



The Malta Independence Constitution, 1964

J J Cremona

In a few words - alas, too few to do justice to my subject - I am here to commemorate, as this beautiful medal is also intended to do, an event which is undoubtedly the greatest one in Malta's modern history: the achievement of independence. In doing so, I beg forgiveness if I seem to overindulge in the use of the first person singular. But, to some extent this is unavoidable given that the events running up to Independence I had the good fortune of being right at the forefront and literally in the thick of it all.

I think it is right to say that as a nation we have always had a marked individuality. Some ascribe it to the sea surrounding us on every side; others would go deeper. We have one of the most ancient flags in Europe and we often like to recall the glorious days when our forefathers at the end of the 18th century rose against the French, who had dispossessed the Order of St John, and of their own accord offered their homeland to the British Crown. It was the Judicial Committee of the Privy Council itself which in the memorable case of *Samut vs Strickland* clearly affirmed that

Malta came to Britain by the voluntary secession of the Maltese. I like to repeat this because some unfortunately tend to forget it.

There was a time, not too long ago, when integration with Britain was formally being negotiated by the two governments. That would have involved the gradual incorporation of Malta into the political, financial and social structure of the United Kingdom while retaining its local autonomy and legislature, but we eventually and perspicaciously preferred to assert ourselves as an independent sovereign state.

The constitutional history of Malta in the British period is well known to us all. I have often in my writings compared it to a snakes-and-ladders playing board with some highs and several lows, the latter occasioned by several factors which it would take too long to elaborate on here. Suffice it to refer to our prime strategic position, which at different times, and for different reasons, has been both an asset and a liability. Among the more hurtful of these lows was the constitution immediately preceding independence, that of 1961, and this not because it was more stringent than others, but because it essentially involved a large measure of distrust prompted no doubt by some immediately preceding incidents, but hurtful all the same. This was known as the Blood constitution.

The story of Malta's independence must therefore start from here. On his being invited to form a government after the 1962 elections, Borg Olivier accepted only after being assured that talks would be held in London concerning certain objectionable clauses of this constitution. Everyone knew, that he was determined to quit if he did not succeed in securing their removal. As Attorney-General and at the same time also a professor of constitutional law I flew with him to London for the necessary constitutional discussions. In fact we found an inflexible Secretary of State in Reginald Maulding, but personally I am firmly convinced he was really thinking that any talk of resignation was merely political bluff. I could see it in his eyes. Eventually there was complete deadlock.

On a miserable Sunday evening, practically as we were packing our luggage for an empty-handed return to Malta, the following day, I tentatively suggested to Borg Olivier over a cup of tea at the hotel that I was prepared to go and have a word in private with Sir John Martin,

then Deputy Under Secretary of State, whom I knew very well, at his residence. With Borg Olivier's half-hearted consent, and after ringing up Sir John, I rushed to his house. After the first greeting, his wife Rosalind prudently withdrew and I explained to him the very real gravity of the situation, assuring him in all sincerity that there was in fact no question of bluff. Sir John listened very attentively and said that even at that very late hour he would try to get in touch with the Secretary of State. On my return to the hotel Sir John rang up to say that a meeting was fixed for the following morning. Talks were in fact happily resumed and were eventually also crowned with success in the form of an amending Order in Council. This *rapprochement* was instrumental in facilitating the passage to independence, especially by building up the necessary mutual trust.



The Duke of Edinburgh and members of the Maltese Government in the Palace Courtyard after the granting of the Independence constitution

That success was not, however, to be repeated in the economic talks with the new Secretary of State Duncan Sandys which followed shortly afterwards especially in the context of impending Service discharges. But, from my previous experience of these talks I knew for a fact that the Treasury is always the hardest nut to crack. The British Government showed itself quite intransigent and at one point, after protracted and sometimes acrimonious discussions, we knew we had reached breaking point. There was nothing else to be done. Then one evening as we were sitting rather despondently in our hotel, all of a sudden Borg Olivier, in a calm but resolute voice, announced that he was asking the British Government for independence. After consulting his Cabinet from London, he instructed me to prepare for him a letter to the Secretary of State formally asking for our country's independence, using the terms 'as a matter of urgency'. It was a momentous decision, particularly for a cautious statesman for whom nothing was really and truly urgent.

