

MEMORANDUM TO CABINET BY THE PRIME MINISTERThe partition of sea areas around Malta

The members of the Oil Committee have been exercising their mind on the problems that would arise if the seas separating Malta from neighbouring countries were to be partitioned for the purpose of oil exploration and exploitation. To the north and east of Malta the Continental Shelf is more or less clearly defined and the sea areas which may be regarded as of immediate interest from an oil prospecting point of view are all within the 200 metre depth-line. To the south and the west of Malta there appears to be other equally interesting areas. But these areas, though they are less than 200 metres deep, are separated from Malta by a deep and rather wide trench.

2. The importance of the sea areas south of Malta has been heightened by the fact that two oil companies, namely the Oceanic Exploration Company and Shell, have applied for an exploration licence covering the Medina Bank, a sea area to the far south of Malta covering approximately 3,000 square miles. Both companies are urging the Malta Government to seek an agreement with neighbouring countries to partition the surrounding seas south and west of Malta, outside the 200 metre depth-line adjacent to Malta; and they quote as precedents the attitude taken by Britain and Norway in the North Sea and by Italy and Yugoslavia in the Adriatic sea.

3. The members of the Oil Committee appreciate the difficulties involved in any Maltese initiative to partition sea areas beyond the 200 metre depth-line adjacent to Malta in view of

Malta's proposal at the United Nations that "the seabed and ocean floor and the subsoil thereof subjacent to waters more than nautical miles from the nearest coast and more than 200 metres deep, disregarding rocks and islands without a permanent settled population, unquestionably are, and must remain, beyond national jurisdiction". The Medina Bank, as well as three or four other small areas to the south and west of Malta where the water is relatively shallow, are outside the 200 metre depth-line adjacent to Malta. The position taken by Malta in the United Nations implies that these areas should remain beyond national jurisdiction. If, on the other hand, Malta were to adopt a less rigid attitude, the Medina Bank would undoubtedly fall within Malta's side of the median line between Malta and Libya. Other areas of interest to oil companies appear to be on the border line.

4. The Ministry of Commonwealth and Foreign Affairs have advised that because -

(a) Malta's short term interests appear reasonably well protected by the 1958 Geneva Convention on the Continental Shelf which leaves very little doubt that our claims on half of the sea area between Malta and Sicily would fall well within the internationally acceptable criteria, as the sea in this area is less than 200 metres deep; and because

(b) it would be unwise to prejudice the position taken in the United Nations without careful consideration of the long term advantages that may be obtained from participation in the

benefits ...

benefits to be derived from the exploitation of the far larger areas of the seabed of the oceans;

it would be advisable not to proceed in the matter of delimitation before the views of the majority of Mediterranean States are known. The proposed Conference of Mediterranean States should provide a good opportunity to ascertain the majority view.

5. The members of the Oil Committee on the other hand are of the opinion that as -

- (a) Malta's short term interests are only safeguarded insofar as the sea area north of Malta is concerned, and are not safeguarded in the case of the areas lying south and west of Malta; and as
- (b) the possible hypothetical benefit to be derived by Malta from sharing the exploitation of the seabed of the oceans with all mankind must necessarily be small in comparison with the direct benefits to be derived from 3,000 square miles of comparatively shallow water if the Banks in question are oil producing,

it would be advantageous to Malta if our Permanent Representative at the United Nations be asked to take a more flexible attitude and to work towards a definition which would not exclude the Medina Bank falling within Malta's jurisdiction.

6. Pending a new approach by Malta's Representative, the Oil Committee reluctantly see no alternative but to defer consideration of concessions in sea areas south and west of Malta,

because for political reasons it would be most inadvisable to include in a call for applications any area of seabed which is not in accord with our stand at the United Nations. In the case of the Medina Bank, south of Malta, no other country can claim jurisdiction over it, as it clearly falls on the Malta side of the median line. There may be a psychological advantage in considering concessions on the Medina Bank before the Continental Shelf north of Malta, if it can be shown that the probability of striking oil on the Medina Bank is higher than on the Continental Shelf. A technical assessment of the probabilities has not been carried out and all the Oil Committee has to go by is the fact that there appears to be great interest among oil companies for concessions on this Bank. A costly technical appraisal of the probabilities may be inadvisable before the stand taken by Malta at the United Nations is altered. Insofar as the Banks west of Malta are concerned there are practical problems in defining a median line which require tripartite agreements between Italy, Tunisia and Malta.

