

**RULES OF PROCEDURE FOR THE TRIBUNAL CONSTITUTED UNDER  
ANNEX VII TO THE UNITED NATIONS CONVENTION ON THE LAW OF  
THE SEA PURSUANT TO THE NOTIFICATION OF IRELAND DATED 25<sup>th</sup>  
OCTOBER 2001**

Whereas Ireland and the United Kingdom are Parties to the United Nations Convention on the Law of the Sea (“the Convention”);

Whereas article 286 of the Convention provides that: “Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any Party to the dispute to the court or tribunal having jurisdiction under this section”;

Whereas article 287(5) of the Convention provides that: “If the Parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the Parties otherwise agree”;

Whereas article 1 of Annex VII to the Convention provides that: “Subject to the provisions of Part XV, any Party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other Party or Parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based”;

Whereas Ireland has invoked article 287 of the Convention and article 1 of Annex VII to the Convention with regard to a 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) (“the Dispute”), as set out in Ireland’s Notification under article 287 of the Convention and article 1 of Annex VII to the Convention and Statement of Claim and Grounds on which it is based dated 25 October 2001 (“the Notification and Statement of Claim”);

Whereas in accordance with articles 3(b) and 3(c) respectively of Annex VII to the Convention, Ireland has appointed Professor James Crawford SC as member of the Arbitral Tribunal in respect of the Dispute (the “Arbitral Tribunal”) and the United Kingdom has appointed Sir Arthur Watts QC as member of the Arbitral Tribunal. Whereas in accordance with article 3(d) of Annex VII to the Convention, Ireland and the United Kingdom (together, the “Parties”) have agreed to the appointment of H.E. Judge Thomas A. Mensah (as President) and Maître L. Yves Fortier QC and Professor Gerhard Hafner as members of the Arbitral Tribunal;

Whereas article 5 of Annex VII to the Convention provides that “Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each Party a full opportunity to be heard and to present its case”;

Whereas the Parties have agreed on the following Rules of Procedure (the “Rules”) for the arbitration;

The arbitration shall be in accordance with these Rules.

## **Section I. Introduction**

### **Scope of Application**

#### *Article 1*

1. The Arbitral Tribunal shall function in accordance with these Rules, the relevant provisions of the Convention and Annex VII to the Convention. These Rules are subject to such modifications or additions as the Parties may agree in writing after consultation with the Arbitral Tribunal.
2. To the extent that any question of procedure is not expressly governed by these Rules or by Annex VII to the Convention or other provisions of the Convention, and the Parties have not otherwise agreed, the question shall be decided by the Arbitral Tribunal after consultation with the Parties.
3. The International Bureau of the Permanent Court of Arbitration (the 'International Bureau') shall serve as the Registry and shall take charge of the archives of the arbitration proceedings.

### **Notice, Calculation of Periods of Time**

#### *Article 2*

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received by the International Bureau or by a Party when it has been delivered to the International Bureau or to the agent of the Party appointed pursuant to Article 4.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-work day in the State of the Party or in The Netherlands, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

### **Commencement of Proceedings**

#### *Article 3*

The proceedings are deemed to have commenced on 25 October 2001.

### **Representation and Assistance**

#### *Article 4*

Each Party shall be represented by an agent and, if it so decides, one or more deputy agents. The Parties may also be assisted by persons of their choice. The name and address of the agent and any deputy agent or agents must be communicated in writing to the other Party, to the International Bureau, and to all members of the Arbitral Tribunal after it has been appointed.

## **Section II. Composition of the Tribunal**

### **Number and Appointment of Arbitrators**

#### *Article 5*

The Arbitral Tribunal consists of five members appointed in accordance with article 3 of Annex VII to the Convention.

### **Challenge of Arbitrators**

#### *Article 6*

1. Either Party may, within thirty days of being notified of the appointment of any arbitrator, challenge the appointment on the ground that circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or that he/she does not have the qualifications suitable for the function. Any such challenge shall be in writing and shall be notified to the International Bureau and to all members of the Arbitral Tribunal.
2. The arbitrator whose appointment is challenged may withdraw and shall do so if both Parties so request, but in the absence of such withdrawal, the remaining members of the Arbitral Tribunal shall decide on the challenge, if possible within 30 days or otherwise not later than 60 days from the date of the challenge.

