

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

IN THE DISPUTE CONCERNING THE MOX PLANT, INTERNATIONAL
MOVEMENTS OF RADIOACTIVE MATERIALS, AND THE PROTECTION OF THE
MARINE ENVIRONMENT OF THE IRISH SEA

(IRELAND V. UNITED KINGDOM)

REQUEST FOR FURTHER PROVISIONAL MEASURES

16 JUNE 2003

1. On 25 October 2001 Ireland instituted arbitration proceedings pursuant to Article 287 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) in respect of the dispute concerning the authorisation and operation of the MOX Plant at Sellafield.
2. At the same time as instituting proceedings Ireland lodged an application for Provisional Measures under Article 290 of UNCLOS. That application was heard by the International Tribunal of the Law of the Sea (ITLOS) on 19 and 20 November 2001. On 3 December 2001 an Order was made by ITLOS granting to Ireland provisional measures set out therein. For the avoidance of doubt those measures continue in force and this application is for further provisional measures.
3. On 21 January 2002 Ireland filed an amended Statement of Claim in the arbitration proceedings.
4. This Arbitral Tribunal was constituted pursuant to Annex VII of UNCLOS.
5. On 26 July 2002 Ireland filed its Memorial in the arbitration proceedings. On 9 January 2003 the United Kingdom filed its Counter Memorial. On 7 March 2003 Ireland filed a Reply. On 24 April 2003 the United Kingdom filed a Rejoinder.
6. On 10 June 2003 the hearing of the Arbitration proceedings commenced at the Permanent Court of Arbitration in The Hague. On 13 June 2003 the Arbitral Tribunal suspended further proceedings in the arbitration to not later than 1 December 2003 but gave liberty to Ireland to apply for provisional measures.
7. In his statement of 13 June 2003, the President stated that the Arbitral Tribunal has prima facie jurisdiction for the purposes of this application.
8. The circumstances justifying this request for provisional measures include the likely duration of the suspension of the hearing and the real possibility of

proceedings before the Court of Justice, and the conduct of the United Kingdom as outlined in the pleadings.

9. Ireland therefore requests provisional measures to preserve Ireland's rights under UNCLOS and to prevent serious harm to the marine environment, as follows:-

A) Discharges

(i) The United Kingdom shall ensure that there are no liquid waste discharges from the MOX Plant at Sellafield into the Irish Sea.

(ii) The United Kingdom shall ensure that annual aerial waste discharges of radionuclides from MOX, and annual aerial and liquid waste discharges of radionuclides from THORP, do not exceed 2002 levels.

B) Co-operation (Note: the following is on a confidential basis)

(i) In the event of any proposal for additional reprocessing at THORP or manufacturing at MOX, (by reference to existing binding contractual commitments), the United Kingdom will notify Ireland, provide Ireland with full information in relation to the proposal and consult with, and consider and respond to issues raised by, Ireland.

(ii) The United Kingdom will inform the Irish Government as soon as possible of the precise date and time at which it is expected that any vessel carrying radioactive substances to or from the MOX or THORP Plant or to a storage facility with the possibility of subsequent reprocessing or manufacture in THORP or MOX will arrive within Ireland's Pollution Response Zone, SAR Zone or within the Irish Sea, and shall inform Ireland on a daily basis as to the intended route and progress of such vessel.

(iii) The United Kingdom shall ensure that Ireland is promptly provided with:

- a. Monthly information as to the quantity (in becquerels) of specific radionuclide discharges in the form of liquid and aerial waste

discharges arising from the MOX Plant and separately from the THORP Plant, and the flow sheets relating to environmental discharges liquid and aerial referred to at paragraphs 118 and 124 of Mr Clarke's first statement;

- b. Monthly information as to the volume of waste in the HAST tanks and the volume vitrified during the previous month;
- c. All research studies carried out or funded in whole or in part by or on behalf of the United Kingdom government or any of its agencies or BNFL into the effect of liquid or aerial discharges, from the MOX or THORP Plant, upon the Irish Sea, its environment or biota;
- d. Full details of any reportable accidents or incidents at the MOX or THORP Plant or associated facilities, that will be the subject of a report to the United Kingdom's Health and Safety Executive (or any other public body with responsibility for health and safety at the Sellafield site);
- e. Access to, and the right and facility to make a copy of Continued Operation Safety Reports (including the Probabilistic Risk Assessments) and associated documents relating to the Sellafield site.
- f. The results of reappraisals since 11 September 2001 of the risks to the MOX Plant and THORP and associated facilities such as the HAST tanks, and of the measures taken to counter any change since 11 September 2001 in the level of the perceived threat.

(iv) The United Kingdom shall co-operate and co-ordinate with Ireland in respect of emergency planning and preparedness in respect of risks arising out of reprocessing, MOX fuel manufacture and storage of radioactive materials including providing Ireland with such information as is necessary to take

appropriate response measures.

(v) The United Kingdom shall co-operate with Ireland in arranging trilateral liaison between the Irish Coastguard, BNFL/PNTL and the United Kingdom's Maritime and Coastguard Agency in respect of all shipments of radioactive materials to or from the MOX and/or THORP plants.

C) Assessment

The United Kingdom shall ensure that no steps or decisions are taken or implemented which might preclude full effect being given to the results of any environmental assessment which the Tribunal may order to be carried out in accordance with Article 206 of UNCLOS in respect of the MOX Plant and/or THORP.

D) Other Relief

(i) Further and other relief

(ii) Liberty to apply

In support of its claim for provisional measures Ireland relies upon the pleadings, submission and proceedings already exchanged in this arbitration and the evidence therein contained. Ireland will also advance oral submission of the basis of the said pleadings, submissions, proceedings and evidence.

The claims made by Ireland pursuant to this application are without prejudice to the substantive claims and reliefs made and sought by Ireland in the hearings which presently stand suspended.

Dated 16 June 2003

Signed:

David J O'Hagan
Chief State Solicitor
Agent for Ireland.