

CCFC
(letter only)

Prime Minister



This seems most Foreign and Commonwealth Office
extraordinary. There is

London SW1A 2AH

no policy, no attempt to examine
the scientific case, only a most

18 November 1988

Dear Charles elaborate invitation. You will no
doubt with no get comments from the
experts. But it does not look very
promising.

Environment Initiative by President Mitterrand and M. Rocard

CCP
10/11

You wrote to Lyn Parker on 1 November about a telephone conversation between the Prime Minister and M. Rocard concerning a French initiative for a new international environmental organisation.

On 15 November M. Rocard asked Ewen Fergusson to call on him "very privately". M. Rocard briefed the Ambassador on the telephone conversation, clearly assuming that he knew nothing about it. His account was substantially the same as yours. He said that the exercise was strictly personal diplomacy on his part with the full endorsement of M. Mitterrand. His choice of Presidents/Prime Ministers to contact had been made in a somewhat accidental way, sometimes the result of fortuitous meetings. Fourteen Heads of State and Government had firmly committed themselves to participating. They were FRG - Chancellor Kohl; Spain - Felipe Gonzalez; Netherlands - Lubbers; Norway - Mrs Brundtland; Sweden - Carlsson; Senegal - Diouf; Tunisia - Ben Ali; Egypt - Mubarak; Jordan - King Hussein; India - Rajiv Gandhi; Australia - Hawke; New Zealand - Lange; Brazil - Sarney (with France). He had the impression that the Japanese Prime Minister might also come on board. The United Nations Secretary-General had given his general support and had accepted willingly that any institutions might be set up outside the UN but that some kind of UN umbrella or link. There might, for instance, need to be ultimate recourse to the International Court of Justice.

M. Rocard handed the Ambassador the attached letter to the Prime Minister together with the main document and the summary, as well as an (unauthenticated) English translation.

M. Rocard said that although the proposal had a French origin, he wanted to establish as broad a base as possible. The three main enthusiasts were Chancellor Kohl, Felipe Gonzalez and Mr Lubbers. The last had said that, assuming that the document, as finally established, was authenticated by the signatures of the fourteen or more potential signatories, he would be ready to issue the document and in any case offer the holding of a meeting in The Hague, possibly as early as January. M. Rocard hoped that when the Prime Minister had had the chance to study the papers, she might be able to offer positive British support.

/M. Rocard



M. Rocard said that he had not wanted to approach the United States during the electoral period. It was impossible to know whom to approach in China. He had spoken to the Soviet Ambassador in Paris and the French proposals would be put formally to Mr Gorbachev during M. Mitterrand's visit on 25/26 November. The Russians would not however be asked to sign the document. He had not consulted the Canadians because of the tricky situation over Franco-Canadian relations on fishing, and he had not consulted the Belgians or the Italians because of their governmental instability and the need not to "over-Europeanise" the initiative.

Sir Ewen Fergusson's judgement is that M. Rocard has hardly consulted his own administration on this project and that the papers had been handed over on the basis that they were personally for the Prime Minister. M. Rocard would be looking for a direct and early personal reaction from the Prime Minister. The Ambassador thinks it quite likely that President Mitterrand might mention the proposal at Mont Saint Michel on 30 November.

Despite the conspiratorial fashion in which the French are conducting this exercise, we assume that you will wish to have advice from the Department of the Environment and ourselves. I am therefore copying this letter to the recipients of yours. I should be grateful, however, if all would observe the caveat that no-one should reveal knowledge of all this to the French.

Yours ever

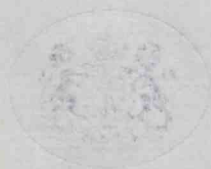
R N Peirce

(R N Peirce)
Private Secretary

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FRANCE

Relatus pr 4



MEMORANDUM

The purpose of this paper is to present a broad outline of the convention project. The organisation to be created is referred to provisionally herein as the Institution.

I - WHY AN INSTITUTION

Bearing in mind what is said of the efforts of various international organisations to protect the environment, why should it be necessary to create a new institution whose efforts might simply duplicate those of others and disperse means and resources ?

The reason is twofold :

1.- The intended Institution would not handle environmental problems in general, but only those related to the biosphere on a worldwide scale : chemical composition, ozone layer, the greenhouse effect. Limitations of sovereignty would not be of a general nature.

2.- The Institution must provide for the swift implementation of means of action which would otherwise be difficult or at least slow to get under way :

- regulations ;
- the power to inform and if need be to inspect ;
- setting up a permanent Scientific High Committee ;
- funding compensation to make up for the sacrifices made by certain countries (particularly developing countries) for the benefit of mankind ;
- a general legal system which both guarantees member States against abuse of authority by the Institution and guarantees that member States comply with the decisions of the Institution.

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II - GENERAL IDEA FOR THE INSTITUTION

1.- A name has to be found for the Institution. The name should be meaningful in both English and French, e.g. : GLOBE - AZURE - or initials which are significant, read well and strike the right note both in English and in French.

