

Treaty Between the Government of the United States of America and the Government of
the Republic of South Africa on Mutual Legal Assistance in Criminal Matters,
signed at Washington on September 16, 1999

Treaty Number: 106-36

Transmitted: July 13, 2000

Resolved, (two thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the Government of the United States of America and the Government of the Republic of South Africa on Mutual Legal Assistance in Criminal Matters, signed at Washington on September 16, 1999 (Treaty Doc. 106-36), subject to the understanding of subsection (a), the declaration of subsection (b) and the provisos of subsection (c).

(a) Understanding. The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

Prohibition on assistance to the International Criminal Court. The United States shall exercise its rights to limit the use of assistance it provides under the Treaty so that any assistance provided by the Government of the United States shall not be transferred to or otherwise used to assist the International Criminal Court contemplated in the Statute adopted in Rome, Italy, on July 17, 1998, unless the Statute establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) Declaration. The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

Treaty Interpretation. The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) Provisos. The resolution of ratification is subject to the following provisos, which shall not be included in the instrument of ratification to be signed by the President:

(1) Limitation on assistance: Pursuant to the rights of the United States under this Treaty to deny requests which prejudice its essential public policy or interests, the United States shall deny a request for assistance when the Central Authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this Treaty is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(2) Supremacy of the Constitution. Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.