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5/12FCS/85/314SECRETARY OF STATE FOR TRANSPORTCFL: Treaty

1. Thank you for your letter of 25 November enclosing our officials' joint progress report on the Treaty and a copy of the latest draft. I am impressed by the good progress which has been made. I note that the major outstanding question concerns commercial and competition policy. I understand that officials in the DTI are working on a solution.
2. I am glad you raised the question of the Intergovernmental Commission. I am sure you are right in wishing to keep the Intergovernmental Commission as small as possible, although I suppose the number of 16 is not immutable. In this respect I doubt whether it would be wise to include a precise number in the Treaty itself. It would be burdensome to have to amend the Treaty just to change the numbers.
3. I should like to make a firm bid for the FCO to be represented on the Commission. As you know, we have a representative on the Anglo-French Plenary Group which currently oversees all matters connected with the Fixed Link. I understand your officials have found this very useful. I imagine the IGC will, particularly during the pre-construction phase, have many of the same responsibilities as that Group. This is a project of major significance to Anglo-French relations and it has important foreign policy implications. I therefore believe that

/the



the FCO should sit on the Commission. There will certainly be a representative from the Quai d'Orsay. An obvious task for the FCO representative would be to continue his present role, coordinating security and defence questions on the British side, and speaking on these issues at meetings of the Commission. There will of course be separate arrangements for Anglo-French coordination of security and defence matters on a more day-to-day basis.

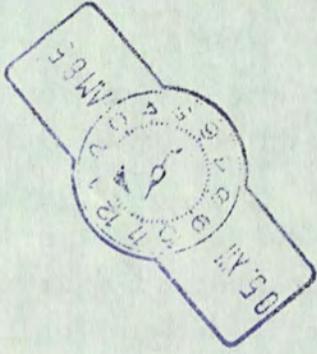
4. For the rest I entirely agree that as you suggest we should instruct our officials to settle the outstanding matters of policy in the Treaty as quickly as possible on the lines described in their report.

5. I am copying this letter to the Prime Minister, Douglas Hurd, Michael Heseltine, members of E(A) and Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
5 December 1985

TRANSPORT
CHANNEL TUNNEL
PT 3



CC/BG



Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Nicholas Ridley AMICE MP
Secretary of State for Transport
2 Marsham Street
LONDON SW1P 3EB

9 December 1985

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9/12

Dear Nick,

CHANNEL FIXED LINK: TREATY

In your letter to Geoffrey Howe of 25 November you described progress on the Treaty. I am broadly content with the draft Treaty but would like to register some points which I imagine you have well in mind.

I understand that you propose to consult us again about the draft on commercial policy after further discussion with the French, and I should welcome that. I do not see why promoters would see the present English draft as not fulfilling the commitment given in the guidelines, since those made it clear that national laws would apply as regards abuse of a dominant position and anti-competitive practices. Because most users of the link are likely to be British, we have a particular interest in safeguarding our powers against the abuse of a dominant position, and I should be reluctant to make their use subject to French agreement.

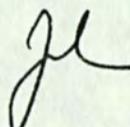
Apart from that, I wonder why we should be promising effective exemption from exchange controls for transactions with third countries. This goes beyond the guidelines, and also beyond the arrangements agreed in 1973. It is an academic point in current circumstances, but the Treaty and link will have a long life. I therefore suggest that officials clarify the purpose of the French in asking for this exemption, and report on the balance of advantage in our conceding it.

I also suggest that what is said about duty-free facilities should be looked at again in the light of apparent French unwillingness to make a joint application to Brussels. Although the text refers to our international obligations, it may still seem presumptuous to the Commission. On the substance, I suggest that you might ask your French counterpart to confirm that his Government still wishes duty-free facilities to be available on the link.

