

MEMORANDUM TO CABINET BY THE MINISTER OF  
COMMONWEALTH AND FOREIGN AFFAIRS

Extension of Maltese Territorial Waters

Consideration has for some time been given to the extension of the territorial waters of Malta. There is no law delimiting the territorial sea or the contiguous zone, but we have always adopted the traditional 3-mile limit. A small Working Party representing the Government Departments concerned was set up to consider the matter and to make recommendations as to the extension of the present territorial waters.

2. In studying the question full account was taken by the Working Party of the following considerations:-

- a) the implications in regard to the continental shelf, as defined by the Continental Shelf Act, 1966, and by the Convention on the Continental Shelf (Geneva, 1958) - to which Malta is a party - having particular regard to oil exploration;
- b) fishing rights;
- c) the establishment of a contiguous zone, as defined in the Convention on the Territorial Sea and the Contiguous Zone (Geneva, 1958), to which Malta is a party;
- d) customs control in relation to contraband activities;
- e) the extent to which the internal waters of Malta could be affected by any extension of the present three-mile limit;
- f) obligations and responsibilities devolving on the Government as the result of the extension of the territorial waters: and

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/g) political ....

- g) political considerations, including the implications of the U.N. Resolution No. 2340 (XXII) concerning the exploitation of the sea-bed and ocean floor for peaceful purposes, and the limits fixed by countries bordering the Mediterranean, with special reference to Italy and Tunisia.

3. The Working Party considered two alternative extensions namely:

- i) an extension of the territorial waters from the present 3-mile limit to 6-mile limit; and
- ii) an extension to a 12-mile limit.

Any extension beyond the 12-mile limit was not considered as this would not have accorded with normal practice.

4. For the purpose of calculating the limits of the territorial waters, the starting point is taken as the position of the baseline established for particular coastal states. Taking the "double-radius" rule for calculating the baseline, an extension of territorial waters from 3 to 6 miles would have the effect of (a) increasing appreciably our internal waters and (b) increasing the area of our continental shelf with consequent advantage for oil exploration purposes. An extension by a further 6 miles to a 12-mile limit would only very slightly increase our internal waters.

5. But it is not clear from the interpretation (and, indeed, from the spirit of) Art. 4 of the Convention on the Territorial Sea and the Contiguous Zone (1958) whether the above rule for calculating the baseline would be the correct one. It was the considered opinion of the Working Party that, by applying the provisions of sections 1 and 4 of Art. 4 of this Convention and having regard to the size of the Island and the general direction of the coastline, the extent of the internal waters would be the same,

irrespective of the extent of the territorial waters limits established for Malta. Similarly, the extent of our continental shelf would be the same.

6. In the absence of a precise and unequivocal rule for drawing the baseline both at law and in practice, but having regard to the above rule, the Working Party was of the strong view that an extension of the limits of territorial waters could be brought as a further justification in international circles for establishing the outer baselines with an automatic assertion of our right for a larger area of internal waters.

7. Article 2 of the European Fisheries Convention 1964 (to which Malta is not a party, but to which Italy is a party) gives coastal states exclusive right to fish and exclusive jurisdiction in matters of fisheries within the belt of six miles measured from the baseline of their territorial sea. Article 3, however, stipulates that within the belt between 6 and 12 miles measured from the baseline of the territorial sea, the right to fish shall be exercised also by such other contracting parties the fishing vessels of which have habitually fished in that belt. It is relevant to point out that Italian fishing vessels are known to operate in the neighbourhood of Malta and, most probably, within the 12-mile limit. It would seem therefore that whilst there are definite advantages for fishing in establishing a 6-mile limit of territorial waters, there is no such advantage in extending the limits of territorial waters by a further 6 miles as Malta would not have exclusive fishing rights in the additional area in view of the "habitual fishing rights" that can be claimed by Italian fishing vessels. The Working Party was of the view that, in these circumstances, it would be more appropriate if fishing rights beyond the territorial limits were to be considered as a separate issue for negotiation and bilateral agreement with other coastal states and particularly with Italy.

/8. According ....

8. According to the Convention on the Territorial Sea and the Contiguous Zone (Geneva, 1958) a "contiguous zone" can be declared immediately adjacent to the territorial seas of a state, provided that the limit of such zone should not extend beyond 12 miles from the baseline established in terms of the Convention. In this area the coastal state may exercise control in relation to customs, fiscal, immigration and sanitary regulations. In view of this provision it would be within our rights to declare a "contiguous zone" provided we do not claim a 12 mile-limit of territorial water. In other words, if we were to decide on a 6-mile limit we could exercise control on a further 6-mile limit of sea by simply claiming a 6-mile limit of territorial waters. The contiguous zone could equally be declared to extend to a limit of 12 miles from the baseline even if we were to retain the present 3-mile limit.

