

**RULES OF PROCEDURE FOR THE ARBITRAL TRIBUNAL CONSTITUTED
UNDER THE OSPAR CONVENTION PURSUANT TO THE REQUEST OF
IRELAND DATED 15th JUNE 2001**

Whereas Ireland (“the Applicant”) and the United Kingdom (“the Respondent”) are parties to the Convention for the Protection of the Marine Environment of the North East Atlantic (“the OSPAR Convention”).

Whereas Article 32(1) of the OSPAR Convention provides that: “Any disputes between Contracting Parties relating to the interpretation or application of the Convention, which cannot be settled otherwise by the Contracting Parties concerned, for instance by means of inquiry or conciliation within the Commission, shall at the request of any of those Contracting Parties, be submitted to arbitration under the conditions laid down in this Article.”

Whereas the Applicant has invoked Article 32(1) of the OSPAR Convention with regard to the following dispute (“the Dispute”): A dispute concerning access to information under Article 9 of the OSPAR Convention in relation to the economic justification of the MOX Plant (Ireland v. United Kingdom), as set out in the Applicant’s Request for the constitution of an Arbitral Tribunal and Statement of Claim and Grounds on which it is based dated 15th June 2001, as amended by the Application to Amend The Relief Sought in Ireland’s Statement of Claim of January 2, 2002 (“the Request and Statement of Claim”).

Whereas in accordance with Article 32(4) of the OSPAR Convention, by letter of 17th July 2001 the Applicant has appointed Gavan Griffith QC as arbitrator in respect of the Dispute, by letter of 13th August 2001 the Respondent has appointed Rt Hon. Lord Mustill as arbitrator in respect of the Dispute, and, by a statement dated 30 October 2001, the two party-appointed arbitrators in turn designated Professor Michael Reisman as chairman.

Whereas pursuant to Article 32(2) of the OSPAR Convention, unless the parties to a dispute decide otherwise, the procedure of an arbitration commenced under Article 32(1) of the Convention shall be in accordance with Articles 32(4) to 32(10) of the OSPAR Convention.

Whereas the Applicant and the Respondent (together, the “parties”) have decided that the procedure of the arbitration of the Dispute shall be in accordance with the following rules (the “Rules”), which shall replace Articles 32(4) to 32(10) of the OSPAR Convention, insofar as they do not impair the rights of other States Parties to the OSPAR Convention.

Section I. Introductory Rules

Scope of Application

Article 1

1. The Arbitration shall be conducted in accordance with these Rules.
2. To the extent that any question of procedure is not expressly governed by these rules, that question shall be decided by the tribunal taking into account, as appropriate, the provisions of Article 32(4) to (8) and (10) of the OSPAR Convention and relevant international arbitral practice.
3. The International Bureau of the Permanent Court of Arbitration (the 'International Bureau') shall serve as a registry and shall take charge of the archives of the arbitration proceeding.

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received when it has been delivered to the agent of the addressee appointed pursuant to Article 4.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-work day in the State of the addressee, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

Commencement of Proceedings

Article 3

Proceedings are deemed to have commenced on 18th June 2001.

Representation and Assistance

Article 4

Each party shall be represented by an agent and if it so decides, one or more deputy agents. The parties may also be assisted by persons of their choice. The name and address of the agent and any deputy agent or agents must be communicated in writing to the other party, to the International Bureau and to the tribunal after it has been appointed.

Section II. Composition of the Tribunal

Number and Appointment of Arbitrators

Article 5

The tribunal shall consist of three members, one appointed by the Applicant, one appointed by the Respondent and the third, who shall be chairman of the tribunal, appointed by common agreement of the two party-appointed arbitrators.

Challenge of Arbitrators

Article 6

1. Either party may, within thirty days of being notified of the appointment of any arbitrator, challenge the appointment on the ground that circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if he/she does not have the qualifications suitable for the function. Any such challenge shall be in writing and shall be notified to all members of the tribunal and to the International bureau.

2. The arbitrator whose appointment is challenged may withdraw and shall do so if both parties so request, but in the absence of such withdrawal, the President of the International Court of Justice is requested to decide on the challenge, if possible within 30 days or otherwise not later than 60 days from the date of the challenge.

Replacement of an Arbitrator

Article 7

1. If the President of the International Court of Justice should sustain a challenge to the appointment of an arbitrator or in the event of the death or withdrawal of an arbitrator during the course of the proceedings, a substitute arbitrator shall be appointed pursuant to the procedure provided for in article 5.

2. In such an event, prior hearings may be repeated at the discretion of the tribunal.

Section III. The Proceedings

General Provisions

Article 8

1. Subject to these Rules, the tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case.

2. The parties shall provide all facilities necessary for the effective conduct of the proceedings.

Place of Arbitration

Article 9

1. The place where the arbitration is to be held shall be The Hague, The Netherlands.
2. The tribunal may hold meetings at any place it deems appropriate.
3. The award shall be made at the place of arbitration.

Order and Content of pleading

Article 10

1. On or before December 15, 2001, the Applicant shall submit an amended "Statement of Claim and Grounds on Which it is Based."
2. On or before March 8, 2002, the Applicant shall communicate in writing to the Respondent and to each of the arbitrators, and to the International Bureau, a Memorial containing:
 - (a) A statement of any facts on which the Applicant relies;
 - (b) The Applicant's submissions on law;
 - (c) The relief or remedy sought.
3. On or before the earlier of June 7, 2002 or 90 days following notification to the Respondent of the Applicant's Memorial, the Respondent shall submit a Counter-Memorial containing:
 - (a) An admission or denial of any facts alleged in the Memorial and a statement of any additional facts on which the Respondent relies;
 - (b) Observations concerning the submissions on law in the Memorial; the Respondent's submissions on law in answer thereto;
 - (c) The form of order sought by the Respondent.
4. On or before the earlier of July 19, 2002 or 45 days following notification to the Applicant of the Respondent's Counter-Memorial, the Applicant may submit a Reply.

