



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

Press Release

ORDER IN THE MOX PLANT CASE (IRELAND v. UNITED KINGDOM)

The International Tribunal for the Law of the Sea today delivered its Order in the MOX Plant Case, Provisional Measures (Ireland v. United Kingdom). The Order was read by the President of the Tribunal, Judge P. Chandrasekhara Rao.

THE DISPUTE

The dispute stems from the authorisation of the United Kingdom to open a new MOX facility in Sellafield. The facility is designed to reprocess spent nuclear fuel into a new fuel, known as mixed oxide fuel, or MOX. The Irish Government has pointed out that the operation of the plant will contribute to the pollution of the Irish Sea and underlined the potential risks involved in the transportation of radioactive material to and from the plant.

By notification dated 25 October 2001, addressed to the United Kingdom, Ireland requested that the dispute be submitted to an arbitral tribunal to be established under Annex VII of the United Nations Convention on the Law of the Sea.

On 9 November 2001, Ireland submitted a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention to the International Tribunal for the Law of the Sea pending the constitution of the arbitral tribunal.

According to article 290 of the Convention, the Tribunal may prescribe provisional measures if it considers provisional measures appropriate to "preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment" and if it considers that *prima facie* the arbitral tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires.

THE ORDER OF 3 DECEMBER 2001

The Tribunal first examined the United Kingdom's argument, based on article 282 of the Convention, that the Tribunal is not competent to prescribe provisional measures since

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the main elements of the dispute are governed by regional agreements, including European Treaties, which provide for binding means of resolving disputes. The Tribunal took the view that the dispute concerns the interpretation and application of the Convention and no other agreement. The United Kingdom also maintained that the requirements of article 283 were not satisfied, since no exchange of views had taken place between the parties before the Case was submitted to the Tribunal. In response to this argument, the Tribunal considered that a State Party is not obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted. It therefore found that the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute.

The Tribunal then considered whether provisional measures are required pending the constitution of the Annex VII arbitral tribunal (according to the provisions of the Convention this should take place in early February 2002).

The Tribunal noted and placed on record the assurances given by the United Kingdom that there will be no additional marine transports of radioactive material either to or from Sellafield as a result of the commissioning of the MOX plant until summer 2002.

The Tribunal noted that, in accordance with article 290, paragraph 5, of the Convention, it may prescribe provisional measures if it considers that the urgency of the situation so requires. In the circumstances of this case, the Tribunal found that the urgency of the situation did not require the prescription of the provisional measures as requested by Ireland, in the short period before the constitution of the Annex VII arbitral tribunal.

However, the Tribunal considered that the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law and that rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention. In the view of the Tribunal, prudence and caution require that Ireland and the United Kingdom cooperate in exchanging information concerning risks or effects of the operation of the MOX plant and in devising ways to deal with them, as appropriate.

For these reasons, the Tribunal prescribed the following provisional measure, pending a decision by the Annex VII arbitral tribunal:

“Ireland and the United Kingdom shall cooperate and shall, for this purpose, enter into consultations forthwith in order to:

- (a) exchange further information with regard to possible consequences for the Irish Sea arising out of the commissioning of the MOX plant;
- (b) monitor risks or the effects of the operation of the MOX plant for the Irish Sea;

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- (c) devise, as appropriate, measures to prevent pollution of the marine environment which might result from the operation of the MOX plant.”

The Tribunal further decided that, in accordance with article 95, paragraph 1, of the Rules, Ireland and the United Kingdom shall each submit an initial report on compliance with the provisional measure prescribed not later than 17 December 2001, and authorized the President of the Tribunal to request such further reports and information as he may consider appropriate after that date.

Judges Caminos, Yamamoto, Park, Akl, Marsit, Eiriksson and Jesus appended a joint declaration to the Order.

Vice-President Nelson, Judges Mensah, Anderson, Wolfrum, Treves, Jesus and Judge *ad hoc* Székely appended separate opinions to the Order.

The text of the Order and the opinions appended thereto is available on the website of the Tribunal at www.itlos.org and www.tiddm.org.

The Press Releases of the Tribunal, documents and other information are available on the Tribunal's website at www.itlos.org and www.tiddm.org and from the Registry of the Tribunal. Please contact Mr. Robert van Dijk or Ms. Julia Pope at Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany,
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