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The legitimacy of Orders of St. John : a historical and legal analysis and case study of a para-religious phenomenon

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THE LEGITIMACY OF ORDERS OF ST. JOHN
A historical and legal analysis and case study
of a para-religious phenomenon

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
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‘Iustum et tenacem propositi virum, non civium ardor prava iubentium, non voltus instantis tyranni, mente quatit solida,’

(Horatius, Odes 3.3.1-4)

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Last, but not least, I thank my beloved wife for putting up with me during the preparation of this study, which took many hours from our family life again. It is therefore to her that I dedicate this study:

to Astrid, she who walks in the favour of the Gods.

PREFACE

The case of the Knights of St. John is so fascinating and the question of the legitimacy so challenging, although perhaps an opus desperatum, that I could not stay away from it. It took me to Cyprus, Malta, Rhodes, St. Petersburg, Jaffa, Jerusalem and I was also on a crusade of my own. An arduous fight for a worthy cause, i.e. to try to find some truth and shed some light.

Beltjens [1] said that 'Coupé de son histoire, l'ordre de Malte [2] perdrait sa spécificité, ne serait plus qu'une societé caritative parmi d'autres.' Basically, this applies to all Orders of St. John, recognised or not.

It is inter alia the aim of this author to investigate in this study the alleged uninterrupted formal and/or material continuity, as well as the alleged continual acts of charity and of defence of the Faith, surrounding all recognised or false, or rather legitimate or illegitimate, regular or irregular Orders of St. John, alleged and claimed by practically all of them. In doing so, I apply a neutral, but critical approach.

Hopefully the reader will thereby be better enabled to see the true story of the original Order and later Orders, as well as the different realities and irrealities in the stream of time and to draw his own conclusions. Not only about the legitimacy of The Knights Hospitallers of the Order of St. John of Jerusalem, Knights of Malta – The Ecumenical Order – , but also about that of any other Orders of St. John.

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1 Beltjens, *Origines*, foreword.

2 By which he meant the Sovereign Military Order of Malta.

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W

Weber *Wirtschaft und Gesellschaft*

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I. INTRODUCTION

I.1. Bewildering number of Orders of St. John

In the Malta Yearbook 2000 and successive issues, to the un-initiated, a bewildering number of Orders of St. John is mentioned. The publisher remarks that mentioning an Order does not mean this Order is enjoying juridical recognition, whatever that may mean.[4] We do not give them below in the sequence in which they are listed in the Malta Yearbook 2000, but in what we feel is an appropriate sequence for the sake of our discussion:

1) The Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes and of Malta;
2) The Grand Priory of the Most Venerable Order of the Hospital of Saint John of Jerusalem
3) Der Johanniter Orden Balley Brandenburg des Ritterlichen Ordens Sankt Johannis vom Spital von Jerusalem;
4) De Johanniter Orde in Nederland;
5) Johanniter Orden i Sverige;
6) The Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem; [5]
7) The Order of Saint John of Jerusalem, Knights Hospitaller, Russian Grand Priory of Malta;
8) The Sovereign Order of Saint John of Jerusalem, the Hereditary OSJ;
9) The Sovereign Order of Saint John of Jerusalem, The Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem, Chevaliers de Malte;
10) The Sovereign Order of Saint John of Jerusalem.

I.2. Trying to find a way

The Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes and of Malta is in practice known as 'The Sovereign Military Order of Malta' ('SMOM'), or as the 'Papal Order' which latter name they seem not to like but serves to denote a certain dependence on the Pope. This Order which officially is a religious Order of the Roman Catholic Church was founded or reconstituted by Pope Leo XIII (1878-1903) in 1879. It pretends

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[4] *Editor's note:* Inclusion of any Group or Society in this Section is by way of information only. It does not imply juridical recognition of any kind by the Editor and Publishers of THE MALTA YEAR BOOK.

