

**JOINT DECLARATION
OF JUDGES CAMINOS, YAMAMOTO, PARK,
AKL, MARSIT, EIRIKSSON AND JESUS**

The dispute between Ireland and the United Kingdom as it appears before the Tribunal is characterized by an almost total lack of agreement on the scientific evidence with respect to the possible consequences of the operation of the MOX plant on the marine environment of the Irish Sea.

Under these circumstances of scientific uncertainty, the Tribunal might have been expected to have followed the path it took in the *Southern Bluefin Tuna Cases* to prescribe a measure preserving the existing situation. In its wisdom, it did not do so. It decided, in the circumstances of the case, that, in the short period before the constitution of an arbitral tribunal under Annex VII to the United Nations Convention on the Law of the Sea, the urgency of the situation did not require it to lay down, as binding legal obligations, the measures requested by Ireland.

We have supported this decision. The circumstances of the case which have influenced us in this regard include, first, as for Ireland's request that marine transport associated with the plant cease, that the United Kingdom has made assurances that there would be no such transport in the relevant period. Second, with respect to Ireland's request to prevent the commissioning of the plant, we are influenced by the United Kingdom statement that the commissioning of the plant and the introduction of plutonium into the system is not irreversible.

More importantly, our position is a response to another characteristic of the dispute as presented to the Tribunal, that is, the almost complete lack of cooperation between the Governments of Ireland and the United Kingdom with respect to the environmental impact of the planned operations. It is clear that this state of affairs has its origin in a long-standing dispute with respect to other activities at the Sellafield site, but those activities are not before the Tribunal.

The Tribunal has identified the duty to cooperate as a fundamental principle in the regime of the prevention of pollution of the marine environment under Part XII of the Convention and general international law. Against the background of that duty, we regard the most effective measure that the Tribunal could have adopted was to require the parties to cooperate forthwith. It is not, we trust, an idle hope that the results of the consultations prescribed will include a common understanding of the scientific evidence and a common appreciation of the measures which must be taken with respect to the plant to prevent harm to the marine environment.

(Signed) Hugo Caminos
(Signed) Soji Yamamoto
(Signed) Choon-Ho Park
(Signed) Joseph Akl
(Signed) Mohamed Mouldi Marsit
(Signed) Gudmundur Eiriksson
(Signed) José Luis Jesus