

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

**THE MOX PLANT CASE
(IRELAND v. UNITED KINGDOM)
List of cases: No. 10**

PROVISIONAL MEASURES

ORDER OF 3 DECEMBER 2001

2001

TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

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**AFFAIRE DE L'USINE MOX
(IRLANDE c. ROYAUME-UNI)
Rôle des affaires : No. 10**

MESURES CONSERVATOIRES

ORDONNANCE DU 3 DÉCEMBRE 2001

Official citation:

*MOX Plant (Ireland v. United Kingdom), Provisional Measures,
Order of 3 December 2001, ITLOS Reports 2001, p. 95*

Mode officiel de citation :

*Usine MOX (Irlande c. Royaume-Uni), mesures conservatoires,
ordonnance du 3 décembre 2001, TIDM Recueil 2001, p. 95*

3 DECEMBER 2001
ORDER

**THE MOX PLANT CASE
(IRELAND v. UNITED KINGDOM)**

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**AFFAIRE DE L'USINE MOX
(IRLANDE c. ROYAUME-UNI)**

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INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

YEAR 2001

3 December 2001

List of cases:
No. 10**THE MOX PLANT CASE**(IRELAND *v.* UNITED KINGDOM)

REQUEST FOR PROVISIONAL MEASURES

ORDER

Present: President CHANDRASEKHARA RAO; *Vice-President* NELSON; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, AKL, ANDERSON, VUKAS, WOLFRUM, TREVES, MARSIT, EIRIKSSON, NDIAYE, JESUS, XU; *Judge ad hoc* SZÉKELY; *Registrar* GAUTIER.

THE TRIBUNAL,

composed as above,

after deliberation,

Having regard to article 290 of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”) and articles 21, 25 and 27 of the Statute of the Tribunal (hereinafter “the Statute”),

Having regard to articles 89 and 90 of the Rules of the Tribunal (hereinafter “the Rules”),

Having regard to the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland (hereinafter “the United Kingdom”) have not accepted the same procedure for the settlement of disputes in accordance with article 287 of the Convention and are therefore deemed to have accepted arbitration in accordance with Annex VII to the Convention,

Having regard to the Notification and Statement of Claim submitted by Ireland to the United Kingdom on 25 October 2001 instituting arbitral proceedings as provided for in Annex VII to the Convention “in the dispute concerning the MOX plant, international movements of radioactive materials, and the protection of the marine environment of the Irish Sea”,

Having regard to the Request for provisional measures submitted by Ireland to the United Kingdom on 25 October 2001 pending the constitution of an arbitral tribunal under Annex VII to the Convention,

Having regard to the Request submitted by Ireland to the Tribunal on 9 November 2001 for the prescription of provisional measures by the Tribunal in accordance with article 290, paragraph 5, of the Convention,

Makes the following Order:

1. *Whereas* Ireland and the United Kingdom are States Parties to the Convention;
2. *Whereas*, on 9 November 2001, Ireland filed with the Registry of the Tribunal by facsimile a Request for the prescription of provisional measures under article 290, paragraph 5, of the Convention “in the dispute concerning the MOX plant, international movements of radioactive materials, and the protection of the marine environment of the Irish Sea” between Ireland and the United Kingdom;
3. *Whereas* a copy of the Request was sent the same day by the Registrar of the Tribunal to the Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office of the United Kingdom, London, and also in care of the Ambassador of the United Kingdom to Germany on 12 November 2001;
4. *Whereas*, on 9 November 2001, the Registrar was notified of the appointment of Mr. David J. O’Hagan, Chief State Solicitor, as Agent for Ireland, and of the appointment of Mr. Michael Wood, CMG, Legal Adviser to the Foreign and Commonwealth Office, as Agent for the United Kingdom;

5. *Whereas* the original of the Request and documents in support were filed on 12 November 2001, certified copies of which were transmitted on the same day to the Agent of the United Kingdom;

