

MEMORANDUM FOR CABINET PREPARED BY THE HON. MINISTER
OF COMMONWEALTH AND FOREIGN AFFAIRS

Recognition of the compulsory jurisdiction
of the International Court of Justice

On the 18th of April, 1966, Cabinet agreed that Malta should declare its recognition of the compulsory jurisdiction of the International Court of Justice and that a declaration should be made to the United Nations in the form of the attached draft (Annex A).

Ministers will note that paragraph (iii) of the declaration excludes disputes with regard to questions which by International Law fall exclusively within the jurisdiction of Malta.

It has been pointed out that a number of States (including the United States of America) which have accepted the compulsory jurisdiction of the International Court of Justice have excluded from such jurisdiction disputes with regard to questions falling exclusively within the jurisdiction of those States but leaving the decision whether such disputes were domestic or not to the country itself.

Malta has not yet made any declaration to the United Nations, and Ministers therefore may, if they so wish, decide to alter paragraph (iii) of the enclosed declaration to follow the line adopted by the United States of America.

The Crown Advocate General has advised that the decision is purely one of Government policy. If the final right to determine whether a dispute is domestic in character or not is to be held by the Government it would provide a means of avoiding international embarrassment, but it would of course reduce the effectiveness of Malta's participation in the International Court of Justice, and it would in effect place the decision of the Government of Malta above International Law. Among the States which have chosen to abide by International Law on this particular point are France and the United Kingdom, the Scandinavian countries, Belgium, Australia, Canada, New Zealand, Nigeria, The Gambia and many others.

Ministers are invited to state whether their previous decision in regard to domestic disputes should remain as previously agreed and as contained in paragraph (iii) of the attached declaration or to decide whether disputes with regard to matters which are essentially within the domestic jurisdiction of Malta should be determined to be such by the Government of Malta.

24th October, 1966.

ANNEX A

I hereby declare on behalf of the Government of Malta that Malta accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes other than:-

- (i) disputes in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement;
- (ii) disputes with the Government of any other country which is a Member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;
- (iii) disputes with regard to questions which by international law fall exclusively within the jurisdiction of Malta;
- (iv) disputes concerning any question relating to or arising out of belligerent or military occupation or the discharge of any functions pursuant to any recommendation or decision of an organ of the United Nations, in accordance with which the Government of Malta have accepted obligations;
- (v) disputes arising under a multilateral treaty, unless (1) all Parties to the treaty affected by the decision are also Parties to the case before the Court, or (2) the Government of Malta specially agrees to jurisdiction;
- (vi) disputes relating to any matter excluded from compulsory adjudication or arbitration under any treaty, convention or other international agreement or instrument to which Malta is

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a party;

(vii) disputes in respect of which arbitral or judicial proceedings are taking, or have taken place with any State which, at the date of the commencement of the proceedings, had not itself accepted the compulsory jurisdiction of the International Court of Justice; and

(viii) disputes in respect of which any other Party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purposes of the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other Party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court.

The Government of Malta also reserve the right at any time, by means of a notification addressed to the Secretary General of the United Nations, and with effect as from the moment of such notification either to add to, amend or withdraw any of the foregoing reservations or any that may hereafter be added.

Minister of Commonwealth
and Foreign Affairs

Valletta

1966.