



Treaty Series No. 70 (1993)

Protocol

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the French Republic

Concerning Frontier Controls and Policing,
Co-operation in Criminal Justice, Public Safety
and Mutual Assistance Relating to
the Channel Fixed Link

Sangatte, 25 November 1991

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*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 1993*

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**PROTOCOL
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE FRENCH REPUBLIC
CONCERNING FRONTIER CONTROLS AND POLICING, CO-OPERATION
IN CRIMINAL JUSTICE, PUBLIC SAFETY AND MUTUAL ASSISTANCE
RELATING TO THE CHANNEL FIXED LINK**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic;

Having regard to the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link signed at Canterbury on 12 February 1986¹ (hereinafter referred to as "the Treaty") and in particular Articles 3, 4 and 8 thereof:

Have agreed as follows:

ARTICLE 1

Definitions

- (1) Any term defined in the Treaty shall have the same meaning in this Protocol.
- (2) Otherwise for the purposes of this Protocol the expression:
 - (a) "frontier controls" means police, immigration, customs, health, veterinary and phytosanitary, consumer protection, and transport and road traffic controls, as well as any other controls provided for in national or European Community laws and regulations;
 - (b) "host State" means the State in whose territory the controls of the other State are effected;
 - (c) "adjoining State" means the other State;
 - (d) "officers" means persons responsible for policing and frontier controls who are under the command of the persons or authorities designated in accordance with Article 2(1);
 - (e) "rescue services" means the authorities and organisations whose functions are provided for in the emergency arrangements referred to in Part VII of this Protocol who are under the command of the persons or authorities designated in accordance with Article 2(1);
 - (f) "professional customs agents" means persons who carry out on behalf of importers and exporters any formalities necessary to enable them to comply with their obligations;
 - (g) "control zone" means the part of the territory of the host State determined by mutual agreement between the two Governments within which the officers of the adjoining State are empowered to effect controls;
 - (h) "restricted zone" means the part of the Fixed Link situated in each State subject to special protective security measures;
 - (i) "through trains" means trains travelling the Fixed Link but originating and terminating outside it, as opposed to "shuttle trains" which are trains travelling solely within the Fixed Link.

PART I

Authorities and General Principles of Co-operation

ARTICLE 2

- (1) Each of the Governments shall designate the authorities or the persons having charge of the services which in its territory have responsibility for the exercise of frontier controls, the maintenance of law and order and fire fighting and rescue within the Fixed Link.
- (2) Each of the Governments shall notify the other Government of such designations and any changes therein, and shall so inform the Intergovernmental Commission.

¹ Treaty Series No. 15 (1992), Cm 1827.

ARTICLE 3

(1) Without prejudice to the application of other international agreements, and in accordance with applicable national law, the authorities of the two States shall to the fullest possible extent co-operate, assist one another and co-ordinate their activities in discharging their duties in relation to the Fixed Link, particularly as regards:

- (a) the functioning of their respective frontier controls;
- (b) the prevention and detection of offences against the laws and regulations of either State relating to frontier controls;
- (c) the prevention and detection of other offences against the laws and regulations of either State;
- (d) public safety and rescue services;
- (e) the exchange of information which may be of use in the performance of their duties.

(2) The provisions of this Protocol are without prejudice to the application of any arrangements which may be made by the two Governments under Article 5 of the Treaty.

ARTICLE 4

In pursuance of Article 3 permanent liaison measures shall be established between the competent authorities of the two States, which shall include:

- (a) the regular holding of co-ordination meetings between the authorities responsible for policing, frontier controls and fire fighting and rescue services in the Fixed Link;
- (b) the establishment of communications facilities permitting under all circumstances contact between the respective national authorities;
- (c) the permanent assignment of each State of liaison officers to the authorities of the other State.

PART II

Frontier Controls and Police: General

ARTICLE 5

(1) In order to simplify and speed up the formalities relating to entry into the State of arrival and exit from the State of departure, the two Governments agree to establish juxtaposed national control bureaux in the terminal installations situated at Frethun in French territory and at Folkestone in British territory. These bureaux shall be so arranged that, for each direction of travel, the frontier controls shall be carried out in the terminal in the State of departure.