6. *Whereas*, on 12 November 2001, the Agent of Ireland proposed corrections to paragraphs 7 and 8 of the Request and the Agent of the United Kingdom informed the Tribunal, in accordance with article 65, paragraph 4, of the Rules, that he had no objections to these corrections being made;

7. *Whereas*, pursuant to article 90, paragraph 2, of the Rules, the President of the Tribunal, by Order dated 13 November 2001, fixed 19 and 20 November 2001 as the dates for the hearing, notice of which was communicated forthwith to the parties;

8. *Whereas* the Tribunal does not include upon the bench a judge of the nationality of Ireland and Ireland has chosen, pursuant to article 17, paragraph 2, of the Statute, Mr. Alberto Székely of Mexican nationality to sit as judge *ad hoc* in this case;

9. *Whereas*, since no objection to the choice of Mr. Székely as judge *ad hoc* was raised by the United Kingdom, and none appeared to the Tribunal itself, Mr. Székely was admitted to participate in the proceedings as judge *ad hoc* after having made the solemn declaration required under article 9 of the Rules at a public sitting of the Tribunal held on 18 November 2001;

10. *Whereas*, pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was notified by the Registrar on 9 November 2001 of the Request, and States Parties to the Convention were notified, in accordance with article 24, paragraph 3, of the Statute, by a note verbale from the Registrar dated 13 November 2001;

11. *Whereas*, on 14 November 2001, the President ascertained the views of the parties regarding the procedure for the hearing in accordance with article 73 of the Rules;

12. *Whereas*, on 15 November 2001, the United Kingdom filed with the Registry by facsimile its Written Response, which was transmitted to the Agent of Ireland on the same day; the original of the Written Response was filed with the Registry on 17 November 2001, a certified copy of which was transmitted by courier to the Agent of Ireland on the same day;

13. *Whereas*, on 16 November 2001, the Agent of the United Kingdom proposed corrections to paragraph 192 of the Written Response and the Agent of Ireland informed the Tribunal, in accordance with article 65,

paragraph 4, of the Rules, that he had no objections to these corrections being made;

14. *Whereas*, on 18 November 2001, the Agent of the United Kingdom proposed corrections to paragraph 190 of the Written Response and, in accordance with article 65, paragraph 4, of the Rules, the Agent of Ireland, while expressing no objections to these corrections being made, reserved his position on the contents of the proposed corrections;

15. *Whereas*, in accordance with article 68 of the Rules, the Tribunal held initial deliberations on 18 November 2001 concerning the written pleadings and the conduct of the case;

16. *Whereas* additional documents were submitted on 17, 19 and 20 November 2001 by Ireland, and on 18 and 20 November 2001 by the United Kingdom, copies of which were transmitted in each case to the other party;

17. *Whereas*, on 19 November 2001, the President held consultations with the Agents of the parties in accordance with article 45 of the Rules;

18. *Whereas*, prior to the opening of the hearing, the parties submitted documents pursuant to paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal;

19. *Whereas*, pursuant to article 67, paragraph 2, of the Rules, copies of the Request and the Written Response and the documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings;

20. *Whereas* oral statements were presented at four public sittings held on 19 and 20 November 2001 by the following:

On behalf of Ireland: Mr. David J. O'Hagan, Chief State Solicitor, *as Agent*,
Mr. Michael McDowell SC, Attorney General,
Mr. Eoghan Fitzsimons SC, Member of the Irish Bar,
Mr. Philippe Sands, Member of the Bar of England and Wales; Professor of International Law, University of London, United Kingdom,
Mr. Vaughan Lowe, Member of the Bar of England and Wales; Chichele Professor of Public International Law, University of Oxford, United Kingdom,
as Counsel and Advocates,

On behalf of the
United Kingdom:

Mr. Michael Wood, CMG, Legal Adviser, Foreign
and Commonwealth Office, *as Agent*,
Lord Goldsmith QC, Attorney General,
Mr. Richard Plender QC, Member of the Bar of
England and Wales,
Mr. Daniel Bethlehem, Member of the Bar of
England and Wales; Deputy Director of the
Lauterpacht Research Centre for International Law,
Cambridge, United Kingdom,
Mr. Samuel Wordsworth, Member of the Bar of
England and Wales,
as Counsel;

