

GREENPEACE Briefing

Irish Government versus UK Government: Sellafield MOX Plant, Permanent Court of Arbitration, The Hague, 10th – 27th June 2003

What is the case?

Ireland is seeking to use international law to stop British Nuclear Fuels (BNFL) and the UK Government from operating the Sellafield MOX Plant (SMP). The facility was authorized by the Blair Government in 2001 after six years of delays despite legal challenges from Greenpeace and Friends of the Earth.



One of the legal challenges launched by the Government of Ireland was a commencement of international arbitration under the United Nations Convention for Law of the Sea (UNCLOS) over the UK Government's plans to operate the Sellafield Mixed oxide plutonium fuel (MOX) Plant (SMP) at the Sellafield site in the northwest of England. By notification dated 25 October 2001 addressed to the United Kingdom, Ireland requested that the dispute be submitted to an arbitral tribunal established under Annex VII of the Convention.

Ireland claims that the UK Government has violated a number of articles of the UNCLOS. Namely,

- Articles 192 and 193 and/or Article 194 and/or Article 207 and/or Articles 211 and 213 of UNCLOS in relation to the authorization 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;
- Articles 192 and 193 and/or Article 194 and/or Article 207 and/or Articles 211 and 213 of UNCLOS in relation to the authorization of the MOX plant by failing to assess the risk of terrorist attack on the MOX plant and international movements of radioactive material associated with the plant;
- Articles 123 and 197 of UNCLOS in relation to the authorization of the MOX plant, in failing to cooperate with Ireland in the protection of the marine environment of the Irish Sea 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 authorize the operation of the MOX plant whilst proceedings relating to the settlement of a dispute on access to information were still pending.

The arbitration is being heard in the Permanent Court of Arbitration in The Hague, in the Netherlands.

What is the Sellafield MOX Plant?

SMP was built to take plutonium from the BNFL reprocessing plant and to manufacture MOX nuclear fuel – a mixture of uranium and plutonium – which BNFL hope would be used by foreign utilities in their nuclear reactors. BNFL has been unable to secure business with its largest potential market, the Japanese utilities, but has signed contracts with Germany, Switzerland and Sweden.

Why is Ireland opposed to the Sellafield MOX Plant?

Ireland, like many other nations around the world, as well as environmental groups, has numerous reasons to be opposed to the SMP. Sellafield is a major source of marine radioactive pollution of the Irish Sea and North Atlantic through releases of millions of litres of nuclear waste every day into the ocean. The SMP's operation is central to the future of BNFL and Sellafield – no SMP means a likely end to reprocessing and the end therefore of major discharges. The plutonium in the SMP is direct use nuclear weapons material, and therefore poses a major security and terrorist threat. BNFL plan to transport hundreds of tons of MOX fuel, containing thousands of kilograms of plutonium, from Sellafield by ship through the Irish Sea to Europe and Japan. The transports also pose significant environmental and human health risks in the event of accident. The UK Government has ignored over successive years Irish concerns over a facility that is closer to Dublin than to London, and which is opposed by the overwhelming majority of Irish people and all political parties.

What is the Permanent Court of Arbitration?

The century-old Permanent Court of Arbitration (PCA) was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference. The most concrete achievement of the Conference was the establishment of the PCA: the first global mechanism for the settlement of inter-state disputes. The 1899 Convention, which provided the legal basis for the PCA, was revised at the second Hague Peace Conference in 1907. There are currently 97 States, which are parties to one or both of the Conventions.

What will happen in the Arbitration Court?

Five international judges will listen to evidence presented by Ireland's Attorney general and legal team and consultants and the UK's Attorney General, legal team and consultants over a period of three weeks. The UK is likely to argue as they have done in early court hearings at the ITLOS, that the Permanent Court is not the appropriate forum for such a case. They will seek to convince the judges that they do not have jurisdiction over the Sellafield MOX Plant. The judges will then take at least six months to decide on the merits of the case.

What are the implications of this case ?

The Irish Government has made a major effort to get the UK Government into an international court over Sellafield. Greenpeace believes they have a strong case and that the Court has the authority to rule in Ireland's favour, finding the UK in major breach of the United Nations Law of the Sea. This ultimately could include the demand for the closure of the SMP.

Simply by bringing the UK Government into Court, the Irish case adds further to the major problems facing the UK Government over the future of Sellafield and the MOX plant. BNFL is insolvent, its largest customer, British Energy is bankrupt and in receipt of hundreds of millions of sterling in illegal state aid. The SMP has failed to operate successfully since it was authorized in 2001, and is already one year behind schedule for its Swiss clients. Its largest potential customers in Japan are refusing to sign contracts with BNFL due to concerns over the quality of MOX fuel produced by the plant, following revelations over a 1999 shipment of MOX fuel that was subsequently rejected and shipped back in 2002.

No Government likes to be put into the dock of an international court accused of violating international law. The UK Government's disregard for the legitimate concerns of its closest neighbour and disregard for its international obligations will once again be exposed to scrutiny during the next three weeks.

For further information:

***Shaun Burnie – Nuclear Campaigner , Greenpeace International - Shaun.Burnie@ams.greenpeace.org
Duncan Currie, Greenpeace International Lawyer - duncanc@globelaw.com***

Notes :

Specific language from the Irish submission to ITLOS October 2001

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 authorization 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 authorization 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 authorization 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.