(2) Supplementary frontier controls may exceptionally be carried out in the Fixed Link by officers of the State of arrival on its own territory.

ARTICLE 6

The competence of those juxtaposed national control bureaux shall extend to all cross-frontier movements with the exception of customs clearance of commercial traffic.

ARTICLE 7

(1) For through trains, each state may carry out its frontier controls during the journey and may authorise the officers of the other State to carry out their frontier controls in its territory.

(2) The two States may agree to an extension of the control zones for through trains, as far as London and Paris, respectively.

ARTICLE 8

Within the Fixed Link, each Government shall permit officers of the other State to carry out their functions in its own territory in application of their powers relating to frontier controls.

ARTICLE 9

The laws and regulations relating to frontier controls of the adjoining State shall be applicable in the control zone situated in the host State and shall be put into effect by the officers of the adjoining State in the same way as in their own territory.

ARTICLE 10

(1) The officers of the adjoining State shall, in exercise of their national powers, be permitted in the control zone situated in the host State to detain or arrest persons in accordance with the laws and regulations relating to frontier controls of the adjoining State or persons sought by the authorities of the adjoining State. These officers shall also be permitted to conduct such persons to the territory of the adjoining State.

(2) However, except in exceptional circumstances, no person may be held more than 24 hours in the areas reserved, in the host State, for the frontier controls of the adjoining State. Any such detention shall be subject to the requirements and procedures laid down by the legislation of the adjoining State.

(3) In exceptional circumstances the 24 hour period of detention may be extended for a further period of 24 hours in accordance with the legislation of the adjoining State. The extension of the period of detention shall be notified to the authorities of the host State.

ARTICLE 11

Breaches of the laws and regulations relating to frontier controls of the adjoining State which are detected in the control zone situated in the host State shall be subject to the laws and regulations of the adjoining State, as if the breaches had occurred in the latter's own territory.

ARTICLE 12

(1) The frontier controls of the State of departure shall normally be effected before those of the State of arrival.

(2) The officers of the State of arrival are not authorised to begin to carry out such controls before the end of controls of the State of departure. Any form of relinquishment of such controls shall be considered as a control.

(3) The officers of the State of departure may no longer carry out their controls when the officers of the State of arrival have begun their own operations except with the consent of the competent officers of the State of arrival.

(4) If exceptionally, in the course of the frontier controls, the sequence of operations provided for in paragraph (1) of this Article is modified, the officers of the State of arrival may not proceed to detentions, arrests or seizures until the frontier controls of the State of departure are completed. In such a case, these officers shall escort the persons, vehicles, merchandise, animals or other goods, for which the frontier controls of the State of departure are not yet completed, to the officers of that State. If these latter then wish to proceed to detentions, arrests or seizures, they shall have priority.

ARTICLE 13

- (1) The area of the Fixed Link and of its means of access shall be delineated geographically in a precise manner and drawn to the attention of the public.
- (2) A part of this area shall be defined by the competent national authorities provided for in Article 2 and shall constitute the restricted zone. The latter shall be protected in order to prevent access by unauthorised persons.

ARTICLE 14

The detailed plans for the Fixed Link and its means of access, shall, in accordance with the relevant provisions of the Concession, delimit among other things:

- (a) the control zones;
- (b) the restricted zones and their sub-divisions;
- (c) railway lines and their means of access included in the control zones;
- (d) the area of the frontier control installations and their means of access.

ARTICLE 15

The two States shall jointly determine, after consultation with the Concessionaires, the detailed procedures for ensuring the access to the restricted zones delimited in accordance with Article 14(b) shall be limited to duly authorised persons.

ARTICLE 16

Where investigations and proceedings concern offences committed in the Fixed Link or having a connection with the Fixed Link, the authorities of the host State shall, at the request of the authorities of the adjoining State, undertake official enquiries, the examination of witnesses and experts and the notification to accused persons of summonses and administrative decisions.