21. *Whereas* in the course of the oral proceedings a number of documents were displayed on video monitors;

22. *Whereas*, on 20 November 2001, a list of points and issues which the Tribunal would like the parties specially to address was communicated to the Agents;

23. *Whereas*, during the hearing on 20 November 2001, the Agent of Ireland requested that Ireland be permitted to submit a written response to the questions referred to in paragraph 22 and the President acceded to that request;

24. *Whereas*, during the hearing on 20 November 2001, the Agent of the United Kingdom responded orally to the questions referred to in paragraph 22;

25. *Whereas* the Agent of Ireland submitted a written response on 21 November 2001 to the questions referred to in paragraph 22 and additional documentation on 22 and 23 November 2001 and the Agent of the United Kingdom submitted comments on the written response of Ireland on 23 November 2001;

26. *Whereas*, in the Notification and Statement of Claim of 25 October 2001, Ireland requested the arbitral tribunal to be constituted under Annex VII (hereinafter "the Annex VII arbitral tribunal") to adjudge and declare:

- 1) That the United Kingdom has breached its obligations under Articles 192 and 193 and/or Article 194 and/or Article 207 and/or Articles 211 and 213 of UNCLOS in relation to the authorisation of the MOX plant, including by failing to take the necessary measures to prevent, reduce and control pollution of the marine environment of the Irish Sea from (1) intended discharges of

- radioactive materials and or wastes from the MOX plant, and/or (2) accidental releases of radioactive materials and/or wastes from the MOX plant and/or international movements associated the MOX plant, and/or (3) releases of radioactive materials and/or wastes from the MOX plant and/or international movements associated the MOX plant with the of resulting from terrorist act;
- 2) That the United Kingdom has breached its obligations under Articles 192 and 193 and/or Article 194 and/or Article 207 and/or Articles 211 and 213 of UNCLOS in relation to the authorisation of the MOX plant by failing (1) properly or at all to assess the risk of terrorist attack on the MOX plant and international movements of radioactive material associated with the plant, and/or (2) properly or at all to prepare a comprehensive response strategy or plan to prevent, contain and respond to terrorist attack on the MOX plant and international movements of radioactive waste associated with the plant;
 - 3) That the United Kingdom has breached its obligations under Articles 123 and 197 of UNCLOS in relation to the authorisation of the MOX plant, and has failed to cooperate with Ireland in the protection of the marine environment of the Irish Sea *inter alia* by refusing to share information with Ireland and/or refusing to carry out a proper environmental assessment of the impacts on the marine environment of the MOX plant and associated activities and/or proceeding to authorise the operation of the MOX plant whilst proceedings relating to the settlement of a dispute on access to information were still pending;
 - 4) That the United Kingdom has breached its obligations under Article 206 of UNCLOS in relation to the authorisation of the MOX plant, including by
 - (a) failing, by its 1993 Environmental Statement, properly and fully to assess the potential effects of the operation of the MOX plant on the marine environment of the Irish Sea; and/or

- (b) failing, since the publication of its 1993 Environmental Statement, to assess the potential effects of the operation of the MOX plant on the marine environment by reference to the factual and legal developments which have arisen since 1993, and in particular since 1998; and/or
 - (c) failing to assess the potential effects on the marine environment of the Irish Sea of international movements of radioactive materials to be transported to and from the MOX plant; and/or
 - (d) failing to assess the risk of potential effects on the marine environment of the Irish Sea arising from terrorist act or acts on the MOX plant and/or on international movements of radioactive material to and from the MOX plant.
- 5) That the United Kingdom shall refrain from authorizing or failing to prevent (a) the operation of the MOX plant and/or (b) international movements of radioactive materials into and out of the United Kingdom related to the operation of the MOX plant or any preparatory or other activities associated with the operation of the MOX until such time as (1) there has been carried out a proper assessment of the environmental impact of the operation of the MOX plant as well as related international movements of radioactive materials, and (2) it is demonstrated that the operation of the MOX plant and related international movements of radioactive materials will result in the deliberate discharge of no radioactive materials, including wastes, directly or indirectly into the marine environment of the Irish Sea, and (3) there has been agreed and adopted jointly with Ireland a comprehensive strategy or plan to prevent, contain and respond to terrorist attack on the MOX plant and international movements of radioactive waste associated with the plant;
- 6) That the United Kingdom pays Ireland's costs of the proceedings;

