force on this date.

For the Secretary of State:

A handwritten signature in black ink, appearing to read "Stephen S. Radwan". The signature is written in a cursive style with a large initial 'S' and a long, sweeping underline.