Finally you have asked about representation on the Intergovernmental Commission. I believe that it has been helpful for the Treasury to have been involved so closely in work with the French up to now, and hope that this can continue. The Tresor will, I am sure, be represented on the French side. The representative of this Department would, of course, keep closely in touch with the Revenue Departments and draw them in as necessary.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Douglas Hurd, Michael Heseltine and other members of E(A) and to Sir Robert Armstrong.

Yours ever,



JOHN MacGREGOR

TRANSPORT PART 3
THE CHANNEL TUNNEL CU





DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
LONDON SW1

25 November 1985

Dear Geoffrey

CHANNEL FIXED LINK: TREATY

Our officials have submitted to me the enclosed joint progress report on the drafting of a Treaty for the Channel Fixed Link. The latest English draft of the Treaty text is attached to the report.

The report suggests that good progress has been made in these negotiations. With one major exception, there is Anglo-French agreement on most issues of substance which arise on the Treaty. We are, therefore, on target to sign the Treaty in February, if required.

The major outstanding question concerns the way in which we are to give effect in the Treaty to the undertaking in the "Invitation to Promoters" that "promoters will be free to decide their own commercial policy, tariffs and the type of service to be offered." The present draft of Article 5 does not satisfy the French and would not be seen by the promoters as fulfilling the commitment given in the guidelines. DTI officials are discussing this with their French opposite numbers and it appears that it is the French, not ourselves, who have the most problems with this Article.

INTER-GOVERNMENTAL MACHINERY

One of the most difficult parts of the Treaty to negotiate has been the Inter-Governmental machinery. To create a bi-national "clearing house" for Governmental decisions affecting the concession and a channel of communication between the Concessionaire and the two Governments, the Treaty provides for:

1. an Inter-Governmental commission; and

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JOINT REPORT BY OFFICIALS OF THE DEPARTMENT OF TRANSPORT AND THE
FOREIGN AND COMMONWEALTH OFFICE TO MINISTERS ON PROGRESS ON THE
DRAFTING OF A TREATY FOR THE CHANNEL FIXED LINK

Introduction

1. The legal arrangements necessary for the establishment and operation of a Channel Fixed Link comprise:-

- a) a Treaty and other intergovernmental agreements and arrangements setting out the intentions of, and regulating the obligations between, the United Kingdom and France;
- b) a Concession by the United Kingdom and France authorising the successful promoters to construct and operate the Link, and regulating their operations. The Concession is the principal instrument regulating the Fixed Link;
- c) legislative provision for the ratification of the Treaty, for enabling the Governments to grant the Concession, and for the adaptation of laws. Due to the different approach in the United Kingdom and France to the effect in domestic law of an international agreement, there will be differences in the legislation of the two countries. In the United Kingdom, it will involve both a Bill and subordinate legislation.

Timing

2. It will be necessary to complete and sign the Treaty and the Concession at least before Second Reading of the Bill. It is the present intention to sign the Treaty during February 1986. The Bill must be enacted before the Treaty is ratified and as a condition of the Concession coming into force.

Contents of the Treaty

3. The substantive provisions of the Treaty will be limited to broad basic agreements between Governments. Although it will be necessary to come to an agreement with the French over many matters of detail, it is neither possible nor desirable to attempt to go into such matters in the Treaty itself. These details (relating eg to the legal regime of the Link, policing, customs, immigration, safety and emergency services) will be worked out (and possibly changed from time to time) over the next couple of years. The Treaty will therefore expressly provide for such matters to be dealt with in implementing protocols and arrangements. Some of them will be highly sensitive, eg precautions against, and response to, terrorism; these will be the subject of confidential arrangements.

4. The main provisions of the draft Treaty will be as follows:-

(a) Concession: The grant by both Governments to permit the Concessionaires to construct and operate a Fixed Link. The Concession cannot be amended without the agreement of both Governments. The Link is to be financed without recourse to government funds or government guarantees of a financial or commercial nature. Subject to competition law, the Concessionaires will be free to fix their own tariffs and determine their commercial policy.