27. *Whereas* the provisional measures requested by Ireland in the Request to the Tribunal dated 9 November 2001 were as follows:

- (1) that the United Kingdom immediately suspend the authorisation of the MOX plant dated 3 October 2001, alternatively take such other measures as are necessary to prevent with immediate effect the operation of the MOX plant;
- (2) that the United Kingdom immediately ensure that there are no movements into or out of the waters over which it has sovereignty or exercises sovereign rights of any radioactive substances or materials or wastes which are associated with the operation of, or activities preparatory to the operation of, the MOX plant;
- (3) that the United Kingdom ensure that no action of any kind is taken which might aggravate, extend or render more difficult of solution the dispute submitted to the Annex VII tribunal (Ireland hereby agreeing itself to act so as not to aggravate, extend or render more difficult of solution that dispute); and
- (4) that the United Kingdom ensure that no action is taken which might prejudice the rights of Ireland in respect of the carrying out of any decision on the merits that the Annex VII tribunal may render (Ireland likewise will take no action of that kind in relation to the United Kingdom);

28. *Whereas* the submissions presented by the United Kingdom in its Written Response read as follows:

[T]he United Kingdom requests the International Tribunal for the Law of the Sea to:

- (1) reject Ireland's application for provisional measures;
- (2) order Ireland to bear the United Kingdom's costs in these proceedings;

29. *Whereas* Ireland, in its final submissions at the public sitting held on 20 November 2001, requested the prescription by the Tribunal of the following provisional measures:

- (1) that the United Kingdom immediately suspend the authorisation of the MOX plant dated 3 October, 2001, alternatively take such other measures as are necessary to prevent with immediate effect the operation of the MOX plant;
- (2) that the United Kingdom immediately ensure that there are no movements into or out of the waters over which it has sovereignty or exercises sovereign rights of any radioactive substances or materials or wastes which are associated with the operation of, or activities preparatory to the operation of, the MOX plant;
- (3) that the United Kingdom ensure that no action of any kind is taken which might aggravate, extend or render more difficult of solution the dispute submitted to the Annex VII tribunal (Ireland hereby agreeing itself to act so as not to aggravate, extend or render more difficult of solution that dispute); and
- (4) that the United Kingdom ensure that no action is taken which might prejudice the rights of Ireland in respect of the carrying out of any decision on the merits that the Annex VII tribunal may render (Ireland likewise will take no action of that kind in relation to the United Kingdom);

30. *Whereas*, at the public sitting held on 20 November 2001, the United Kingdom presented its final submissions as follows:

The United Kingdom requests the International Tribunal for the Law of the Sea to:

- (1) reject Ireland's request for provisional measures;
- (2) order Ireland to bear the United Kingdom's costs in these proceedings;

31. *Considering* that, in accordance with article 287 of the Convention, Ireland has, on 25 October 2001, instituted proceedings before the Annex VII arbitral tribunal against the United Kingdom "in the dispute concerning the MOX plant, international movements of radioactive materials, and the protection of the marine environment of the Irish Sea";

32. *Considering* that Ireland on 25 October 2001 notified the United Kingdom of the submission of the dispute to the Annex VII arbitral tribunal and of the Request for provisional measures;

33. *Considering* that, on 9 November 2001, after the expiry of the time-limit of two weeks provided for in article 290, paragraph 5, of the Convention, and pending the constitution of the Annex VII arbitral tribunal, Ireland submitted to the Tribunal a Request for provisional measures;