ARTICLE 17

The assistance provided for in Article 16 shall be furnished in accordance with the laws, regulations and procedures in force in the State providing the assistance, and with international agreements to which that State is a party.

ARTICLE 18

If the State of arrival refuses admission to persons, vehicles, animals or goods, or if persons decide not to pass through the frontier controls of the State of arrival, or send or take back any vehicles, animals or goods which are accompanying them, the authorities of the State of departure may not refuse to accept back such persons, vehicles, animals or goods. However, the authorities of the State of departure may take any measures to deal with them in accordance with national law and in a way which does not impose obligations on the other State.

ARTICLE 19

- (1) The provisions of this Protocol concerning the methods of exercise of juxtaposed frontier controls, particularly any extension or reduction of their field of application, may be modified by mutual agreement by the two Governments by way of arrangements which shall be confirmed by Exchange of Diplomatic Notes.
- (2) In an emergency, the local representatives of the authorities concerned may by mutual agreement, provisionally bring into effect alterations to the delimitation of the control zones which may prove necessary. Any arrangement so reached shall come into effect immediately.

PART III

Health, Veterinary and Phytosanitary Controls

ARTICLE 20

Controls on persons for the purpose of safeguarding public health shall be carried out in the control zone situated in the host State by the competent authorities of the adjoining State in conformity with the regulations applicable in that State.

ARTICLE 21

The bringing into each of the two States of living animals, animal products, plants, plant products and foodstuffs for human or animal consumption shall be subject to controls by the competent authorities of the importing State in conformity with the regulations applicable in that State.

ARTICLE 22

The frontier controls referred to in Article 21 shall be carried out by the competent authorities of the two States either before or during Customs clearance.

ARTICLE 23

- (1) The frontier controls referred to in Article 21 shall include:
- (a) inspection of certificates or accompanying documents, termed documentary inspection;
 - (b) physical examination, including where necessary the taking of samples;
 - (c) inspection of means of transport.
- (2) Such controls may be limited to documentary inspection, while physical examination may be undertaken as considered necessary.

ARTICLE 24

Veterinary inspection of living animals shall be without prejudice to any subsequent quarantine measures which may be imposed by the importing State.

ARTICLE 25

Provisions shall be made by the competent authorities of the two States to prevent animals straying into the Fixed Link. The two States agree that they will require the Concessionaires to take all appropriate measures in this respect.

PART IV

Officers

ARTICLE 26

Officers of both States shall be permitted to circulate freely in the whole of the Fixed Link for official purposes. In carrying out their functions they shall be authorised to pass through the frontier controls simply by producing appropriate evidence of their identity and status.

ARTICLE 27

The authorities of the host State reserve the right to request the authorities of the adjoining State to recall any of their officers.

ARTICLE 28

- (1) Officers of the adjoining State may wear their national uniform or visible distinctive insignia in the host State.
- (2) In accordance with the laws, regulations and procedures governing the carriage and use of firearms in the host State, the competent authorities of that State will issue permanent licences to carry arms:
 - (a) to officers of the adjoining State exercising their official functions on board trains within the Fixed Link; and
 - (b) to an agreed number of specified officers of the adjoining State exercising their functions within the control zone of the host State.

ARTICLE 29

- (1) The authorities of the Host State shall grant the same protection and assistance to officers of the adjoining State, in the exercise of their functions, as they grant to their own officers.
- (2) The provisions of the criminal law in force in the host State for the protection of officers in the exercise of their functions shall be equally applicable to the punishment of offences committed against officers of the adjoining State in the exercise of their functions.

ARTICLE 30

- (1) Without prejudice to the application of the provisions of Article 46, claims for compensation for loss, injury or damage caused by or to officers of the adjoining State in the exercise of their functions in the host State shall be subject to the law and jurisdiction of the adjoining State as if the circumstance giving rise to the claim had occurred in that State.
- (2) Officers of the adjoining State may not be prosecuted by authorities of the host State for any acts performed in the control zone or within the Fixed Link whilst in the exercise of their functions. In such a case, they shall come under the jurisdiction of the adjoining State, as if the act had been committed in that State.
- (3) The judicial authorities or the police of the host State, having taken steps to record the complaint and to assemble the facts relating thereto, shall communicate all the particulars and evidence thereof to the competent authorities of the other State for the purposes of a possible prosecution according to the laws in force in the latter.

