

MEMORANDUM FOR THE CABINET BY THE  
HON. PRIME MINISTER

Succession of Malta to International Treaties

Some time ago the United Kingdom Government had asked for the views of the Malta Government regarding the question of Malta's succession to international agreements concluded on her behalf by the United Kingdom Government (as the Government responsible for Malta's international relations) before independence.

2. In a Note prepared by the Colonial Office it was stated that "under customary international law certain treaty rights and obligations of an existing State are inherited automatically by a new State formerly part of the territories for which the existing State was internationally responsible". The Note went on to say however that international law on the subject was not well settled and it was impossible to state with precision which rights and obligations would be inherited automatically and which would not.

3. It is therefore necessary for the Government of Malta to declare its position regarding existing international agreements so as to remove whatever doubt there may be about their applicability at international law.

4. There seem to be three courses open to the Malta Government:-

- (i) A declaration accepting a list of specified treaties -

This involves a detailed study of all treaties and a selection of those which apply to Malta with advantage or convenience. Such declaration could conceivably be lodged with the United Nations and would then be followed by a disclaimer of responsibility by the United Kingdom. Because this method is selective it is unlikely that third parties would be willing to hold themselves bound by our

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declaration. The detailed study cannot be undertaken in a short time (in fact at least two years is considered the minimum time for a careful study to be completed). This method has not been either suggested by the Colonial Office or accepted so far by other emergent countries. It is not recommended by the Attorney General.

- (ii) A declaration retaining in force all treaties for a determined period -

This was the method used by Tanganyika, Kenya, Malawi and Uganda, the United Kingdom making its own disclaimer. This method may have some advantages over the blanket method in (iii) below but they do not appear to be of moment. By this method treaties are kept in force on a basis of reciprocity for a specified time (e.g. two years) unless abrogated or modified before then. At the end of the time all treaties not formally accepted or renegotiated expire automatically unless by the rules of customary international law they survive.

- (iii) A blanket exchange of notes with the United Kingdom accepting all treaties -

This is the method used by Nigeria, Ghana, Malaya and Sierra Leone. It maintains the status quo, is non-selective and therefore the more likely to be acceptable to third parties and permits of a detailed study to be made at leisure. As a result of such study it will then be possible (a) to renegotiate individual treaties with a view to modification, (b) to terminate certain treaties which provide for termination, (c) formally to accede to certain others, and (d) to abrogate by agreement or to denounce, where permissible by the rules of international law, those which do not provide for termination.

5. For the reasons stated above, course (i) is obviously out of the question. Course (ii) would tie Malta down to a definite period within which time must be found to go through all agreements, treaties, etc., and to decide in each case which is to be retained and which abrogated. This in itself may not be of detriment, but it is not essential to go through such exercise once the position pre-independence was not irksome and did not call for any definite action in respect of any treaty or set of treaties. Accordingly it is equally possible to accept course (iii) which does not preclude a full study being undertaken with a view to re-negotiation as necessary.

6. It is therefore proposed (a) to inform the British Government of the Malta Government's intention to proceed as per course (iii) in para 4 above which, as already indicated, was also followed by the more mature of the Territories within the Commonwealth attaining independence in recent years, and (b) to complete a study of all treaties by December, 1965.

7. If this course is adopted, effect may be given to it by an exchange of letters between the British High Commissioner and the Prime Minister or Minister of External Affairs. The letters are registered with the United Nations. Whilst such agreement by exchange of letters is not directly binding on third countries it gives them notice of the new State's intentions, and it is reasonable to assume that any State which raises no objection within a reasonable time accepts the arrangements embodied therein. Third States have, so far as is known, accepted the new State as a party to existing agreements where an agreement of the kind described has been made between the new State and the United Kingdom.

8. Hon. Ministers are invited to endorse the proposal contained in para 6 above.

9th October, 1964.