(b) Political guarantee: If a Government interrupts the Concession or terminates it prematurely, save eg for non performance or on defence grounds, compensation is payable to the Concessionaires. Compensation comparable to that payable on a requisition of property would also be payable on interruption or termination on defence grounds. Compensation will also be payable to the other Government for a premature termination of the Concession; the exact terms of this latter provision are still the subject of negotiation.

- (c) Jurisdiction: The frontier on the Fixed Link will be the same as the frontier on the Continental shelf agreed between the United Kingdom and France by Treaty in 1982. In general the frontier will determine jurisdiction, but because of the nature of the Link and the probability of juxtaposition of controls, there will inevitably be a need for some extraterritorial jurisdiction. This is to be the subject of Protocols (and necessary domestic legislation).
- (d) Finance: The draft provides that matters relating to direct taxation will be dealt with through the Anglo-French Double Taxation Convention. Provision is also made for duty-free facilities, though this will be subject to agreement by the EC.
- (e) Intergovernmental machinery: A system of inter-governmental control is to be established consisting of a Commission, through which the governments will in practice act vis-a-vis the Concessionaires, a safety authority, and provision for consultation. It has been proposed that the Commission and the Authority should be funded by a levy on the Concessionaires.
- (f) Disputes: There is provision for arbitration both as between the governments and as between the governments and the Concessionaires.

Present state of negotiations

5. There is substantial agreement on these main provisions and the current English text of the draft Treaty is annexed to this Report. There is to be a drafting committee later this month to reconcile the English and French texts, eliminate anomalies and ensure consistency. There are still a number of substantive

issues outstanding of which the most significant from the British side are the question of payment of compensation to the other Government on a termination of the Concession for defence reasons; the application of competition law to the Fixed Link; and the provision of duty-free facilities. If necessary, these will be the subject of separate submissions. The other matters currently outstanding are likely to be resolved so as to enable the Treaty to be signed on time though tactical considerations will affect the timing of agreement on them.

6. The current draft of the Treaty is suitable for any of the schemes proposed by the promoters. It will be necessary to review the text after the selection of the successful scheme to see if any additional, in particular "scheme specific", provision is needed.

Future work plan

7. Planning for the future work on the Treaty will therefore be on the following basis:-

- a) drafting committee and production of a common text: November 1985;
- b) continued work to resolve outstanding issues: December 1985/1-15 January 1986;
- c) examination of additional, eg "scheme specific", provisions: January 1986;
- d) scrutiny by FCO Treaty Department: January 1986

FCO/DTP

15 November 1985

DRAFT

D.T. Rev 5

6.xi.85

TREATY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FRENCH REPUBLIC CONCERNING THE CONSTRUCTION AND OPERATION OF A CHANNEL FIXED LINK BETWEEN THE UNITED KINGDOM AND FRANCE

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth, and the President of the French Republic;

CONVINCED that a link comprising a [] will greatly improve communications between the United Kingdom and France and give fresh impetus to relations between the two countries;

DESIRING ALSO TO contribute to the development of relations and the expansion of trade between the Members States of the European Communities and more generally between European States;

CONFIDENT of the ability of private enterprise successfully to construct and operate such a Channel Fixed Link in accordance with the criteria laid down by the Government of the United Kingdom and the French Government;

HAVE DECIDED to conclude a Treaty and to this end have appointed as their Plenipotentiaries :-

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories. Head of the Commonwealth :

[

]

The President of the French Republic :

[]

WHO, having presented their full Powers, found in good and due form, have agreed as follows :

Article 1 [F. 13.1]

Definitions

* In this Treaty :-

(a) "the Fixed Link" means the referred to in Article 2 (6) ;

(b) "the Concessionaires" means;

(c) "the Concession" means

(the text of which is attached to this Treaty but does not form an integral part thereof), and includes any subsequent agreement concerning the construction and operation of the Fixed Link made between the Governments or one of them and the Concessionaires in accordance with Article 3(3).