### **Replacement of an Arbitrator**

#### *Article 7*

1. If a challenge to the appointment of an arbitrator is sustained or in the event of the death or withdrawal of an arbitrator during the course of the proceedings, a substitute arbitrator shall be appointed:
  - (a) Where the arbitrator being replaced was originally appointed by one of the Parties in accordance with articles 3(b) or 3(c) of Annex VII to the Convention, by the Party making the original appointment if possible within 30 days, or otherwise not later than 60 days, from the date of any challenge being sustained or the death or withdrawal of an arbitrator.
  - (b) Where the arbitrator being replaced was originally appointed by agreement of the Parties in accordance with article 3(d) of Annex VII to the Convention, by agreement of the Parties or, failing such agreement, by the remaining members of the Arbitral Tribunal if possible within 30 days, or otherwise not later than 60 days, from the date of any challenge being sustained or the death or withdrawal of the arbitrator.
2. In such an event, prior hearings may be repeated at the discretion of the Arbitral Tribunal.

### **Section III. The Proceedings**

#### **General Provisions**

##### *Article 8*

1. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity to be heard and to present its case.
2. Subject to these Rules, the Parties shall facilitate the work of the Arbitral Tribunal in accordance with article 6 of Annex VII to the Convention.

#### **Place of and language of Arbitration**

##### *Article 9*

1. The place where the arbitration is to be held shall be The Hague, The Netherlands.
2. The Arbitral Tribunal may hold meetings at any place it deems appropriate.
3. The award shall be made at the place of arbitration.
4. The language of the arbitration is English.

#### **Order and Content of pleading**

##### *Article 10*

1. On or before 26 July 2002, Ireland shall communicate in writing to the United Kingdom, to the International Bureau and to each of the arbitrators a Memorial containing:
  - (a) A statement of any facts on which Ireland relies;
  - (b) Ireland's submissions on law;
  - (c) A statement of the relief or remedy sought by Ireland.
2. On or before 3 January 2003, the United Kingdom shall submit a Counter-Memorial containing:
  - (a) An admission or denial of any facts alleged in the Memorial and a statement of any additional facts on which the United Kingdom relies;
  - (b) Observations concerning the submissions on law in the Memorial; the United Kingdom's submissions on law in answer thereto;
  - (c) The form of order sought by the United Kingdom.
3. On or before 28 February 2003, Ireland may submit a Reply.
4. On or before 25 April 2003, the United Kingdom may submit a Rejoinder.

5. At the request of either Party, and after having ascertained the views of the other Party, the Arbitral Tribunal may extend the time specified in paragraphs 1, 2, 3 and 4 of this Article for the submission of pleadings.
6. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of any facts alleged in it.
7. During the course of the arbitral proceedings either Party may, if given leave by the Arbitral Tribunal to do so, amend or supplement its claim or defence, provided that a claim may not (without the consent of the other Party) be amended or supplemented in such a manner that it falls outside the scope of the Dispute.

### **Preliminary objections**

#### *Article 11*

1. The Arbitral Tribunal shall have the power to rule on objections to its jurisdiction or to the admissibility of the Notification or of any claim made in the proceedings.
2. A submission that the Arbitral Tribunal does not have jurisdiction or that the Notification or a claim made in the pleadings is inadmissible shall be raised either:
  - (a) where the United Kingdom requests that the submissions be dealt with as a preliminary issue, as soon as possible but not later than three months from the time of the filing of the Memorial; or
  - (b) in all other circumstances, not later than in the Counter-Memorial or, with respect to the Reply, in the Rejoinder.
3. The Arbitral Tribunal, after ascertaining the views of the Parties, may rule on objections to jurisdiction or admissibility as a preliminary issue or in its final award.

