

## **Proposed Text of Article 98 Agreements with the United States**

July 2002

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

B. 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,

C. 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,

D. Bearing in mind Article 98 of the Rome Statute,

E. 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 X.

4. When the Government of X extradites, surrenders, or otherwise transfers a person of the United States of America to a

third country, the Government of X 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.

*(Paragraphs have been lettered and numbered for identification purposes.)*