Article 2 [F.1; F.3; F.4.4 and F.5]

Object

(1) The High Contracting Parties undertake, in accordance with

the provisions of this Treaty and any arrangements made pursuant thereto, to facilitate the construction and operation by [private undertakings] of a Fixed Link [across/under] the English Channel between and as provided in the Concession. The Fixed Link shall be financed without recourse to government funds or to government guarantees of a financial or commercial nature.

(2) The High Contracting Parties undertake not to interrupt or terminate the right of the Concessionaires to construct or operate the Fixed Link during the terms of the Concession save -

[(a)] on grounds of national defence; or

[(b)] in the case of a failure by the Concessionaires to satisfy or comply with the terms of, and as provided in, the Concession.

A High Contracting party which fails to comply with this obligation shall be liable to pay compensation to the Concessionaires as provided in the Concession.

(3) Where the right of the Concessionaires to construct or operate the Fixed Link is interrupted or terminated on grounds of national defence, the Concessionaires shall be eligible for just and reasonable compensation such as that which the High Contracting Party concerned pays to enterprises deprived, on grounds of national defence, in like circumstances of the right to operate their own undertakings. The Concessionaires shall not be eligible for double compensation on account of the same facts.

(4) In the event of the Concessionaires becoming entitled to compensation, each Government shall bear the cost of the payment of any compensation to the Concessionaires in proportion to its responsibility, if any, in accordance with international law.

† (5) In the event of either High Contracting Party interrupting or terminating the right of the Concessionaires to construct or operate the Fixed Link during the term of the Concession otherwise than [in the case of a failure by the Concessionaires as provided by

† Unofficial suggested draft

| Article 2.2b,] the other High Contracting Party shall be entitled to
| compensation. Such compensation shall be limited to the actual and
| direct loss suffered by that other High Contracting Party in respect
| of the establishment of the Fixed Link and shall exclude any
| indirect loss or damage, in particular it shall exclude any loss of
| benefits derived from the establishment or operation of the Fixed
| Link. No compensation shall be payable under this Article in
| respect of [an interruption or termination of such a right on
| grounds of national defence where such termination serves the
| defence interests of both High Contracting Parties or in respect of
| an interruption of such a right on grounds of national defence.]

(6) The Fixed Link will consist of

Article 3 [F.4.1]

Power to grant concession

(1) The High Contracting Parties shall, according to their own procedures, adopt such legislative and regulatory measures, and take such steps, as are necessary for the construction, and operation of the Fixed Link by the Concessionaires in accordance with the Concession.

[(2) Any United Kingdom legislation which may be required to give effect to the provisions of the initial Concession shall have been enacted before this Treaty enters into force.]

(3) Neither Government shall modify or replace the terms of the Concession without the prior approval of the other Government.

Article 4 [F.4.2]

International organisations

Measures taken by the Governments with respect to the construction and operation of the Fixed Link shall be consistent with their international obligations. The two Governments shall co-operate in making any necessary approaches to the relevant international organisations.

Article 5 [F.4.2]

[New text proposed by French side]

Commercial Character of Fixed Link

[The two Governments shall ensure that the Concessionaires are free, within the framework of national and community laws, in particular those relating to competition, to determine their own commercial policy, tariffs and the type of service to be offered. [The Governments shall not apply price controls to the Fixed Link for the duration of the Concession.] [This shall not affect the right of the Governments to apply the provisions of their respective laws relating to restrictive practices or the abuse of a dominant position.]]

Article 6

Government Shares in Concessionaires

[Item II.3]

Article 7

Apportionment of liability for Compensation

[See now Article 2(4)]

Article 8 [F.5]

Frontier and national jurisdiction

(1) As regards any matter relating to the Fixed Link, the frontier between the United Kingdom and France shall be the vertical projection of the line agreed in the Agreement signed at London on 24 June 1982 relating to the delimitation of the Continental Shelf in the area east of 30 minutes West of the Greenwich meridian, and, [subject to paragraph 3 of this Article or any arrangements made pursuant to Articles 7, 10 or 10c], the respective States shall exercise jurisdiction accordingly.