### **Evidence and Hearings**

#### *Article 12*

1. Each Party shall have the burden of proving the facts relied on to support its claim or defence. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence adduced.
2. Subject to paragraph 3 below, the Arbitral Tribunal may take all appropriate measures in order to establish the facts.
3. Any part of a written or oral pleading or other documentary material tendered or to be tendered by either Party and identified as “confidential and sensitive” shall remain confidential exclusively to the Arbitral Tribunal and to independent counsel for the other Party and such other persons as the Parties agree upon, unless and until and to the extent that the Arbitral Tribunal makes an order to the contrary, under procedures to be determined by the Arbitral Tribunal in consultation with the Parties. The Arbitral Tribunal will not make any order

permitting the wider disclosure of such material without giving the Party tendering such material a prior opportunity to withdraw it. This requirement of confidentiality shall remain in effect with respect to any material so withdrawn. The Arbitral Tribunal may require that any person to whom any “confidential and sensitive” material is disclosed give an appropriate written undertaking to respect and preserve its confidentiality.

#### *Article 13*

1. There shall be such hearings as the Arbitral Tribunal considers appropriate at which the Parties may make their oral submissions
2. The Arbitral Tribunal shall give the Parties adequate advance notice of the date, time and place of any oral hearing.
3. If witnesses, including expert witnesses, are to be heard, each Party shall, at least thirty days before the hearing, communicate to the International Bureau, to the members of the Arbitral Tribunal and to the other Party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony. Where a language other than English is to be used by a witness, the necessary arrangements for interpretation into English shall be made by the International Bureau, at the expense of the Party concerned.
4. The Arbitral Tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of other witnesses. Taking account of the views of the Parties, the Arbitral Tribunal shall determine the manner in which witnesses are examined.
5. Subject to any steps taken or to be taken in pursuance of Article 12(3) that may be required to protect any pleading or other documentary material tendered or to be tendered by either Party and identified as “confidential and sensitive”, and after consultation with the Parties to establish appropriate modalities, the oral hearings shall be open to the public unless the Arbitral Tribunal decides otherwise.
6. Subject to the operation of Article 12(3), the pleadings of the Parties and any documentary material or evidence submitted by them shall remain confidential until the opening of the oral hearing to which they relate at which point the Arbitral Tribunal may, after ascertaining the views of the Parties, decide that they may be made accessible to the public.
7. The International Bureau shall make arrangements for a verbatim record of each hearing to be produced

#### **Decisions on administration and routine procedure**

#### *Article 14*

Decisions of the Arbitral Tribunal, both on procedure and substance, shall be taken by a majority vote of its members, except that questions of administration or routine procedure may be decided by the President of the Arbitral Tribunal, unless the President wishes to have the opinion of the other members of the Arbitral Tribunal or the Parties request a decision of the Arbitral Tribunal.

## **Section IV. The Award**

### **Publication of the Award**

#### *Article 15*

Subject to any requirement arising from the application of Article 12(3) of the Rules, the award shall be made public to the extent that this can be done without disclosure of confidential information.

### **Expenses and Costs**

#### *Article 16*

1. Unless the Arbitral Tribunal determines otherwise because of the particular circumstances of the case, the expenses of the Arbitral Tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.
2. The expenses of the Arbitral Tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.
3. The International Bureau shall keep a record of all expenses, and shall furnish a final statement thereof to the Parties.

#### *Article 17*

The Arbitral Tribunal may make such award as appears to it appropriate in respect of the costs incurred by the Parties in presenting their respective cases.

### **Deposit for Expenses**

#### *Article 18*

1. The International Bureau may request each Party to deposit an equal amount as an advance for the expenses referred to in Article 16. All amounts deposited by the Parties pursuant to this article shall be directed to the International Bureau, and disbursed by it for such expenses, including, *inter alia*, fees to the arbitrators, and the International Bureau.
2. During the course of the proceedings, the International Bureau or the Arbitral Tribunal may request supplementary deposits from the Parties in respect of the expenses referred to in Article 16.
3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the Arbitral Tribunal shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the proceedings.
4. After the award has been made, the International Bureau shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.