34. *Considering* that article 290, paragraph 5, of the Convention provides in the relevant part that:

Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea ... may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires;

35. *Considering* that, before prescribing provisional measures under article 290, paragraph 5, of the Convention, the Tribunal must satisfy itself that *prima facie* the Annex VII arbitral tribunal would have jurisdiction;

36. *Considering* that Ireland maintains that the dispute with the United Kingdom concerns the interpretation and application of certain provisions of the Convention, including, in particular, articles 123, 192 to 194, 197, 206, 207, 211, 212 and 213 thereof;

37. *Considering* that Ireland has invoked as the basis of jurisdiction of the Annex VII arbitral tribunal article 288, paragraph 1, of the Convention which reads as follows:

A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part;

38. *Considering* that the United Kingdom maintains that Ireland is precluded from having recourse to the Annex VII arbitral tribunal in view of article 282 of the Convention which reads as follows:

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such

dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree;

39. *Considering* that the United Kingdom maintains that the matters of which Ireland complains are governed by regional agreements providing for alternative and binding means of resolving disputes and have actually been submitted to such alternative tribunals, or are about to be submitted;

40. *Considering* that the United Kingdom referred to the fact that Ireland has under article 32 of the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (hereinafter “the OSPAR Convention”) submitted a dispute between Ireland and the United Kingdom “concerning access to information under article 9 of the OSPAR Convention in relation to the economic ‘justification’ of the proposed MOX plant” to an arbitral tribunal (hereinafter “the OSPAR arbitral tribunal”);

41. *Considering* that the United Kingdom has further stated that certain aspects of the complaints of Ireland are governed by the Treaty establishing the European Community (hereinafter “the EC Treaty”) or the Treaty establishing the European Atomic Energy Community (hereinafter “the Euratom Treaty”) and the Directives issued thereunder and that States Parties to those Treaties have agreed to invest the Court of Justice of the European Communities with exclusive jurisdiction to resolve disputes between them concerning alleged failures to comply with such Treaties and Directives;

42. *Considering* that the United Kingdom has also stated that Ireland has made public its intention of initiating separate proceedings in respect of the United Kingdom’s alleged breach of obligations arising under the EC Treaty and the Euratom Treaty;

43. *Considering* that the United Kingdom maintains that the main elements of the dispute submitted to the Annex VII arbitral tribunal are governed by the compulsory dispute settlement procedures of the OSPAR Convention or the EC Treaty or the Euratom Treaty;

44. *Considering* that, for the above reasons, the United Kingdom maintains that the Annex VII arbitral tribunal would not have jurisdiction and that, consequently, the Tribunal is not competent to prescribe provisional measures under article 290, paragraph 5, of the Convention;

45. *Considering* that Ireland contends that the dispute concerns the interpretation or application of the Convention and does not concern the

interpretation or application of either the OSPAR Convention or the EC Treaty or the Euratom Treaty;

46. *Considering* that Ireland further states that neither the OSPAR arbitral tribunal nor the Court of Justice of the European Communities would have jurisdiction that extends to all of the matters in the dispute before the Annex VII arbitral tribunal;

47. *Considering* that Ireland further maintains that the rights and duties under the Convention, the OSPAR Convention, the EC Treaty and the Euratom Treaty are cumulative, and, as a State Party to all of them, it may rely on any or all of them as it chooses;

48. *Considering* that, in the view of the Tribunal, article 282 of the Convention is concerned with general, regional or bilateral agreements which provide for the settlement of disputes concerning what the Convention refers to as “the interpretation or application of this Convention”;

49. *Considering* that the dispute settlement procedures under the OSPAR Convention, the EC Treaty and the Euratom Treaty deal with disputes concerning the interpretation or application of those agreements, and not with disputes arising under the Convention;

50. *Considering* that, even if the OSPAR Convention, the EC Treaty and the Euratom Treaty contain rights or obligations similar to or identical with the rights or obligations set out in the Convention, the rights and obligations under those agreements have a separate existence from those under the Convention;