(2) The frontier [on/in] the Fixed Link shall be marked by a joint commission, composed of representatives of the two States, as soon as possible after the completion of the relevant section of the Fixed Link and, in any case, before the Fixed Link comes into operation.

[(3) Save as may be provided by any specific arrangements made pursuant to this Treaty but notwithstanding the provision of paragraph (1), if in the construction of the Fixed Link any works which continuously project from [the mainland of one State/the artificial island constituting the entrance to the tunnel from one State] extend beyond the line of the frontier, the law that applies in that part of the works which so extends shall, in relation to matters occurring before that part is effectively connected with works which project from the other State, be the law of the first mentioned State.]

Article 9 [F.7]

Frontier arrangements and Police

(1) The frontier controls shall be organised in a way which will reconcile, as far as possible, the rapid flow of traffic with the efficiency of the controls.

(2) Provisions for the exercise of police, immigration, customs and health controls, including animal and plant health controls, and of other necessary controls, shall be the subject of an additional Protocol or other arrangements.

(3) Such a Protocol or arrangements shall include provisions for the free circulation throughout the Fixed Link of public officials and other persons, so far as is necessary for the exercise of their functions in relation to the construction and operation of the Fixed Link and for the protection and assistance to be accorded to them.

(4) The construction and maintenance of the buildings and installations necessary for frontier controls will be at the charge of the Concessionaires on terms determined in the Concession Agreements.

(5) Each Government is responsible for the payment or recovery of the costs of its own controls.

Article 10

Cooperation in law enforcement

In relation to the Fixed Link, the two Governments may make provision, by an additional protocol or other arrangements, for mutual assistance in the enforcement of the criminal, administrative and civil law.

Article 10A [F.9]

Defence and Security

(1) Defence and security matters relating to the construction and operation of the Fixed Link shall be the subject of special arrangements between the two Governments. Such arrangements shall include provisions for the free circulation throughout the Fixed Link of public officials and other persons so far as is necessary for the exercise of their functions in relation to the defence and security of the Fixed Link and for the protection and assistance to be accorded to them. [Each Government will inform the other Government of the authorities designated by it to take in its name any decision necessitated by the defence and security of the Fixed Link].

(2) The Concessionaires shall submit to the two Governments for their approval any proposed designs, plans or arrangements affecting the defence and security of the Fixed Link and the two Governments shall agree a joint response to any such proposals.

(3) The Concessionaires shall, if required by the two governments, take measures in the interest of the defence and security of the Fixed Link. Except in emergencies of the kind envisaged in Article 10B, the two Governments shall act jointly in this respect, and in particular consult each other before requiring the Concessionaires to take such measures.

Article 10B [F.10]

Emergencies

In the event of any emergency, such as natural disasters, acts of terrorism or armed conflict, or the threat thereof, each Government, after consultation with the other if circumstances permit, may take measures derogating from its obligations under this Treaty or any such arrangements as are referred to herein or in the Concession.

measures derogating from its obligations under this Treaty or any such arrangements as are referred to herein or in the Concession.

Such measures may include closure of the Fixed Link but shall be limited to the extent required by the exigencies of the situation and shall be notified immediately to the other Government and, as appropriate, to the Concessionaires.

Article 10C

Social Security, Labour and Safety Laws of the Fixed Link

The two Governments may make provision, by an additional protocol or other arrangements, relating to social security, employment and health and safety at work applicable as regards the construction or operation of the Fixed Link.

Article 11 [F.8]

Financial Matters

[(1) The taxation by the two States of profits and gains derived from the construction or operation of the Fixed Link shall be in accordance with the laws of the two States, including any Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income that is in force for the time being and any protocol thereto.

(2) The two States shall observe the principle of non-discrimination in relation to taxes and charges made to users of transport in direct competition for cross-channel traffic.]

