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TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF KIRIBATI ON THE DELIMITATION OF MARITIME BOUNDARIES, SIGNED AT MAJURO ON SEPTEMBER 6, 2013

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MAY 15, 2018.—Ordered to be printed

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Mr. CORKER, from the Committee on Foreign Relations,  
submitted the following

REPORT

[To accompany Treaty Doc. 114–13B]

The Committee on Foreign Relations, to which was referred the Treaty Between the Government of the United States of America and the Government of the Republic of Kiribati on the Delimitation of Maritime Boundaries, signed at Majuro on September 6, 2013 (Treaty Doc. 114–13B), having considered the same, reports favorably thereon with one declaration, as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of advice and consent.

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I. PURPOSE

According to the President’s Letter of Transmittal, the purpose of the Treaty Between the Government of the United States of America and the Government of the Republic of Kiribati on the Delimitation of Maritime Boundaries, signed at Majuro on September 6, 2013, (hereinafter, the “Kiribati Maritime Boundary Treaty” ) is to establish the United States maritime boundary in the South Pacific Ocean with the neighboring country of the Republic of

Kiribati. The Treaty establishes three maritime boundaries totaling approximately 1,260 nautical miles in length between Kiribati and the United States islands of Palmyra Atoll, Kingman Reef, Jarvis Island, and Baker Island.

## II. BACKGROUND

The committee notes that a more detailed article-by-article analysis of this Treaty may be found in the Letter of Submittal from the Secretary of State to the President dated October 28, 2016, reprinted in Treaty Document 114–13B. What follows is a brief summary of the key provisions of the Treaty as provided in Treaty Document 114–13B:

The Kiribati Maritime Boundary Treaty establishes three maritime boundaries in the Pacific Ocean with respect to the exclusive economic zone (EEZ) and continental shelf generated by various Kiribati islands and by each of the U.S. islands of Palmyra Atoll, Kingman Reef, Jarvis Island, and Baker Island.

Consistent with similar maritime boundary treaties between the United States and other countries, this Treaty defines the limits within which each Party may exercise EEZ and continental shelf jurisdiction off the coasts of their respective islands. The three boundaries with Kiribati, taken together, are approximately 1,260 nautical miles in length.

The boundary lines are established on the basis of equidistance. As the Acting Legal Adviser of the State Department testified to the committee, the method of equidistance is a long-standing approach consistent with international law and practice with respect to delimiting boundaries. In fact, Congress has used the equidistance method as far back as 1805 with respect to a law concerning the establishment of boundaries of public lands.<sup>1</sup> Under the equidistance method, every point on an equidistance line is equal in distance from the nearest point on the coastline of each Party.

With appropriate technical adjustments, the Treaty formalizes boundaries that have been informally adhered to by the Parties, and that are very similar to the existing limit lines of the EEZ asserted by the United States for decades and published in the Federal Register.

The administration has informed the committee that, because of improved calculation methodologies and minor coastline changes, the new maritime boundaries in this Treaty will result in a small net gain of United States EEZ and continental shelf area relative to the existing limit lines of our EEZ. The form and content of the Treaty is very similar to previous maritime boundary treaties between the United States and other Pacific island countries that have entered into force after receiving the Senate's advice and consent. The Treaty consists of seven articles.

Article I states that the purpose of the Treaty is to establish the maritime boundaries between the two countries. The Treaty identifies the relevant United States territory as Palmyra Atoll, Kingman Reef, Jarvis Island, and Baker Island.

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<sup>1</sup>An Act Concerning the Mode of Surveying the Public Lands of the United States, 2 Stat. 313 (1805); *see also Texas v. Louisiana*, 426 U.S. 465, 468–70 (1976) (citing the Convention on the Territorial Sea and the Contiguous Zone, Sep. 15, 1958, 15 U.S.T. 1606, and relying on the equidistance method in defining the lateral seaward boundary between Texas and Louisiana).

Article II of the Treaty sets out its technical parameters, stating that, for the purpose of the Treaty the North American Datum 1983 and the World Geodetic Datum 1984 (“WGS 84”) are considered identical. Further, the article states that, for the purpose of illustration only, the boundary lines have been drawn on maps annexed to the Treaty.

