

MEMORANDUM BY THE MINISTER OF JUSTICE

The draft Convention on the Protection of Foreign Property was prepared by a Committee of the Organisation for Economic Co-operation and Development in accordance with the instructions of the Council of the Organisation for European Economic Co-operation.

The Convention in draft form has been made available also to non-Member States and other interested circles for pertinent comment.

The Convention contains fourteen articles and an annex relating to the Statute of the Arbitration Tribunal.

Broadly speaking the articles of the Convention would be introducing no innovation in so far as our legal heritage is concerned and they are, therefore acceptable.

It may not be out of place to point out in this connection that the salient principles of the Convention have been entrenched in the "Malta Independence Constitution".

Article 11 refers to the extra-territorial application of the Convention and the exercise contained therein merits the consideration of Honourable Ministers.

I deem it my duty to call the attention of Honourable Ministers that in accordance with article 3 "taking of property" is obviously subordinate to payment of just compensation. In the notes to article 3 just compensation is qualified as being the fair market value of the property at the moment of deprivation. As explained in paragraph 8(a) of the Notes and comments to Article 3, this may work out to be in excess of the compensation provided for in Chapter 136 in the normal cases of expropriation, even though under (b) of paragraph 8 the determination of the "genuine value" must initially be referred to the national body to which is entrusted the task of assessing compensation unless the value of the property or the method of ascertaining it is stipulated in an undertaking within the meaning of article 2.

The aim of the Convention is to codify recognised principles relating to the protection of foreign property with a view to fostering schemes designed to facilitate private investment in developing countries.

Honourable Ministers are invited to recommend.

4th September, 1964.