5. On or before the earlier of August 30, 2002 or 45 days following notification to the Respondent of any Reply by the Applicant, the Respondent may submit a Rejoinder.
6. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of any facts alleged in it.
7. During the course of the arbitral proceedings any party may, if given leave by the tribunal to do so, amend or supplement its claim or defence, provided that a claim may not, without the consent of the other party, be amended or supplemented in such a manner that it falls outside the scope of the Dispute.

Preliminary objections

Article 11

1. The tribunal shall have the power to rule on objections to the jurisdiction of the tribunal or to the admissibility of the Request or of any claim made in the pleadings.
2. A submission that the tribunal does not have jurisdiction or that the Request or a claim made in the pleadings is inadmissible shall be raised not later than in the Counter-Memorial or, with respect to the Reply, in the Rejoinder.
3. The tribunal may rule on objections to the jurisdiction of the tribunal or to the admissibility of the Request or of any claim made in the pleadings as a preliminary question or it may proceed with the arbitration and rule on such an objection in its final award.

Evidence and Hearings

Article 12

1. Each party shall have the burden of proving the facts relied on to support its claim or defence. The tribunal shall determine the admissibility, relevance, materiality and weight of the evidence adduced.
2. Subject to Article 14 below, the tribunal may take all appropriate measures in order to establish the facts.

Article 13

1. There shall be such hearings as the tribunal considers appropriate at which the parties may make their oral submissions.
2. The tribunal shall give the parties adequate advance notice of the date, time and place of any oral hearing.
3. If witnesses are to be heard, at least thirty days before the hearing each party shall

communicate to the tribunal and to the other party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.

4. The tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. Taking account of the views expressed by the parties, the tribunal is free to decide on the manner in which witnesses are examined.
5. The International Bureau shall make arrangements for a verbatim record of the hearing.

Confidentiality of Proceedings

Article 14

1. Since the dispute concerns “access to information under Article 9 of the OSPAR Convention in relation to the economic ‘justification’ of the proposed MOX plant,” all written pleadings shall be confidential, except to the extent decided otherwise by the tribunal.
2. The tribunal shall decide, in its discretion, whether all or part of the oral proceedings shall be open to the public and whether or which parts of the verbatim transcripts of the oral proceedings shall be confidential. The tribunal will notify the parties of its decision in a timely fashion after further consultation with them.
3. In addition to the requirements of paragraph 1 above, any part of a pleading or other documentary material tendered by either party and identified as “confidential and sensitive” shall remain confidential exclusively to the tribunal and to independent counsel for the other party unless and until, and to the extent that the tribunal makes an order to the contrary. The tribunal will not make any order permitting the wider disclosure of such material without giving the party tendering such material a prior opportunity to withdraw it. This requirement of confidentiality shall remain in effect with respect to any material so withdrawn.
4. The tribunal may require that any person to whom any “confidential and sensitive” material is disclosed sign an appropriate undertaking to respect and preserve its confidentiality.
5. Insofar as may be necessary, further arrangements for procedures relating to examination of “confidential and sensitive” materials will be made by the tribunal.

Interim Measures of Protection

Article 15

The tribunal may, at the request of one of the parties, recommend essential interim

measures of protection under such conditions as it may deem appropriate.

Absence or default

Article 16

The absence or default of one of the parties shall not constitute an impediment to the proceedings.

Section IV. The Award

Decisions

Article 17

The decision of the tribunal, both on procedure and substance shall be taken by majority voting of its members, except that questions of administration and routine procedure may be decided by the chairman, unless the chairman wishes to have the opinion of the other tribunal members or the parties request a tribunal decision.

Form and Effect of the Award

Article 18

1. The award of the tribunal shall be final and binding upon the parties to the dispute.
2. The award of the tribunal shall be accompanied by a statement of reasons.
3. The award shall be made public to the extent that this can be done without disclosure of information that the tribunal has found to be confidential.

Applicable Law

Article 19

The tribunal shall decide according to the rules of international law and, in particular, those of the OSPAR Convention.

Interpretation of the Award

Article 20

1. Within 90 days after the receipt of the award, either party, with notice to the other party, may request that the tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 90 days after the receipt of the request. The interpretation shall form part of the award.

Expenses and Costs

Article 21

1. Unless the tribunal determines otherwise, because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties in equal share.
2. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties. The expenses of the tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.

Article 22

The tribunal may make such award as appears to it appropriate in respect of the costs incurred by the parties in presenting their respective cases.

Deposit of Expenses

Article 23

1. The International Bureau, may request each party to deposit an equal amount as an advance for the expenses referred to in Article 20. All amounts deposited by the parties pursuant to this article shall be directed to the International Bureau, and disbursed by it for such expenses, including, inter alia, fees to the arbitrators, and the International Bureau.
2. During the course of the proceedings the tribunal may request supplementary deposits from the parties in respect of the expenses referred to in Article 20.
3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the tribunal may order the suspension or termination of the proceedings.
4. After the award has been made, the International Bureau shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Amendment of the Rules

Article 24

The tribunal shall have the power to amend these rules following consultation with the parties.