

STATEMENT BY THE PRESIDENT

1. On behalf of the Tribunal I should first of all like to thank the Parties, their Agents, the two Attorneys-General and counsel, for the courteous and most helpful way in which the proceedings so far have been conducted. The Tribunal has paid careful attention to both the written and oral arguments presented, and has been able to reach a clear understanding of the Parties' respective positions on the issues which have so far been debated.

2. The Tribunal considers that before proceeding to hear further the merits of the dispute, and in particular the witnesses presented by the parties on questions of fact and scientific opinion, it has first to determine that there is a reasonable likelihood that it has jurisdiction over the merits of the dispute, and to form a sufficiently clear view of the extent of that jurisdiction under the 1982 Convention on the Law of the Sea.

3. The jurisdictional objections presented by the United Kingdom fall into two groups. First, there are a number of questions of jurisdiction and admissibility raised in respect of the United Nations Convention on the Law of the Sea, itself, and other international commitments invoked or referred to by Ireland. I will refer to these, for present purposes, as the international law points. Second, there are certain objections relating to the position of the parties under the law of the European Communities. I will refer to these as the EU law points.

4. The Tribunal would begin by observing that the parties are in agreement that there is a dispute concerning the MOX Plant, and that this dispute is a dispute concerning the interpretation and application of the 1982 Convention. The International Tribunal for the Law of the Sea held that it had prima facie jurisdiction over this dispute and so far the present Tribunal sees no reason to disagree.

5. As to the international law points raised by the United Kingdom, the Tribunal does not believe that these cast any doubt on its prima facie jurisdiction. There has already been (and the United Kingdom does not now contest his) an

exchange of views between the parties as required by Article 283 of the Convention. It is true that the OSPAR Convention is relevant to some, at least, of the questions in issue between the parties, but the Tribunal does not regard that fact as calling into question the characterization of the present dispute as one essentially involving the interpretation and application of the 1982 Convention. Nor is it presently persuaded that the OSPAR Convention substantially covers the field of this dispute so as to trigger Articles 281 and 282 of the 1982 Convention on the Law of the Sea. The Tribunal agrees with the United Kingdom that there is a cardinal distinction to be drawn between the scope of its jurisdiction under Article 288 of the Convention and the applicable law under Article 293. It is also inclined to agree with the United Kingdom that aspects of the written pleadings of Ireland raised questions arising directly under other legal instruments, and it agrees that to the extent this is so, any such claims would be inadmissible. It does not, however, agree that Ireland has failed to state and plead a case arising under the 1982 Convention. For these reasons, among others, the Tribunal maintains the view that it has prima facie jurisdiction under Article 288 (1) of the Convention.

6. As to the EU law points, however, there is a serious difficulty. The Tribunal has been invited to consider the implications of the fact that the 1982 Convention is a mixed agreement to which the EC is a party along with its Member States. Moreover, the Tribunal is requested to consider the fact that, pursuant to Annex IX to the Law of the Sea Convention, it is for the EC, not its Member States, to exercise rights and obligations under the 1982 Convention in respect of matters in relation to which competence has been transferred to the EC by those of its Member States that are also parties to the Convention.

7. The Tribunal notes, in this regard, the statement in a Parliamentary Answer of 15 May 2003 by the European Commission to the effect that the provisions of the 1982 Convention on which Ireland relies in the present case must be regarded as provisions of EC law, either generally or to the extent that they fall within

EC competence. The Commission has added that it is examining the question whether to institute proceedings under article 226 of the EC Treaty.

8. There is, therefore, a real possibility that the European Court of Justice may be seised of the question whether the provisions of the 1982 Convention on which Ireland relies are matters relating to which competence has been transferred to the EC, and indeed that issues concerning the interpretation and application of the provisions of the Convention are as such matters of EC law. In these circumstances, whether, and if so to what extent, all or any of the provisions of the 1982 Convention fall within the competence of the EC or its Member States would fall to be decided by the European Court of Justice. Moreover, while neither the United Kingdom nor Ireland sought to sustain the view that the interpretation of the 1982 Convention in its entirety falls within the exclusive competence of the European Court of Justice as between Member States of the European Union, it cannot be said with certainty that this view would be rejected by the European Court of Justice. The parties before us agreed in argument that, if this view were to be sustained, it would preclude the jurisdiction of the present Tribunal entirely, by virtue of Article 282 of the Convention. By contrast, the United Kingdom did not argue that its other EU law objections were such as wholly to preclude the jurisdiction of this Tribunal.

9. To decide on the jurisdictional issues raised by the United Kingdom in relation to European Community law, this Tribunal would need to determine, *inter alia*, whether the European Community or its Member States have competence in respect of all or some of the matters raised in the provisions invoked in this case. In other words the Tribunal must decide if, and to what extent, the rights and obligations arising under the provisions are exercisable by the European Community or by its Member States.

10. It is clear that any decision of the European Court of Justice on the issues identified above will be decisive and binding as to the question of European Union law. At the same time, by virtue of Article 11 of Annex VII to the 1982

Convention, the decision of the Tribunal will also be binding on Ireland and the United Kingdom as Parties to the dispute.

11. The Tribunal considers that a situation in which there might be two conflicting decisions on the same issues would not be helpful to the resolution of this international dispute. Nor would such a situation be in accord with the dictates of mutual respect and comity that should exist between judicial institutions deciding on rights and obligations as between States, and entrusted with the function of assisting States in the peaceful settlement of disputes that arise between them.

12. The Tribunal has, therefore, decided to suspend further proceedings in the case until not later than 1 December 2003. The Tribunal hopes that it will, at that time, have a clearer picture of the EC legal position. In this regard, the Tribunal urges the Parties to take the necessary steps to expedite the measures for the resolution of outstanding questions.

13. In the meantime, this Tribunal remains seised of the dispute. In the circumstances that now prevail, it is moreover willing to consider the possibility of prescribing provisional measures if either party considers that such measures are necessary in the circumstances to preserve the rights of the Parties or to prevent serious pollution of the marine environment. As Ireland has indicated that it will request the prescription of further provisional measures, the Parties will be given the opportunity during hearings next week to present their views on what, if any, provisional measures are appropriate and the conditions under which such measures may be prescribed. The hearings will commence on Tuesday 17 June and each party will be allocated one and a half days to make its submissions, with half a day for reply. Ireland will provide, as soon as possible and by no later than 5 pm on Monday 16 June, a written statement of the provisional measures it seeks.

14. An appropriate Order of the Tribunal will be issued subsequently, embodying the views as to prima facie jurisdiction which are set out above, and the eventual conclusions of the Tribunal on the Irish request for further provisional measures.

15. The Tribunal accordingly adjourns until 9.45 am on Tuesday next, when it will hear argument from Ireland on the content of any provisional measures that it seeks. The meeting is adjourned.