2.- A choice must obviously be made between two types of institution (or some form of mixture of the two) :

- a purely intergovernmental type of body, highly respectful of sovereignties, with decisions being reached in principle on a unanimous basis ;
- a much more "integrated" institution originating in the member States of course, but standing alone, with its own High Authority ruling on a majority basis and having powers of its own, with a Scientific High Council acting as a real "public prosecutor" in the struggle for survival. The Institution would be empowered to draw up regulations, inform, inspect, sanction, and so on.

This second solution seems preferable, at least in terms of the initial proposal to be made, for various reasons.

If the Institution is merely a sort of permanent intergovernmental conference, it seems unlikely that it would be any more effective than the existing system.

In an integrated organisation - particularly if sufficient room is made for the developing countries - wounds to national sovereignty resulting from sacrifices by certain countries may be soothed by the prospect of financial or economic aid.

It is easier to achieve ambitious goals by setting one's sights high initially and compromising when necessary than by setting one's sights low from the outset.

Finally, an audacious project could give rise to a staggered start, with the hard core of highly motivated countries accepting to take the lead initially (see pp. 11 and 12).

III - THE ORGANS OF POWER

The main difficulty that arises in the power structure of the Institution lies in the fact that :

- many member States would be expected to participate (which means that it would be impossible for everybody to be represented at every level of the Institution, unlike in smaller communities like the E.E.C.) ;
- the participants would be a heterogeneous group in terms of both geographical diversity and economic development levels ;
- the Institution would have to be quite "technocratic" given the nature of the problems to be solved, but it would also have to be "political" in view of the effects its decisions could have on economies and development policies.

These characteristics lead us to envisage an Institution made up of bodies with marked individual features, the overall effect of which is nevertheless to balance out the contradictory considerations outlined above.

The Institution would comprise four bodies :

- the Council of States
- the Scientific High Council
- the High Authority
- the Court.

.../...

A) THE COUNCIL OF STATES

It is made up of representatives of each member State on an equal footing. In view of the purpose of the Institution, any weighting of the votes was rejected because they could only be weighted on the basis of arbitrary criteria such as population or area, or of criteria likely to generate discord, such as GDP or contribution to the budget of the Institution. However, in order to avoid the drawbacks of decision-making by too large an assembly in which "automatic" majorities might build up, the powers of this Council and the exercise thereof are somewhat restricted, as follows :

- It is the primary organ of the Institution, the other organs being elected by it, allowing where necessary for regional interests to cushion the possibly brutal effects of a simple majority voting system.

- It is competent to take certain basic decisions : acceptance and rejection of membership, budget, five-year plans, and so on.

- In view of the substantial powers invested in the High Authority (which is far more than a mere executive body), it has a certain power to veto the decisions thereof.

B) THE SCIENTIFIC HIGH COUNCIL

The general idea is to make the Scientific High Council a prestigious, independent body. It must be a sort of "public prosecutor" or "ombudsman".

Its members shall be recruited on the strength of proposals submitted by qualified groups or persons (Nobel Prize panel, specialised institutions) and appointed by the Council of States.

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The role of the High Council is a multiple one :

- First of all it is a scientific centre, centralising scientific knowledge and helping it to progress through the services it provides.
- It is a permanent surveillance and alarm service which applies to the High Authority to have inspections carried out or injunctions issued.
- At the technical and scientific level it is responsible for drawing up regulations or acts as in an advisory capacity in the drawing up of such regulations. In certain cases, the High Authority can only act with its approval. The High Council may appeal decisions of the High Authority before the Council of States and, in certain cases, take matters to the Court.

C) THE HIGH AUTHORITY

The High Authority, which is the keystone to the whole structure, is made up of members appointed by the Council of States but who act independently, not as representatives of their States. It must comprise enough members (depending on the number of member States) to provide fair representation for all the geographic, economic, cultural and political interests involved, but be small enough to be effective. Its membership could be fixed at 1/4 or 1/3 the number of member States (for example 15 members for fifty member States).

Although the High Authority is appointed by and answerable to the Council of States and responsible for implementing certain of its decisions, it is nevertheless invested with major powers of its own.

.../...

In general terms, the High Authority has the following powers :

- the power to inform and if necessary to inspect, on its own initiative or at the request of the Council of States, the Scientific High Council, the Court, the member States or certain organisations ;
- normative powers which it exercises in various ways (regulations, directives, recommendations) ;
- powers of injunction and possibly of sanction ;
- financial powers (compensation and assistance) ;
- the power to negotiate with international organisations and non-member States ;
- the power to act : intervention in the event of a disaster.

The treaty must define these rather complex powers very accurately :

- first of all, the High Authority rules on the basis of an absolute majority of its members, certain special cases requiring a reinforced majority ;
- furthermore, certain of its decisions may be blocked by veto (on a qualified majority basis) in the Council of States ; others require the approval of the Scientific High Council ;
- all the decisions of the High Authority may be submitted to the Court for a decision regarding their legality.

