

MEMO for the CABINET by the Minister of Justice

(Granting of the Island of Filfla by title of temporary emphyteusis to the Naval Authorities).

1. The previous Administration had reached agreement with the Naval Authorities on the granting to them by the Government of Malta of the Island of Filfla and adjacent rocks by title of emphyteusis for 150 years and on the terms which are to govern the emphyteutical concession.

2. The agreed terms, besides those normally governing any emphyteutical concession according to law, are as follows:-

- (a) the groundrent will be one shilling per annum;
- (b) the emphyteutical concession will terminate automatically as soon as the Island of Filfla will be no longer required for defence purposes;
- (c) the said Island shall under no circumstances be made over, sub-granted or leased by the Naval Authorities to any third party except to another Service Department of Her Majesty's Government;
- (d) the Government shall not under any circumstances be required to contribute to any expenses which may be incurred by the Admiralty on or in relation to the said Island of Filfla ~~or in relation to the said Island of Filfla~~ or in relation to and as a consequence of the use thereof by the Admiralty for the purpose of the concession, whatever the amount, cause or time of such expense and even if rendered necessary by any law at any time in force.

3. A clause which stipulated that the Island of Filfla shall be accessible to the public save where safety measures shall otherwise require was cancelled at the request of the Naval Authorities.



4. The obvious purpose of the said agreement sponsored and brought about by the previous Administration was to put an end to a source of continuous dispute between the Government of Malta and the Services on the use by the latter of the Island of Filfla as a target for bombing practice. The Services' view, under the 1947 Constitution, was that the use of the Island for that purpose was a reserved matter in which the Government of Malta had no right to interfere. That view was challenged on sound legal grounds by the Government of Malta who, however, in a letter addressed on the 11th June, 1952, to the Governor by the Prime Minister "ad interim", expressed its willingness to recognize the Services' necessities in relation to the said use, provided the Services accepted such use would have to be according to law. The Government of Malta, therefore, stated that it would be prepared, subject to satisfactory safeguards of public and private rights, to grant a right of use on the Island of Filfla on agreed terms particularly as regards the delimitation of the danger area, in order that the provisions of the Gun, Rifle and Torpedo Ranges Ordinance, after amendment of the Ordinance and the making of regulations thereunder as might be found necessary, would be made applicable to the bombing of Filfla Island.

5. The said Ordinance governs the rights and obligations of the Services in relation to the use by them of any land belonging to them or of which any of them had acquired the lease or the right of user or of any area of the sea within the territorial waters of Malta (other than the Grand Harbour and Marsamxett Harbour) which have been appropriated for a gun, rifle or torpedo range or for training or practice in the use of any other weapons of war or for experiments connected with any weapons of war. The amendment referred to above concerned principally the extending of the scope of the Ordinance to bombing from aircraft which was not covered by the original law. Such amendment was effected by virtue of Ordinance No.III of 1954.



6. The granting on emphyteusis to the Naval Authorities of the Island of Filfla and the adjacent rocks would not in itself solve all the difficulties inherent to the matter, especially in regard to the restriction on the use by fishermen of the area around the Island, but it would at least establish the basis of legality on which the Government of Malta has been ever insisting.

7. It is to be noted that one of the effects of the emphyteutical concession would be that of empowering the Naval Authorities to preclude the public from going on the Island of Filfla. But this right was already exercised, under the powers vested in the Governor by section 27 of the Land Acquisition Ordinance, by virtue of Maltese Imperial Government Notice No.108 of the 23rd September, 1955, and the Government of Malta did not then object to the exercise of such right in view of the possible danger to members of the public on account of the existence on the Island of unexploded bombs.

8. The legal position now is that the previous Administration has committed the present Administration to the extent that it may be said that an agreement legally binding has been reached on the terms of the emphyteutical concession. But, even under such circumstances, this Government cannot accept the granting of the Island of Filfla at a nominal groundrent of one shilling per annum. The original intention under the previous Administration was to grant the Island at a yearly groundrent of £100, but, subsequently, the Legal Secretary decided that the groundrent should be a peppercorn one of one shilling per annum since, he said, the U.K. side would appear to be compromising on the principle it always upheld that Her Majesty's Government should not pay for the use of defence facilities in Malta. This is not acceptable to the present Administration and, while it would seem that there should be no objection to the granting of the Island on emphyteusis for the purpose already referred to, payment of a yearly groundrent of £100 should be insisted upon.

16th November, 1962.