



CC BG  
PC

FCS/85/317

SECRETARY OF STATE FOR TRANSPORT

CD:Ri

Channel Fixed Link: Compensation

1. Thank you for your letter of 26 November.
2. I am glad that you accept, at least for the time being, the arguments of Michael Heseltine, John McGregor and myself on the distinction between cancellation of the Link Concession for political and defence reasons. I note that you may wish to return to the question.
3. On compensation between Governments where the Concession is terminated unilaterally on account of the default of the Concessionaires, or where the construction or operation of the Link is interrupted or terminated on grounds of national defence, I understand that officials and legal advisers of the departments concerned are in agreement with the propositions in your letter. I am quite content, therefore, that they should be instructed to finalise the wording of the compensation article of the Treaty on the basis described in your letter.
4. I am copying this minute to the Prime Minister, the Secretary of State for Defence, Home Secretary, and other members of E(A) and to Sir Robert Armstrong.

Foreign & Commonwealth Office  
9 December 1985

GEOFFREY HOWE

TRANSPORT  
CHANNEL TOWN  
PT 3





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

*CC [Signature]*  
*ESP*  
*27/11*  
26 November 1985

*Dear Geoff*

#### CHANNEL FIXED LINK: COMPENSATION

Thank you for your letter of 25 October about compensation between Governments and in respect of cancellation or termination of the Link concession for defence reasons.

You agreed generally with my proposals on compensation

- a. between Governments; and
- b. to concessionaires for interruption on grounds of defence or national security

But you were unhappy about my suggestion that termination on defence grounds should be regarded in the same way as any other form of political cancellation. John MacGregor and Michael Heseltine made the same point.

Though I would not wish to press my argument at this stage, I am not wholly convinced that this distinction actually gains anything at all. It is by no means certain that it would be cheaper, and it is a point that may worry any chosen promoter. But it is not a matter on which the French have expressed strong feelings, and adopting your line would not cause any problems in the Treaty negotiations. I must sound a warning, however, that I may need to return to this question in due course, if it proves to be a sticking point with a promoter, and if the French are disposed to concede the point.

#### INTER-GOVERNMENTAL COMPENSATION

Since my letter, the French have raised a point of detail on the question of Inter-Governmental compensation

on which I would be grateful for further views. They have argued that if one State unilaterally terminates or interrupts the concession, either because of default by the Concessionaire, or on defence grounds, then the "innocent" State would still have a claim against the other.

It would be easier for us to reach a conclusion on both these issues if the concession agreement had already been signed. As it is currently drafted, termination or interruption for a breach by the Concessionaire would have to be joint to be effective. It is highly improbable that the French Government and the Concessionaires would sign an agreement which provided a right of unilateral termination or interruption, even where there was an actual default by the promoter. In the circumstances envisaged by the French, therefore, compensation between Governments would probably be payable anyway, because a unilateral termination or interruption would be a breach of the Treaty.

In the case of termination or interruption on defence grounds, the question is slightly different. It is difficult to imagine circumstances where the defence interests of the two States would diverge, so what the French fear is so unlikely that their proposal is probably acceptable. The present draft of the concession agreement would, however, need to be amended to meet this point.

I think we can agree to accept the principle that compensation would be payable to the other Government, in a case of defence termination or interruption, provided that the action is not in the defence interests of both States. I suspect that what this means in practice is that no compensation would be paid at all, because a unilateral termination would imply that a state of hostility existed between the two signatory powers.

A point of principle about which we felt strongly at an earlier stage was that we should seek to restrict the expenditure in respect of which compensation would be payable to the other Government, for whatever reason. This principle has now been accepted by the French and the draft Treaty now includes words on the following lines:

"Such compensation shall be limited to the actual and direct loss suffered ..... 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."

If you agree, I suggest that we should instruct our officials to finalise the wording of the compensation Article of the Treaty on the basis I have described above.

I am copying this letter to the Prime Minister, the Secretary of State for Defence, the Home Secretary, other members of E(A) and to Sir Robert Armstrong.

*Yours sincerely*

*Nicholas*

NICHOLAS RIDLEY

Transport:  
Channel Tunnel

PE3





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The Rt Hon John MacGregor OBE MP  
Chief Secretary to the Treasury  
HM Treasury  
Treasury Chambers  
Parliament Street  
LONDON SW1P 3AG

20 December 1985

*Dear John*

*NBRM*

CHANNEL FIXED LINK: COMPENSATION

Thank you for your letter of 6 December.

I am glad to say that the latest draft of the Channel Fixed Link Treaty has been modified to meet the point you make about inter-governmental compensation.

I am copying this letter to the Prime Minister, the Secretary of State for Defence, the Home Secretary, other members of E(A) and to Sir Robert Armstrong.

*John*

*Nicholas*

NICHOLAS RIDLEY

Transport: Channel Tunnel; PE3.







Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Nicholas Ridley AMICE MP  
Secretary of State for Transport  
Department of Transport  
2 Marsham Street  
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CDP  
G/n

6<sup>th</sup> December 1985

*Dear Nicholas,*

**CHANNEL FIXED LINK: COMPENSATION**

I broadly accept the reasoning in your letter to Geoffrey Howe of 26 November, and note what you say about compensation to concessionaires on defence grounds. I understand, however, that the latest French draft of the treaty simply limits intra-governmental compensation to that conforming to the principles of international law. I would prefer to have the formula you mention, and which you say the French accept, provided it is understood that "actual and direct loss" excludes tax revenue.

I am sending copies of this letter to the Prime Minister, the Secretary of State for Defence, the Home Secretary and other members of E(A) and to Sir Robert Armstrong.

*Yours ever,*

*JM*

JOHN MacGREGOR

TRANSPORT : Channel Tunnel : Pt 3