(3) Subject to application being made as necessary under the terms of national laws and regulations relating to exchange control made consistently with Community law and without prejudice to any other approval that may be required, approval will be given under those laws and regulations to transfers of funds and financial

settlements necessitated by the construction and operation of the Fixed Link, whether between the two States or from or the third countries, conversions being made at the market rate applicable to transactions of a similar nature. The Governments shall not levy any tax on such transfers of funds or financial settlements other than generally applicable income taxes on the payments which they represent.

(4) Both Governments intend, so far as may be consistent with their international obligations, to allow to travellers through the Fixed Link from the mainland of one State to that of the other duty-free facilities which are comparable to those available to persons travelling from one State to the other by sea or air.

Article 12 [F.15]

Consultation between the parties

The two Governments shall consult, at the request of either :-

- (a) on any matter relating to the interpretation or the implementation of this Treaty or the Concession;
- (b) on the consequences of any measure announced or taken which could substantially affect the construction or the operation of the Fixed Link;
- (c) on any action proposed in relation to any rights or obligations of the Governments under the Treaty or the Concession.

Article 13 [F.11]

Intergovernmental Commission

(1) An Intergovernmental Commission shall be established to supervise, in the name of and on behalf of the two Governments, all

matters concerning the construction and operation of the Fixed Link.

(2) With regard to the Concessionaires, the two Governments shall exercise their rights and obligations under the Concession, other than those relating to the amendment, extension, suspension, termination or assignment of the latter, through the Intergovernmental Commission.

(3) The functions of the Intergovernmental Commission shall include :-

- (a) monitoring the construction and operation of the Fixed Link;
- (b) taking decisions in the name of the two Governments for the implementation of the Concession;
- (c) approving proposals made by the Safety Authority as provided by Article 13A;
- (d) drawing up, or participating in the preparation of, regulations applicable to the Fixed Link, including regulations relating to maritime matters and the environment, and monitoring their subsequent implementation;
- (e) considering any matter referred to it by the Governments or the Safety Authority or any other matter affecting the construction or operation of the Fixed Link which appears to it to be necessary to take into consideration;
- (f) giving advice and making recommendations to the two Governments or the concessionaires.

(4) Each Government shall appoint half the members of the Intergovernmental Commission, which shall comprise at most 16 members including at least two representatives of the Safety Authority. The Chairmanship of the Commission shall be held for a period of one year by the head of each delegation alternately.

period of one year by the head of each delegation alternately..

(5) The decisions of the Intergovernmental Commission shall be taken by agreement between the heads of the British and French delegations. In the event of disagreement between them, the procedure for consultation between Governments provided for in Article 15 shall apply.

(6) The Commission shall draw up its own rules of procedure and submit them for the approval of the two Governments.

(7) For the purpose of carrying out its functions the Commission may make appropriate arrangements with the authorities of each Government or any body or expert of its choice.

(8) The Governments shall

(a) take all necessary measures to ensure that regulations applicable to the Fixed Link have the necessary force and effect within their national laws; and

(b) grant to the Intergovernmental Commission such powers of investigation, inspection [and direction] as are necessary for the performance of its tasks.

(9) [The expenses of the Intergovernmental Commission shall be met by the Concessionaires as provided in the Concession.]

Article 13A [F.12]

SAFETY AUTHORITY

(1) A Safety Authority shall be established to -

a. advise and assist the Intergovernmental Commission on all matters concerning safety in the construction and operation of the Fixed Link and, in particular, to

1) deliver on request, or on its own initiative, advice, ~~or proposals~~.

or proposals to the Intergovernmental Commission on all matters concerning safety;

ii) participate in the drawing-up of any regulations applicable to safety and present them to the Intergovernmental Commission;

iii) discharge, within the scope of its powers, any function delegated to it by the Intergovernmental Commission;

b. ensure that the safety measures and practices applicable to the Fixed Link comply with the national or international regulations in force; monitor and, insofar as they confer functions on the Safety Authority, enforce such regulations; and report thereon to the Intergovernmental Commission; and

c. examine reports concerning any accident within the confines or vicinity of the Fixed Link, make such investigations as are necessary, and report thereon to the Intergovernmental Commission.

