INTERNATIONAL CRIMINAL COURT

Article 98

Agreement between the

UNITED STATES OF AMERICA

and GUINEA-BISSAU

Effected by Exchange of Notes at
Dakar and Bissau January 28, February 2, and
March 14, 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."

GUINEA-BISSAU

International Criminal Court: Article 98

Agreement effected by exchange of notes at Dakar and Bissau January 28, February 2, and March 14, 2005;
Entered into force February 8, 2005.

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 1

The Embassy of the United States of America at Dakar presents its compliments to the Ministry of Foreign Affairs, International Cooperation and Communities of the Republic of Guinea-Bissau, and,

As a result of recent discussions between representatives of the Government of the United States of America and the Government of the Republic of Guinea-Bissau regarding the surrender of persons to international criminal 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 the Republic of Guinea-Bissau have each expressed their intention to investigate and to prosecute where appropriate war crimes, crimes against humanity, and genocide alleged to have been committed by their officials, employées, military personnel or nationals,

The Embassy has the honor to propose the following Agreement:

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 express consent of the first Party,

(a) be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal has been established or authorized by the United Nations Security Council, 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 such tribunal has been established or authorized by the United Nations Security Council.

3. When the Government of the United States of America extradites, surrenders, or otherwise transfers a person of the Republic of Guinea-Bissau 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 such tribunal has been established or authorized by the United Nations Security Council, absent the express consent of the Government of the Republic of Guinea-Bissau.

4. When the Government of the Republic of Guinea-Bissau extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of Guinea-Bissau will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established or authorized by the United Nations Security Council, absent the express consent of the Government of the United States of America.

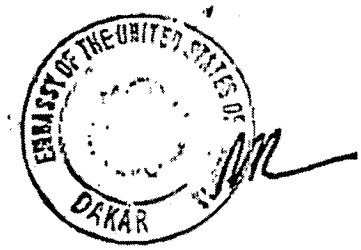
5. This Agreement shall remain in force until one year after the date on which one Party notifies the other of its intent to terminate the Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

If the proposal set forth herein is acceptable to the Government of the Republic of Guinea-Bissau, 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 at Dakar avails itself of this opportunity to renew to the Ministry of Foreign Affairs, International Cooperation and Communities of the Republic of Guinea-Bissau the assurances of its highest consideration.

Embassy of the United States of America
Dakar, January 28, 2005



REPÚBLICA DA GUINÉ-BISSAU
Ministério dos Negócios Estrangeiros, Cooperação Internacional e das Comunidades

Ref. 36/GM/uf/2005 Bissau, 02 de Fevereiro de 2005

O Ministério dos Negócios Estrangeiros, da Cooperação Internacional e das Comunidades apresenta os seus melhores cumprimentos a Embaixada dos Estados da América em Dakar, e em referência a sua nota No.1 de 28 de Janeiro de 2005 com o seguinte teor:

"A Embaixada dos Estados Unidos da América em Dakar apresentou o seus cumprimentos ao Ministério dos Negócios Estrangeiros, da Cooperação Internacional da Republica da Guiné-Bissau, e,

Na sequência das recentes discussões entre os Representantes do Governo dos Estados Unidos da América e do Governo da República da Guiné–Bissau referentes à entrega de pessoas aos tribunais penais internacionais;

Reafirmando a importância de levar à justiça as pessoas que cometerem genocídio, crimes contra a humanidade e crimes de guerra;

Considerando que o Governo dos Estados Unidos da América e o Governo da República da Guiné–Bissau expressaram suas intenções de investigar e processar, conforme apropriado, crimes de guerra, crimes contra a humanidade e genocídio, alegadamente cometidos pelos seus funcionários, empregados, pessoal militar ou outros nacionais;

A Embaixada tem a honra de propor o seguinte acordo:

1. Para os fins deste acordo, entende-se por " pessoas", os indivíduos que são actualmente ou foram no passado funcionários públicos, empregados (incluindo aqueles sob contrato), pessoal militar ou nacionais de uma das Partes.

2. As pessoas de uma das Partes presentes no território da outra não serão, salvo consentimento expresso da primeira Parte,

a) entregues ou transferidas por quaisquer meios a qualquer tribunal internacional para qualquer propósito, a menos que tal tribunal tenha sido criado ou autorizado pelo Conselho de Segurança da Organização das Nações Unidas, ou

b) entregues ou transferidas por quaisquer meios a qualquer outra entidade ou terceiro País, ou expulsas a um terceiro país para fins de entrega ou transferência a qualquer tribunal internacional, a menos que tal tribunal tenha sido criado ou autorizado pelo Conselho de Segurança da Organização das Nações Unidas.

3. Quando o Governo dos Estados Unidos da América extraditar, entregar ou de qualquer outra forma transferir uma pessoa da República da Guiné–Bissau para um terceiro País, o Governo dos Estados Unidos da América não concordará na entrega ou transferência da referida pessoa pelo terceiro país a qualquer tribunal internacional, a menos que tal tribunal tenha sido criado ou autorizado pelo Conselho de Segurança da Organização das Nações Unidas, salvo consentimento expresso do Governo da República da Guiné–Bissau.