I excitedly rushed upstairs to my room, grabbed a sheet of azure hotel notepaper and in no time at all drafted a short but very firm letter in which, with regard to the desired independence, I deliberately used the word 'demand'. The draft was approved straightaway. It was then typed and immediately sent by hand to the Secretary of State. It was 20 August 1962. On that same day Sandys replied that he would arrange a meeting between the two governments as soon as practicable to consider this proposal. Eventually in the first half of December 1962 discussions were held in London between the Secretary of State and a Malta Government delegation led by the Prime Minister, Borg Olivier, with me at his side, on the preparatory measures necessary for the holding of an independence conference in London, at which all parties would be invited to send delegates.

Sandys then told Borg Olivier that there would have had to be a draft of a proposed constitution to serve as a basis for discussion. Even as Borg Olivier was staring at him, Sandys, who knew of my constitutional law training in Britain, probably from my dear friend and great constitutionalist Stanley de Smith, just smiled and said 'you have Cremona'. This I know from the delighted Borg Olivier himself when he instructed me to start

working on the draft. I worked hard on it, and this after office hours, with numerous books and papers scattered over the largest table in my house, and even on the carpet, which in consequence, in my wife's considered but unshared opinion, ended up moth-eaten. But, I was able to transmit the draft to the prime minister as early as 16 April 1963.

Sandys had some very nice words to say about it in his opening speech of the independence conference held in London on 16 July 1963 and it was then adopted as a basis for discussion in the following days, when some amendments were in fact agreed. Actually Malta is the only country in the new Commonwealth whose independence constitution was drafted by a local jurist.

The great bulk of the proposed constitution - a quintessentially democratic one, in general incorporating in written form the spirit of the unwritten British constitution - raised no appreciable difficulties. But there were also some rather sticky provisions notably the so-called 'religious clauses' which, if I may say so without disrespect, bedevilled the whole issue. After some other vicissitudes and eventually approval by a popular



Dr Borg Olivier waving the constitution document after the handing over ceremony held at Floriana

vote in a referendum the Maltese Independence Act was passed by the United Kingdom Parliament in a matter of days, the 'appointed day' being 21 September 1964, now known and celebrated as Independence Day.

The new coat-of-arms of independent Malta was entrusted to the Royal College of Arms, but Borg Olivier took it upon himself to find a suitable motto. He had shortlisted a number of possible ones, but was still undecided. I happened at that time to be reading Mario Barbaro's book *Costituzione del Sovrano Militare Ordine di Malta* which reproduces the document, in Latin, in which de Valette ordered the solemn annual commemoration of the 1565 victory, which we observe to this day. In it he refers to the defenders' remarkable qualities by which victory was in fact achieved *virtute et costantia*, by valour and perseverance. Borg Olivier adopted this straightaway.

There is another amusing sequel to this. Just a couple of days before the 'appointed day' Borg Olivier had some small scruple about the coat-of-arms which he wished to clear with the Royal College. I offered to go, but he ruled it out saying that at the time he surely could not spare me. Indeed I was then already busy working on a number of post-independence matters such as legislation on the diplomatic privileges and immunities of the new ambassadors and arrangements for joining such international bodies as the United Nations and the Council of Europe. So I suggested that genial scholar Vincent Depasquale. He readily accepted, smilingly saying, since he was a non-flyer, that he would take a fast train. The matter was dropped.

I realize that in this limited timeframe I have had to rush through some momentous and unforgettable events with indecent haste but for those who are interested, more details may be found in *Recollections of Constitution Making* in the first volume of my *Selected Papers* and in my constitutional textbook.

Lastly, even though by now practically out of breath may I say how delighted I am to have had this opportunity of celebrating with you this great event, Independence Day. As from that day we Maltese have shown ourselves ready to face the future as masters of our own destiny. May that future be ever bright.