51. *Considering* also that the application of international law rules on interpretation of treaties to identical or similar provisions of different treaties may not yield the same results, having regard to, *inter alia*, differences in the respective contexts, objects and purposes, subsequent practice of parties and *travaux préparatoires*;

52. *Considering* that the Tribunal is of the opinion that, since the dispute before the Annex VII arbitral tribunal concerns the interpretation or application of the Convention and no other agreement, only the dispute settlement procedures under the Convention are relevant to that dispute;

53. *Considering* that, for the reasons given above, the Tribunal considers that, for the purpose of determining whether the Annex VII arbitral tribunal would have *prima facie* jurisdiction, article 282 of the Convention is not applicable to the dispute submitted to the Annex VII arbitral tribunal;

54. *Considering* that the United Kingdom contends that the requirements of article 283 of the Convention have not been satisfied since, in its view,

there has been no exchange of views regarding the settlement of the dispute by negotiation or other peaceful means;

55. *Considering* that article 283 of the Convention reads as follows:

1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement;

56. *Considering* that the United Kingdom maintains that the correspondence between Ireland and the United Kingdom did not amount to an exchange of views on the dispute said to arise under the Convention;

57. *Considering* that the United Kingdom contends further that its request for an exchange of views under article 283 of the Convention was not accepted by Ireland;

58. *Considering* that Ireland contends that, in its letter written as early as 30 July 1999, it had drawn the attention of the United Kingdom to the dispute under the Convention and that further exchange of correspondence on the matter took place up to the submission of the dispute to the Annex VII arbitral tribunal;

59. *Considering* that Ireland contends further that it has submitted the dispute to the Annex VII arbitral tribunal only after the United Kingdom failed to indicate its willingness to consider the immediate suspension of the authorization of the MOX plant and a halt to related international transports;

60. *Considering* that, in the view of the Tribunal, 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;

61. *Considering* that, in the view of the Tribunal, the provisions of the Convention invoked by Ireland appear to afford a basis on which the jurisdiction of the Annex VII arbitral tribunal might be founded;

62. *Considering* that, for the above reasons, the Tribunal finds that the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute;

63. *Considering* that, in accordance with article 290, paragraph 1, of the Convention, the Tribunal may prescribe provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment;

64. *Considering* that, according to article 290, paragraph 5, of the Convention, provisional measures may be prescribed pending the constitution of the Annex VII arbitral tribunal if the Tribunal considers that the urgency of the situation so requires in the sense that action prejudicial to the rights of either party or causing serious harm to the marine environment is likely to be taken before the constitution of the Annex VII arbitral tribunal;

65. *Considering* that the Tribunal must, therefore, decide whether provisional measures are required pending the constitution of the Annex VII arbitral tribunal;

66. *Considering* that, in accordance with article 290, paragraph 5, of the Convention, the Annex VII arbitral tribunal, once constituted, may modify, revoke or affirm any provisional measures prescribed by the Tribunal;

67. *Considering* that Ireland contends that its rights under certain provisions of the Convention, in particular articles 123, 192 to 194, 197, 206, 207, 211, 212 and 213 thereof, will be irrevocably violated if the MOX plant commences its operations before the United Kingdom fulfils its duties under the Convention;

68. *Considering* that Ireland contends further that once plutonium is introduced into the MOX plant and it commences operations some discharges into the marine environment will occur with irreversible consequences;

69. *Considering* that Ireland contends further that, if the plant becomes operational, the danger of radioactive leaks and emissions, whether arising from the operation of the plant, or resulting from industrial accidents, terrorist attacks, or other causes, would be greatly magnified;

70. *Considering* that Ireland argues that the commissioning of the plant is, in practical terms, itself a near-irreversible step and it is not possible to return to the position that existed before the commissioning of the MOX plant simply by ceasing to feed plutonium into the system;

71. *Considering* that Ireland argues that the precautionary principle places the burden on the United Kingdom to demonstrate that no harm would arise from discharges and other consequences of the operation of the MOX plant, should it proceed, and that this principle might usefully inform

the assessment by the Tribunal of the urgency of the measures it is required to take in respect of the operation of the MOX plant;