.../...

D) THE INTERNATIONAL COURT

Because of the specific nature of the Institution, it would seem more expedient to endow it with a jurisdiction of its own rather than refer litigation to the International Court of Justice.

The Court's members (11 for example) are specialists in international environmental law, elected by the Council of States. When the nature of the case being heard so requires, a number of members of the Scientific High Council (4, say) could be asked to sit in.

In general terms, its job is to interpret and enforce the Treaty.

In this respect, it may be asked to rule on decisions taken by other organs of the Institution.

It may use its powers of injunction to make member States fulfil their commitments (suspension of projects, conservation measures, prohibition).

IV - FUNDING

The Institution would operate on an annual budget drawn up by the High Authority and passed by the Council of States.

Its resources are made up in the main of contributions from member States.

Additional sources of funds may also be envisaged, however :

.../...

- voluntary contributions from States, corporations and private individuals ;
- a tax on firms which are a strain on the environment even though they operate within the law ;
- fines on firms which break the law.

The budget must cover the Institution's operating costs, as well as the upkeep of certain funds (scientific investment fund, special effort compensation fund, rescue and assistance fund).

The "philosophy" behind the budget must reflect strong commitment to the idea that protecting the biosphere, which has already been largely exploited by the industrialised countries, means that the developing countries must make sacrifices to avoid aggravating the situation, and that they will have to receive compensation for these sacrifices.

V - STATE SOVEREIGNTY AND POWERS OF THE INSTITUTION

This project seems at first sight to grant sweeping powers to an international organisation which threaten national sovereignties all the more in that its decisions do not require a unanimous vote and that not all States are represented on three of its major component bodies (the High Authority, the Scientific High Council and the Court). In a way, the impression is one of greater integration than in the E.E.C. prior to 1993.

We must therefore consider to what extent this impression is really accurate. Careful consideration of the question leads to the conclusion that although national sovereignty is encroached upon to a certain extent, the harm is less extensive than it would seem at first glance.

.../...

1.- The organs making up the Institution have considerable powers, individually or collectively, with regard to member States :

- regulatory powers of different types : recommendations, directives (which set objectives but leave it up to individual States to decide how to go about achieving them), regulations (of a compulsory nature) ;
- powers of surveillance and investigation : at any time the Institution is entitled to request and receive any information it may require ; it may send a team to investigate ;
- power of injunction : the Institution may order the provisional suspension of a public or private activity, a permanent ban or certain corrective measures ;
- power of sanction : this power may be used against firms (fines) as well as against States (ban on the purchase of certain "harmful" substances, for example). It goes without saying that the Institution has no physical means of coercion and cannot impose economic sanctions of a "general" nature ;
- fiscal power : the Institution may levy taxes on certain firms.

2.- These powers must be carefully measured, however :

- first of all, the scope of the Institution is limited and does not cover economic and financial life in general, which rules out any comparison with the E.E.C. ;

.../...

- secondly, the Institution's criteria for action are much more precise than those of a community with a more general vocation ; they are objectively tangible and it is the main role of the Scientific High Council to curb any temptation for the Institution to abuse its power ;
- finally, various rules relating to the distribution of power mean that the majority rule will only be used in rare cases and that the Institution will operate only in a climate of consensus.

Indeed, the very fact that power is shared amongst the four constituent organs is in itself a limitation of power.

The fact that geographical, economic and possibly political differences are taken into account in determining the membership of the High Authority should have a moderating influence.

VI - THE DECLARATION OF THE DUTIES OF STATES

1.- Bearing in mind the action and work of various organisations, declarations, resolutions, conventions, a body of rules currently in force or under negotiation already exists regarding the duties of States in protecting the biosphere. It would be an easy matter to collate and complete this existing material and shape it into a General Declaration. A text of this nature is included as a foreword to the draft Convention.

2.- The problem is how to use this Declaration. It could be included in a draft treaty as a foreword, as is the case here.

But it could also be the vanguard, the moving force behind efforts leading up to a Treaty.

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The initiative would consist in drawing up a Declaration and inviting States to accede to it as to a Charter for the Preservation of Life.

To this invitation would be added the suggestion that those States wishing to go further should join forces in building the Institution (Treaty proper).

This approach, although highly dynamic, requires further thought, for the mere fact of the Declaration would constitute a political and moral, if not legal obligation for participant States to respect the terms thereof on the strength of a unilateral commitment, with no counterpart commitment from States which remain alien to the process.

3.- The Declaration could therefore be a way to set the whole machine in motion.

But if this start-up were to prove too difficult or too remote in time, we could seek the second stage of the rocket in the Scientific High Council, which would not in principle impinge upon the sovereignty of States and could therefore be set up as an instrument at the service of the Declaration.