9. In regard to Customs control of contraband, Malta would be in a position to exercise more effective control if we claimed an extension of the territorial seas, but this would imply the provision of equipment on a larger scale than what is required to control the present area. It may be pointed out that equipment etc. for an effective Customs control of contraband is in any case required for the present 3-mile limit, but that provision of equipment for an area with a 6-mile limit would be required on a slightly larger scale. On the other hand, if the territorial water limits were to be extended by another six miles to 12 miles, then equipment would have to be provided on a very much larger scale. The Working Party, however, did not feel it necessary to go into details as regards the technical and financial implications of any proposals for proper Customs control of contraband, as they thought that this aspect of the study of the matter should not constitute a dominant issue in their deliberations.

10. Consideration was also given to the limits claimed by other countries bordering the Mediterranean, with special reference to Italy. The United Arab Republic and Libya claim 12 miles, Albania 10, whilst

Italy, Spain, Turkey, Yugoslavia, Israel and Greece claim 6 miles. Algeria claimed 3 miles before independence, but she is likely to claim 12 miles to conform to the United Arab Republic and Libya. The majority of states parties to the Convention on Territorial Waters claim at least 6 miles for territorial waters (and 12 miles for fishing rights). A claim of up to 12 miles is considered by the International Law Commission and by International Legal Opinion as a reasonable one. The Soviet Union claims 12 miles.

11. In regard to the U.N. Resolution No. 2340 (XXIII) regarding the exploitation of the seabed and ocean floor for peaceful purposes, which makes reference to "the limits of the national present jurisdiction", any extension of our territorial waters limits would not conflict with the terms of the Resolution or in any way raise difficulties in the study which is currently being made of the proposal by the "ad hoc" U.N. Committee.

12. The above considerations led the Working Party to the conclusion that while it would be advisable to extend the present limit of territorial waters, such extension should be limited only to 6 miles (with a contiguous zone of another 6 miles) as there are no practical advantages to be gained in extending it still further to 12 miles.

13. However, the Working Party could not fail to take into consideration the implications arising out of the presence of the Russian Fleet east of Malta, in the area known as the Hurd Bank. In this context it is relevant to point out that the shallowest part of Hurd Bank is within 12 miles of our coast (less than 30 fathoms between  $8\frac{1}{2}$  and  $10\frac{1}{2}$  miles from shore). The Russians have been in the habit of anchoring in depths of up to 40 fathoms (and in a few instances 50 fathoms) between the 3-mile territorial waters limit and the shallowest part of Hurd Bank. There is plenty of water beyond the shallowest part of the Hurd Bank and the 12-mile limit in depths of 31 to 50 fathoms to the north east (up to  $20\frac{1}{2}$  miles from Malta) and to the east (up to 18 miles from Malta) of Hurd Bank shallows where they could continue to anchor

with impunity. In terms of the Continental Shelf Act, 1966, and the Continental Shelf Convention, 1958, Malta has sovereign rights over the Hurd Bank for the purpose of exploring it and exploiting its natural resources. Consequently any foreign ships using the Bank other than for anchorage would be infringing our rights over the Bank. If the Russian warships are here simply for "innocent" purposes, then their presence cannot be challenged. If on the other hand the Russian warships use the Bank to carry out tests on the sea-bed, this would constitute an infringement of the Act and the Convention. The point arises whether our rights on the Hurd Bank are being actually infringed in that area.

14. An extension of our territorial waters to 6 miles would not alter the present position in relation to the Russian fleet using the Bank for anchorage. But if the limits were to be extended to 12 miles, then Hurd Bank would form an integral part of Maltese territorial waters and, according to the provisions of the Convention on the Territorial Sea and Contiguous Zone, 1958, Russian warships would have the right of "innocent passage" only, to the exclusion of any right to stop and anchor except in so far as this was incidental to ordinary navigation or was rendered necessary by "force majeure" or by distress. According to the latter Convention, if any warship does not comply with the regulations of the coastal state concerning passage and disregards any request for compliance, the coastal state may require the warship to leave the territorial sea. The Crown Advocate General concurs with the views expressed above.

15. In the light of the foregoing the Ministry of Commonwealth and Foreign Affairs feels that though the 6-mile limit, in normal circumstances, would be sufficient for our purposes, there are at present strong political and security motives for extending the territorial waters of Malta to 12 miles thus including Hurd Bank. On the other hand the Ministry of Finance Customs and Port considers that the effect of adopting a 12-mile limit would be a nuisance value

only to the Russians as it would include that area of Hurd Bank presently used by them as anchorage. There would then arise the strong possibility of a continual argument as to whether they were within or without territorial waters. The only way one can check whether a ship is within this limit or not is to patrol the area between 7 and 12 miles from shore and "fix" ships' position to see whether they are within or without territorial waters. With a 6-mile limit, and reasonable visibility, a ship can be seen and fixed from shore on most days of the year.

Hon. Ministers are invited to decide, in the light of the above considerations, whether Maltese territorial waters should be extended to a 6 or a 12 mile limit.

20th November, 1968.