IX. CONFERENCE AND DISPUTE RESOLUTION

Summary

Sections 421-24 outline the conference and dispute procedures under the Compacts. The dispute resolution procedures require a number of steps. First, the United States and the concerned government must confer promptly with each other on the matter relating to the Compact provision(s) or its related agreements. Second, if both parties determine that a dispute exists and a written notice is issued, the concerned governments are required to make good faith effort to resolve the dispute among themselves. Third, if the dispute cannot be resolved in 90 days, either party to the dispute may refer the matter to an arbitration board. Fourth, if this step is taken, an arbitration board is established pursuant to the procedures of Section 424(a) for the purpose of hearing the dispute and rendering a decision. The decision of the board shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory.

Section 424 defines the terms of the arbitration. Section 424(d) states that the arbitration board may have reference to international law in determining any legal dispute, following the provisions set forth in Article 38 of the Statute of the International Court of Justice.

An important question arises as to whether the arbitration board should apply the 1982 Convention of the Law of the Sea, which the United States has not signed, in disputes between the United States and one of the associated states. The United States Department of State responded to this question in the July 26, 1984 hearing before the Subcommittee on the Public Lands and National Parks of the House Interior and Insular Affairs Committee. An excerpt of the State Department response (from page 97) reads:

> The Freely Associated States have agreed to conduct the activities in the area of foreign affairs in accordance with international law. As between the United States and the freely associated states, it is quite irrelevant whether the latter become parties to the Law of the Sea Convention if the United States does not do so as well. Any disputes in this area must be determined with reference to the framework provided by the Compact, which preserves the United States position within the context of the free association relationship, by such conventions as both the United States and the freely associated states may have joined, and by customary international law. In reaching a determination, an arbitration tribunal may refer to international law as codified in treaties and international agreements or customary international law. The United States does not recognize the Law of the Sea Convention as an embodiment of international law on the range of subjects it addresses.

The Federated States' chief negotiator, Andon Amaraich responded to a similar inquiry later by stressing that Section 424(d)'s reference to international was a discretionary procedure such that parties to the dispute will have the prerogative to decide (1) whether or not to apply international law, and (2) whether or not to be bound by the decision of the arbitration board. (Interview with Amaraich, April 23, 1986)

PROBLEM: Wake Island (Enen-kio)

Overlapping exclusive economic zones exist between the Marshall Islands and the Federated States of Micronesia, Kiribati, and Wake Island. The boundary dispute that is likely to cause the most controversy involves Wake Island. The United States, having administered the island since 1899, claims Wake Island as a United States territory. The Marshall Islands claim to Wake as Enen-kio is based on discovery and traditional use of the island centuries earlier.

The following article written by Dwight Heine and Jon A. Anderson entitled Enen-kio: Island of the Kio Flower, 19 Micronesian Reporter 34 (1971), describes the Marshallese claims to Enen-kio Island. Following it are two pieces describing the island and explaining the basis for the U.S. claim.