72. *Considering* that the United Kingdom contends that it has adduced evidence to establish that the risk of pollution, if any, from the operation of the MOX plant would be infinitesimally small;

73. *Considering* that the United Kingdom maintains that the commissioning of the MOX plant on or around 20 December 2001 will not, even arguably, cause serious harm to the marine environment or irreparable prejudice to the rights of Ireland, in the period prior to the constitution of the Annex VII arbitral tribunal or at all;

74. *Considering* that the United Kingdom contends that neither the commissioning of the MOX plant nor the introduction of plutonium into the system is irreversible, although decommissioning would present the operator of the plant with technical and financial difficulties, if Ireland were to be successful in its claim before the Annex VII arbitral tribunal;

75. *Considering* that the United Kingdom argues that Ireland has failed to supply proof that there will be either irreparable damage to the rights of Ireland or serious harm to the marine environment resulting from the operation of the MOX plant and that, on the facts of this case, the precautionary principle has no application;

76. *Considering* that the United Kingdom states that the manufacture of MOX fuel presents negligible security risks and it has in place very extensive security precautions in terms of the protection of the Sellafield site;

77. *Considering* that the United Kingdom states that it hopes to reach agreement with Ireland on the constitution of the Annex VII arbitral tribunal within a short space of time;

78. *Considering* that, at the public sitting held on 20 November 2001, the United Kingdom has stated 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”;

79. *Considering* that at the same sitting the United Kingdom stated further that “there will be no export of MOX fuel from the plant until summer 2002” and that “there is to be no import to the THORP plant of spent nuclear fuel pursuant to contracts for conversion to the MOX plant within that period either” and clarified that the word “summer” should be read as “October”;

80. *Considering* that the Tribunal places on record the assurances given by the United Kingdom as specified in paragraphs 78 and 79;

81. *Considering* that, in the circumstances of this case, the Tribunal does not find that the urgency of the situation requires the prescription of the provisional measures requested by Ireland, in the short period before the constitution of the Annex VII arbitral tribunal;

82. *Considering*, however, 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;

83. *Considering* that, in accordance with article 89, paragraph 5, of the Rules, the Tribunal may prescribe measures different in whole or in part from those requested;

84. *Considering* that, 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;

85. *Considering* that Ireland and the United Kingdom should each ensure that no action is taken which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal;

86. *Considering* that, pursuant to article 95, paragraph 1, of the Rules, each party is required to submit to the Tribunal a report and information on compliance with any provisional measures prescribed;

87. *Considering* that it may be necessary for the Tribunal to request further information from the parties on the implementation of provisional measures and that it is appropriate that the President be authorized to request such information in accordance with article 95, paragraph 2, of the Rules;

88. *Considering* that, in the present case, the Tribunal sees no need to depart from the general rule, as set out in article 34 of its Statute, that each party shall bear its own costs;

89. *For these reasons,*

THE TRIBUNAL,

1. Unanimously,

Prescribes, pending a decision by the Annex VII arbitral tribunal, the following provisional measure under article 290, paragraph 5, of the Convention:

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

2. Unanimously,

Decides that Ireland and the United Kingdom shall each submit the initial report referred to in article 95, paragraph 1, of the Rules not later than 17 December 2001, and authorizes the President of the Tribunal to request such further reports and information as he may consider appropriate after that date.

3. Unanimously,

Decides that each party shall bear its own costs.

Done in English and in French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this third day of December, two thousand and one, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Ireland and the Government of the United Kingdom, respectively.

(Signed) P. CHANDRASEKHARA RAO,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judges CAMINOS, YAMAMOTO, PARK, AKL, MARSIT, EIRIKSSON and JESUS append a joint declaration to the Order of the Tribunal.

Vice-President NELSON, *Judges* MENSAH, ANDERSON, WOLFRUM, TREVES, JESUS and *Judge ad hoc* SZÉKELY append separate opinions to the Order of the Tribunal.