ARTICLE 31

- (1) Officers of the adjoining State shall be permitted freely to transfer to that State sums of money levied on behalf of their Government in the control zone situated in the host State, as well as merchandise and other goods seized there.
- (2) They may equally sell such merchandise and other goods in the host State in conformity with the provisions in force in the host State, and transfer the proceeds to the adjoining State.

ARTICLE 32

- (1) Professional Customs agents from the adjoining State may carry out their operations at the customs post of that State in the control zone situated in the host State in the same way as in the adjoining State, subject to such conditions and limitations as may be laid down by the authorities of the adjoining State.
- (2) The operations carried out and the services rendered in these circumstances shall be considered to be exclusively carried out and rendered in the adjoining State, along with any consequences which may ensue therefrom.
- (3) The general rules of the host State relating to entry into and stay in that State shall apply to professional customs agents.

PART V

Facilities

ARTICLE 33

The competent authorities of the two States shall, in consultation with one another, determine their respective requirements for accommodation, installations and equipment. Where these requirements are to be satisfied by the Concessionaires in accordance with the provisions of the Concession, they shall be notified to the Concessionaires, where appropriate, through the Intergovernmental Commission.

ARTICLE 34

The authorities of the adjoining State shall be able to make use in the host State of the accommodation, installations and equipment necessary for the performance of their functions.

ARTICLE 35

- (1) The officers of the adjoining State are empowered to keep order within the accommodation appointed for their exclusive use in the host State.
- (2) The officers of the host State shall not have access to such accommodation, except at the request of the officers of the adjoining State or in accordance with the laws of the host State applicable to entry into and searches of private premises.

ARTICLE 36

All goods which are necessary to enable the officers of the adjoining State to carry out their functions in the host State shall be exempt from all taxes and dues on entry and exit.

ARTICLE 37

- (1) The officers of the adjoining State whilst exercising their functions in the host State shall be authorised to communicate with their national authorities.
- (2) For this purpose, the authorities of the host State shall endeavour to meet the requests of the authorities of the adjoining State relating to communications facilities necessary for the performance of their functions, and shall define their conditions of use.

PART VI

Co-operation in Criminal Justice

ARTICLE 38

- (1) Without prejudice to the provisions of Articles 11 and 30(2), when an offence is committed in the territory of one of the two States, including that lying within the Fixed Link up to its frontier, that State shall have jurisdiction.
- (2) (a) Within the Fixed Link, each State shall have jurisdiction and shall apply its own law:
 - (i) when it cannot be ascertained with certainty where an offence has been committed; or
 - (ii) when an offence committed in the territory of one State is related to an offence committed on the territory of the other State; or
 - (iii) when an offence has begun in or has been continued into its own territory;
- (b) however, the State which first receives the person suspected of having committed such an offence (in this Article referred to as "the receiving State") shall have priority in exercising jurisdiction.

(3) When the receiving State decides not to exercise its priority jurisdiction under paragraph (2) of this Article it shall inform the other State without delay. If the latter decides not to exercise its jurisdiction, the receiving State shall be obliged to exercise its jurisdiction in accordance with its own national law.

ARTICLE 39

Where an arrest has been made for an offence in respect of which a State has jurisdiction under Article 38, that arrest shall not be affected by the fact that it continues in the territory of the other State.

ARTICLE 40

Without prejudice to the application of Article 3 of the Treaty and of Part II of this Protocol, the police and customs officers of one State may in accordance with their own national laws make arrests on the territory of the other State in cases where a person is found committing, attempting to commit, or just having committed an offence:

- (a) on board any train which has commenced its journey from one State to the other and is within the Fixed Link; or
- (b) within any tunnel described in Article 1(2) of the Treaty.

