
TREATY WITH NIUE ON DELIMITATION OF A
MARITIME BOUNDARY

JULY 31, 2002.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 105-53]

The Committee on Foreign Relations, to which was referred the Treaty Between the Government of the United States of America and the Government of Niue on the Delimitation of a Maritime Boundary, signed in Wellington on May 13, 1997, having considered the same, reports favorably thereon, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of advice and consent to ratification.

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I. PURPOSE

The sole purpose of the agreement is to establish the maritime boundary between American Samoa and Niue.

II. BACKGROUND

The treaty was submitted by President Clinton on June 23, 1998. The Bush Administration has indicated that it supports ratification of the treaty.

Prior to the 1970s, the need to establish maritime boundaries generally arose only between states that were closely adjacent. But advances both in the technology available to exploit the resources in and under the ocean and in the law of maritime zones during the 1970s and 1980s have caused the issue to arise with much greater frequency. During this period, states began claiming territorial seas up to 12 miles rather than the traditional three miles,

and a number of states began to lay claim to national resource zones of up to 200 miles from their shores. These claims gained recognition and approval in the United Nations Convention on the Law of the Sea, which was concluded in 1982 and entered into force in 1994. The Law of the Sea Convention provides that states may claim a territorial sea up to 12 nautical miles from coastal baselines, a contiguous zone of up to 24 nautical miles from the same baselines, and an Exclusive Economic Zone (EEZ) of up to 200 nautical miles. Consequently, as more and more states have claimed a wider territorial sea and, even more importantly, an EEZ, more and more overlaps with the claims of adjacent and opposite states have arisen, and the need to delimit maritime boundaries has increased.

The United States is not a party to the Law of the Sea Convention. It has, however, expanded its maritime zones. In 1976, the Magnuson Fishery Conservation and Management Act required the President to establish fishery conservation zones of up to 200 miles for the United States and its territorial possessions. In 1977, the State Department designated such zones for the United States and its territories, including the island territories in the south Pacific, stating that it did so “without prejudice to any negotiations (with adjoining states or territories) or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction in such areas.” Subsequently, in 1983, President Reagan proclaimed a 200-mile EEZ for the United States, including its territories and possessions. Where the EEZs overlapped with those of other states, President Reagan’s proclamation provided that a maritime boundary with the other state would be determined “in accordance with equitable principles.”

Such overlaps were endemic among the islands in the south Pacific. With respect to American Samoa, both the island state of the Cook Islands and the island territory of Tokelau (belonging to New Zealand) laid claim to EEZs of 200 mile in 1977, and the island state of Niue did so in 1978. All of these overlapped with the fishery zone the United States claimed around American Samoa. As a consequence, in 1980, the United States concluded maritime boundary treaties with the Cook Islands and with New Zealand (on behalf of Tokelau) that used lines between equidistant points to demarcate the boundaries between these islands and American Samoa.” These boundaries modified somewhat those that had been set for the fishery zone around American Samoa. For the Cook Islands, the treaty created a maritime boundary that is 566 nautical miles long and utilizes equidistant points ranging from 120 to 199 nautical miles from each Party. For Tokelau, the treaty resulted in a maritime boundary that is 318 nautical miles long and that utilizes equidistant points ranging from 48 to 162 nautical miles from each Party.

According to the State Department’s submission, no special problems prevented finalizing a maritime boundary agreement with Niue, except the need for more accurate data on the baselines used to determine the location of equidistant points. Once that technical work was completed, and after New Zealand confirmed the competence of Niue to enter into a maritime boundary agreement, this agreement was concluded. It provides for a maritime boundary that

is 279.1 nautical miles in length and utilizes equidistant points ranging from 139.6 to 199.3 nautical miles from each Party.

III. SUMMARY OF TREATY PROVISIONS

The proposed treaty with Niue is similar in form to those previously concluded with the Cook Islands and with New Zealand on behalf of Tokelau. The Letter of Submittal from the Secretary of State to the President, dated May 27, 1998, explains the Treaty in detail, and is set forth in full in Treaty Document 105–53. What follows is a summary of each article.

Article I states that the sole purpose of the agreement is to establish the maritime boundary between American Samoa and Niue.

Article II designates the data bases used for plotting the boundary to be the North American Datum 1983 and the World Geodetic System 1984 (these were not available for the Cook Island and Tokelau agreements).

Article III sets forth the coordinates that are used to define the boundary.

In Article IV, in language identical to the Cook Island and Tokelau agreements, both Parties relinquish all claims to the waters, seabed, or subsoil on the other side of the maritime boundary.

Article V, again in language identical to that used in the Cook Island and Tokelau agreements, further delimits the scope of this agreement by stating that it “shall not affect or prejudice in any manner either Party’s position with respect to the rules of international law relating to the law of the sea.”

Article VI commits both Parties to resolve any dispute over this agreement “by negotiation or other peaceful means.”

Article VII establishes the date of the exchange of instruments of ratification as the date the agreement shall enter into force.

IV. ENTRY INTO FORCE

The treaty enters into force on the date of the exchange of instruments of ratification.

V. COMMITTEE ACTION

The Committee held a hearing to review the Treaty on May 7, 2002.¹ On July 25, 2002, the Committee considered the Treaty, and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the Treaty.

VI. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

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 Niue on the Delimitation of a Maritime Boundary, signed in Wellington on May 13, 1997 (Treaty Doc. 105–53).

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¹ The hearing print of this hearing is forthcoming.