4. Quando o Governo da República da Guiné-Bissau extraditar, entregar ou de qualquer outra forma transferir uma pessoa dos Estados Unidos da América para um terceiro País, o Governo da República da Guiné-Bissau não concordará na entrega ou transferência da referida pessoa pelo terceiro País a qualquer tribunal internacional, a menos que tal tribunal tenha sido criado ou autorizado pelo Conselho de Segurança da Organização das Nações Unidas, salvo consentimento expresso do Governo dos Estados Unidos da América.

5. Este Acordo deverá permanecer em vigor até um ano após a data da recepção da notificação de uma das partes a outra da sua intenção de rescindi-lo. As disposições deste Acordo continuarão em vigor no tocante a qualquer acto que ocorra ou a qualquer alegação que surja, antes da data efectiva da rescisão.

Se a proposta descrita neste instrumento for aceita pelo governo da República da Guiné-Bissau, esta nota e a nota afirmativa do Ministério em resposta constituirão um acordo entre nossos dois governos, o qual entrará em vigor na data da nota do Ministério.

A Embaixada dos Estados Unidos da América aproveita esta oportunidade para renovar ao Ministério dos Negócios Estrangeiros da Cooperação Internacional e das Comunidades da República da Guiné-Bissau os votos da mais alta consideração".

O Ministério dos Negócios Estrangeiros, da Cooperação Internacional e das Comunidades tem a honra de confirmar de que a referida proposta foi aceite pelo Governo da Republica da Guiné-Bissau e o presente acordo, por troca de notas, entrará provisoriamente em vigor na data da sua assinatura, em 2 de Fevereiro de 2005 e definitivamente na data da sua publicação.

O Ministério dos Negócios Estrangeiros, da Cooperação Internacional e das Comunidades aproveita esta oportunidade para renovar a Embaixada dos Estados Unidos da América em Dakar os protestos da sua mais alta consideração.

REPUBLICA DA GUINE-BISSAU
MINISTERIO DOS NEGÓCIOS ESTRANGEIROS
GABINETE DA MINISTRA

A
Embaixada dos Estados Unidos da América
Em Dakar

Official Translation

Ref 36/GM/uf/2005 Bissau, 02 February 2005

The Ministry of Foreign Affairs, International Cooperation and Communities presents its highest compliments to the Embassy of the United States of America in Dakar and has the honor to acknowledge the receipt of Your Excellency's note number 1, dated January 28, 2005, which reads as follows:

"The Embassy of the United States of America at Dakar presents its compliments to the Ministry of Foreign Affairs, International Cooperation and Communities of the Republic of Guinea-Bissau, and,

As a result of recent discussions between representatives of the Government of the United States of America and the Government of the Republic of Guinea-Bissau regarding the surrender of persons to international criminal 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 the Republic of Guinea-Bissau have each expressed their intention to investigate and to prosecute where appropriate war crimes, crimes against humanity, and genocide alleged to have been committed by their officials, employees, military personnel or nationals,

The Embassy has the honor to propose the following Agreement:

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 express consent of the first Party,

(a) be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal has been established or authorized by the United Nations Security Council, 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 such tribunal has been established or authorized by the United Nations Security Council.

3. When the Government of the United States of America extradites, surrenders, or otherwise transfers a person of the Republic of Guinea-Bissau 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 such tribunal has been established or authorized by the United Nations Security Council, absent the express consent of the Government of the Republic of Guinea-Bissau.

4. When the Government of the Republic of Guinea-Bissau extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of Guinea-Bissau will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established or authorized by the United Nations Security Council, absent the express consent of the Government of the United States of America.

5. 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 the Republic of Guinea-Bissau, 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 at Dakar avails itself of this opportunity to renew to the Ministry of Foreign Affairs, International Cooperation and Communities of the Republic of Guinea-Bissau the assurances of its highest consideration."

The Ministry of Foreign Affairs, International Cooperation and Communities has the honor to confirm that the proposal set forth in your note is acceptable to the Government of the Republic of Guinea-Bissau, and that this accord, by exchange of notes, will enter into force provisionally on the date of its signature, February 2, 2005, and definitively on the date of its publication.

The Ministry of Foreign Affairs, International Cooperation and Communities avails itself of this opportunity to renew to the Embassy of the United States of America in Dakar its assurances of its highest consideration.

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 2

The Embassy of the United States of America at Dakar presents its compliments to the Ministry of Foreign Affairs, International Cooperation and Communities of the Republic of Guinea-Bissau, and, acknowledges receipt of the Ministry's note No. 36/GM/uf/2005 dated February 2, 2005 confirming the agreement effected by the Ministry's note and the Embassy's note No. 1, dated January 28, 2005.

The Embassy accepts the Ministry's proposal that the aforementioned agreement enter into force provisionally on February 2, 2005, and definitively on the date of the Government of the Republic of Guinea-Bissau's publication of the agreement.

The Embassy would appreciate a note from the Ministry informing the Embassy of the date of such publication.

The Embassy of the United States of America at Dakar avails itself of this opportunity to renew to the Ministry of Foreign Affairs, International Cooperation and Communities of the Republic of Guinea-Bissau the assurances of its highest consideration.

Embassy of the United States of America
Dakar, March 14, 2005