(2) In an emergency, the powers conferred on the Authority may be exercised by the Chairman of the Authority or his delegate who may take or cause to be taken any decisions or actions necessary for the safety of persons and property within the Fixed Link. The Chairman, or his delegate, shall report thereon to the two Governments and to the Intergovernmental Commission.

(3) The composition of the Authority shall be determined by the two Governments by agreement, each Government appointing half its members. The Chairmanship of the Authority shall be held for a period of one year by the head of each delegation alternately.

(4) The Safety Authority shall draw up its own rules of procedure and shall submit them through the Intergovernmental Commission for the approval of the two Governments.

(5) The Safety Authority may make appropriate arrangements with the authorities of each Government or any body or expert of its choice for the purpose of carrying out its functions.

[(6) The Safety Authority may, in regard to any matter in which it has a responsibility, make a report and recommendation to the two Governments at the same time as its reports to the Intergovernmental Commission.]

(7) The Governments shall grant to the Safety Authority and its members and agents such powers of investigation, inspection, direction and enforcement as are necessary for the performance of its functions.

(8) [The expense of the Safety Authority shall be met by the Concessionaires as provided in the Concession.]

Article 14 [F.6]

Discoveries

Rights to any natural resources discovered in the course of construction of the Fixed Link shall be governed by the law of the State in the territory, or in the continental shelf, of which the resources lie.

Article 15 [F.13.2]

Reversionary rights of Governments

(1) Each Government shall ensure that when the Concession Agreement terminates, whether by effluxion of time or prematurely, it will have a present right to the property in the structure and any fixed installations of the Fixed Link within its jurisdiction, and power to operate, or grant a concession to operate, the Fixed Link. [The Governments shall make such arrangements with the

Concessionaires as will ensure that continued availability for the service of the Fixed Link of any moveable property necessary for its maintenance and operation.]

(2) On any such termination of the Concession Agreement[s] the two Governments shall consult together, [on the basis of equal rights and obligations,] as to the future use of the Fixed Link, its continued development and its continued operation.

Article 16

[See now Article 10B]

Article 17 [F. 16]

[Disputes] [Arbitration]

- (1) (a) If a dispute arises between the two States as to the interpretation or application of this Treaty or otherwise relating thereto which is not settled through consultations under Article 12 within three months, it shall be submitted to an arbitral tribunal at the request of either of the Governments.
- (b) The arbitral tribunal shall be constituted for each case in the following manner :
- (i) Within two months of the receipt of the request for arbitration each party shall appoint one arbitrator.
 - (ii) The two arbitrators shall, within a period of two months of the appointment of the second, appoint, by mutual agreement, a national of a third State as third arbitrator who shall act as chairman of the tribunal.

- A . .
- (iii) If within the time limits specified above any appointment has not been made, either of the parties may, in the absence of any other agreement, request the President of the Court of Justice of the European Communities to make any necessary appointment.
 - (iv) If the President of that Court is a national of either State, or if he is otherwise unable to act, the Presidents of the Chambers of the Court in order of seniority shall be requested to make the appointment.
 - (v) If the latter are likewise unable to act, the member of the Court next in seniority who is not a national of either State or otherwise unable to act shall be requested to make the appointment.
- (c) Decisions of the tribunal shall be taken by a majority vote and shall be binding on the parties.#
- (d) Each party shall bear the costs of the arbitrator appointed by it, or appointed on its behalf; the other costs of the arbitration process being borne by the two parties in equal shares.
- (e) The tribunal shall determine its procedure relating to all other matters.

Footnote : Consideration needs to be given to the drafting of a provision excluding an abstention by an arbitrator.