ARTICLE 41

In the case of arrests covered by Articles 39 and 40:

- (a) the person arrested shall be presented without delay to the competent authorities of the State of arrival for that State to be responsible for determining the exercise of jurisdiction as required by Article 38; and
- (b) where jurisdiction shall be exercised by the other State in accordance with Article 38, the person arrested may be transferred to the territory of that State. However, any such transfer shall take place within 48 hours of the presentation under paragraph (a) of this Article. Moreover, each State reserves the right not to transfer its nationals.

PART VII

Public Safety and Rescue

ARTICLE 42

- (1) In case of need the rescue services of the two countries may be committed to joint interventions within the Fixed Link; the rescue services of the adjoining State shall in that case be placed at the disposal of the competent authorities of the host State.
- (2) The rescue services so committed shall however remain under their own internal command.

ARTICLE 43

- (1) In the case of a joint intervention, the competent authorities of each State shall be responsible for the costs incurred by their own rescue services. Any costs which may be recovered from any person or organisation shall be shared in proportion to their actual costs incurred by the rescue services of the two countries.
- (2) The conditions under which the rescue services of the two countries may intervene shall be determined by the emergency arrangements established jointly by the competent authorities of the two States.

ARTICLE 44

- (1) Without prejudice to the application of the provisions of Article 46, if, during a rescue operation in the territory of the host State, damage is caused to a third party by a member of the rescue services of the adjoining State, the competent authorities of the host State shall make reparations in respect of the damage according to the arrangements which would have applied had the damage been caused by its own rescue services.

(2) In the case of the death of, or personal injury to, the personnel of the rescue services of the adjoining State, that State shall waive any claim against the host State.

(3) Whilst in the exercise of their official functions, members of the rescue services shall:

(a) benefit in the same way as officers from the provisions of Articles 28(1), 29 and 30(2);

(b) in the case of a joint intervention, be permitted to circulate freely in the whole of the Fixed Link;

(c) except in circumstances provided for in sub-paragraph (b) and after agreement by the competent authorities of the two States, be granted access where necessary to that part of the Fixed Link lying within the territory of the adjoining State.

ARTICLE 45

(1) The authorities of the two States shall jointly endeavour to achieve standardisation of safety equipment so that such equipment is compatible and may be used by the rescue services of either country.

(2) *The Intergovernmental Commission shall ensure that the necessary measures are taken by the Concessionaires so that the equipment and materials provided in accordance with the Concession are compatible with those used by the rescue services of the two countries.*

PART VIII

Final Clauses

ARTICLE 46

(1) Without prejudice to the application of Articles 15 and 16 of the Treaty in any case covered by those two Articles, in the case of claims for compensation resulting from the application of this Protocol the following provisions shall apply:

(a) each State shall waive any claim which it may have against the other State for compensation in respect of damage caused to its officers or its property;

(b) claims by the Concessionaires shall be dealt with in accordance with the provisions of the Concession.

(2) The provisions of this Article do not affect in any way the rights of third parties under the laws of each State.

ARTICLE 47

The procedures for the implementation of this Protocol may, as far as necessary, be the subject of technical or administrative arrangements between the competent authorities of the two States.

ARTICLE 48

Either Government may at any time request consultations with a view to revising the provisions of this Protocol in order to adapt it to new circumstances or needs.

ARTICLE 49

(1) Any disputes concerning the interpretation or application of this Protocol shall be settled by negotiation between the two Governments.

(2) However, disputes arising between the two States relating to questions of compensation shall be determined by the arbitral tribunal constituted in accordance with Article 19 of the Treaty, after consultations in accordance with Article 18 of the Treaty.

ARTICLE 50

The provisions of this Protocol shall enter into force on the date of the later of the notifications by the two States of the completion of their necessary internal procedures.

In witness whereof, the respective plenipotentiaries duly authorised thereto by their Governments, have signed this Protocol.

Done in duplicate at Sangatte, this 25th day of November 1991, in the English and French languages, both texts being equally authoritative.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of the French
Republic:

KENNETH BAKER

P. MARCHAND