Article III lists the turning and terminal points of defining the maritime boundaries. This article defines three distinct boundary lines: for the boundary line between the United States Baker Island and the Kiribati Phoenix Islands group, six points are connected by geodesic lines that measure 332 nautical miles in total; for the boundary line between the United States Jarvis Island and the Kiribati Line Islands group, ten points are connected by geodesic lines that measure 548 nautical miles in total; and for the boundary line between the U.S. islands of Palmyra Atoll and Kingman Reef and the Kiribati Line Islands group, five points are connected by geodesic lines that measure 383 nautical miles in total.

Article IV sets forth the agreement of the Parties that, on the opposite side of each maritime boundary, each Party shall not “claim or exercise for any purpose sovereignty, sovereign rights, or jurisdiction with respect to the waters or seabed or subsoil.”

Article V provides that the establishment of the boundaries shall not affect or prejudice either side’s position “with respect to the rules of international law relating to the law of the sea, including those concerned with the exercise of sovereignty, sovereign rights, or jurisdiction with respect to the waters or seabed or subsoil.”

Article VI sets forth the agreement of the Parties that any dispute arising from the interpretation or application of the Treaty shall be resolved by negotiation or other peaceful means agreed upon by the Parties.

Article VII provides that the Treaty shall enter into force after the Parties have exchanged notes indicating that each has completed its internal procedures to bring the Treaty into force.

The Acting Legal Adviser of the State Department testified to the committee, with respect to the Kiribati Maritime Boundary Treaty and the Treaty Between the Government of the United States of America and the Government of the Federated States of Micronesia on the Delimitation of a Maritime Boundary, that:

The treaties do not limit how we may choose to manage, conserve, explore, or develop the U.S. EEZ and continental shelf consistent with international law; they merely clarify the geographic scope of our sovereign rights and jurisdiction consistent with international law and with longstanding unilateral U.S. practice, and they reinforce other countries’ recognition of the U.S. EEZ and continental shelf entitlements around the U.S. islands in question.

### III. IMPLEMENTING LEGISLATION

The executive branch has indicated that the United States does not need implementing legislation to implement the Treaty.<sup>2</sup> Accordingly, no new legislation is necessary or is being sought in conjunction with the Treaty. The Resolution of Advice and Consent to

<sup>2</sup>Treaty Doc. 114–13B at VI, Letter from John F. Kerry, Secretary of State, to the President, Oct. 28, 2016.

Ratification includes a declaration stating that the Treaty is self-executing.

#### IV. COMMITTEE ACTION

The committee held a hearing to consider the Treaty on December 13, 2017. The hearing was chaired by Senator Risch. The committee considered the Treaty on March 20, 2018, and ordered the Treaty favorably reported by voice vote, with a quorum present and without objection, with the recommendation that the Senate give advice and consent to its ratification, as set forth in this report and the accompanying resolution of advice and consent to ratification.

#### V. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that ratification of the Kiribati Maritime Boundary Treaty will further the national interests of the United States and recommends the Senate give its consent to ratification of this Treaty. Ratification will strengthen our ties and cooperation with the Republic of Kiribati. Further, ratification will delimit our boundaries with the Republic of Kiribati in a manner that closely follows limit lines long asserted by the United States for our exclusive economic zone. The committee notes the assertions of the executive branch that the United States will achieve a small gain in maritime area with ratification of the Treaty.

The committee has included in its resolution of advice and consent one proposed declaration, which states that the Kiribati Maritime Boundary Treaty is self-executing. This declaration is consistent with the view of the executive branch. Historically, the Senate has not routinely included statements regarding the self-executing nature of treaties in resolutions of advice and consent, but in light of the Supreme Court decision, *Medellin v. Texas*, 552 U.S. 491 (2008), the committee has determined that a clear statement in the resolution is warranted. A further discussion of the committee's views on this matter can be found in Section VIII of Executive Report 110–12.

#### VI. RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

*Resolved, (two-thirds of the Senators present concurring therein),*

##### **SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION.**

The Senate advises and consents to the ratification of the Treaty between the Government of the United States of America and the Government of the Republic of Kiribati on the Delimitation of Maritime Boundaries, signed at Majuro on September 6, 2013 (the "Treaty") (Treaty Doc 114–13B), subject to the declaration in section 2.

##### **SEC. 2. DECLARATION.**

The Senate's advice and consent under section 1 is subject to the following declaration: The Treaty is self-executing.