7. Concessions on the Continental Shelf north of Malta do not require a prior bilateral agreement with Italy establishing the median line. Only such an agreement would, however, definitely establish the median line, and it is therefore advisable to negotiate such an agreement. The Italians are quite willing to enter into such an agreement, and indeed lately they have been pressing through diplomatic channels for an early start of negotiations. The Oil Committee found it advisable to mark time until expert advice is available on suitable negotiating tactics.

8. In the meantime our Permanent Representative at the United Nations has raised

two important alternatives for consideration -

- (a) if it is decided to seek delimitation of the Continental Shelf, would the deepest trench principle be preferable to the median line principle; or
- (b) should special 'ad hoc' criteria be adopted in lieu of a delimitation of the Continental Shelf.

9. Our Permanent Representative at the United Nations accepts that the deepest trench criterion can only be advantageous to Malta if bathymetric charts indicate that the deepest trench is nearer to Sicily than Malta. The Oil Committee feel that practical considerations rule out the utilization of the deepest trench criterion. If for the sake of argument it is found that the deepest trench is substantially nearer Sicily than Malta, it is highly unlikely that the Italians would agree with the principle when the most recent negotiations on the dividing line have all been concluded on the basis of the median line principle. The Oil Committee see no advantage in pursuing negotiations, which require lengthy expert investigations, if they are likely to be abortive.

10. As an alternative to the delimitation of the Continental Shelf through negotiating a median line with Italy, our Permanent Representative is advocating a novel approach to the problem on the lines of either co-ownership or co-jurisdiction of the area with Italy. In brief, the idea is that instead of partitioning the area, Malta and Italy should declare that the area is jointly owned by both parties. The concept of co-ownership would lead to a joint Italo-Maltese company for the purpose of the

exploration ...

exploration and exploitation of mineral resources, whilst co-jurisdiction would lead to a joint commission for the purpose of issuing mineral exploration and exploitation licences. In support of this thesis our Permanent Representative offers the following arguments -

- (a) if the area is partitioned, we would not be in a position ourselves to exploit our own side of the delimited Continental Shelf for lack of technology and expertise, but we would be forced to grant exploration and exploitation licences to large oil companies whose interest are likely to be far removed from ours, since operations in Malta might be only a small part of their total operations;
- (b) if the area is co-owned, we would be in a position to provide joint legislation with regard to safeguards against pollution, compensation for damages arising from exploitation and other technical matters;
- (c) if a joint company is set up, we would insist that the statutes of the joint company would provide for the training of Maltese technicians and for their employment when trained, thus assuring a systematic and progressive increase in our knowledge and expertise; and
- (d) politically we would consolidate our relationship with Italy, if we accept the thesis of co-ownership or co-jurisdiction.

11. The Oil Committee have examined the two concepts in depth and feel that -

- (a) co-ownership will be advantageous if oil is more plentiful on the Italian side of the dividing line. Though this is an unknown factor, nevertheless the interest shown by oil companies in the Hurd Bank might indicate that there are good prospects on our side of the median line ;
- (b) whilst it is realised that we can only forge ahead with the help of outside experts and on the basis of exploitation licences to big oil companies, the element of competition is more advantageous than the alternative solution of allowing, say, AGIP to run the whole show, as in practice this would be the only alternative;
- (c) at least half of any area given out on licence would revert to the Government under the terms of the licence, whereas there would be no such reversion under either co-ownership or co-jurisdiction;
- (d) Malta, being the lesser partner in such a co-ownership scheme, would be at the complete mercy of the other partner plentifully supplied both with expertise and money; and
- (e) politically it may not be wise for a small independent nation to abdicate some of its powers to a stronger foreign power.

12. Our permanent representative at the United Nations does not, however, consider these counter arguments sufficiently forceful and has again asked for very careful consideration of his proposal for co-ownership or co-jurisdiction. He holds that by proclaiming the principle of co-jurisdiction it might be possible to avoid some diplomatic complications since in the case of the Medina Bank, neither Malta nor Libya would be expanding their own sovereignty in a manner considered illegal by certain countries.

13. Hon. Ministers may wish to approve that -

- (a) Malta's Permanent Representative at the United Nations be instructed to take a less rigid approach on the 200 metre depth-line, and work towards a definition which would not exclude the Medina Bank from falling within the jurisdiction of Malta;
- (b) concessions should for the moment be limited to the area of the Continental Shelf north and east of Malta within the 200 metre depth-line; and as regards the northern boundary which would coincide with the median line, an apposite clause should be inserted in the licences so as to allow for possible slight changes in the boundary if and when agreement on the median line is reached with the Italian authorities;
- (c) negotiations be initiated with Italy as soon as expert advice is available to conclude a partitioning of the sea area on the basis of an agreed median line.

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