[5] In 2000, the name was not yet followed by 'Knights of Malta – The Ecumenical Order –'.

to be the only legitimate and direct continuation of the original Order and it only recognises two other Orders of Saint John, i.e. the Anglican Grand Priory of the Most Venerable Order of the Hospital of Saint John of Jerusalem, thus called since an annual report for 1959 of the Chapter General, founded by or awarded with a Royal Charter of Queen Victoria of Great-Britain in 1888 and the Protestant Johanniter Orden Balley Brandenburg des Ritterlichen Ordens Sankt Johannis vom Spital von Jerusalem, founded or reconstituted in 1852, together with the Protestant Johanniter Orde in Nederland and the Protestant Johanniter Orden i Sverige, both founded or reconstituted in 1946.

The Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem (The Ecumenical Order) are the Order taken as departure point in this study, having an 'International Headquarters' at Castello dei Baroni, Wardija, Malta and allegedly founded or reconstituted in 1890/1908 or able to trace back their lineage to this date. The organisation allegedly transferred or reconstituted or formed in 1890/1908, is called here 'the American Order' or 'the Shickshinny Order'. The Ecumenical Order presently claims to be under the 'Protection' of a Prince Wassili Alexandrovitch Romanov, under the Royal Protection of H.M. King Michael I of Romania (born 25 October 1921, King of Romania 1927-1930 and 1940-1947) and under the Protection of a certain Patriarch of Antioch. Their 72nd (so they claim) Grandmaster was Crolian Edelen De Burgh. Their 73rd Grandmaster was H.R.H. Prince Roberto II. Their 74th Grandmaster was a Dr. George Korey-Krzeczowski (Prince Korczak-Krzeczowski). They mention as their 75th Grandmaster since 1 June 1997, Count Joseph Frendo Cumbo, the first Prince Grandmaster of Maltese origin.

This clearly shows their pretentions. These are that they can be deemed to be the continuation of the Knights of Malta as they allegedly continued as an Order after the Surrender of Malta in 1798 and the reorganisation of the original Order by Czar Paul I ('the Russian Order'). Furthermore, that this Russian Order was transferred to or reconstituted in the United States in 1890/1908 and that The Ecumenical Order has the same identity or is the legal successor of this reconstitution. This belief and the belief that the two Russian Grand Priories legally or at least factually continued after 1810, respectively 1817, is sometimes referred to by disbelievers as 'the Russian Legend'. But some of these disbelievers are also not averse of spreading 'Maltese Myths' themselves. [6]

It is peculiar that The Order of Saint John of Jerusalem, Knights Hospitaller,

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[6] Stuurman, *Verzuiling*, p. 337, calls this 'a Whig Interpretation of History', deriving this from Butterfield's *The Whig interpretation of history* (1931), p. 9: 'and to produce a story which is the ratification if not the glorification of the present'.

Russian Grand Priory of Malta which has 'Russian Grand Priory' in its name, is usually referred to by the initiated as the 'Yugoslav Order', or as 'the King Peter Order'. They have their 'World Headquarters' at Valletta. The 'Royal Protection' of the House of Yugoslavia, H.M. the late King Peter II (1923-1970, reign 1934-1945, great great grandson of Czar Alexander II), was withdrawn from this Order. Indeed they have been acknowledged as a dynastic chivalric Order in the '1966 Register of the International Commission for Orders of Chivalry'. [7] However, this would probably not be the case now, because they have no 'Royal Protector' anymore. [8]

The Sovereign Order of Saint John of Jerusalem, the Hereditary OSJ, have their 'Headquarters' at Gzira, Malta. Their present Grandmaster is a Baron Bentfield de Palmanova de Spire.

The Sovereign Order of Saint John of Jerusalem, The Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem, Chevaliers de Malte have their 'Headquarters' at Saint Paul's Bay, on Malta. Their present 74th Prince Grandmaster is His Imperial Royal Highness Prince Henry Constantine III de Vigo Aleramico Lascaris Paleologue, Head of the Imperial House of Constantinople. Indeed this family was the last reigning house of Constantinople – the Paleologian dynasty reigned f rom 1261-1453 –, after which they were succeeded by the family of De Courtenay, who seems never to have reigned de facto at Constantinople. This Order invokes as its 72nd Grandmaster His Highness Prince Crolian Edelen De Burgh. The De Burgh family seems to be a well-known English-Irish noble family. Does Crolian belong to this family? This Grandmaster was succeeded as 73rd Grandmaster by Don Roberto II Paternò Castello, etc., Head of the Royal House of Aragon. He resigned on 10th September 1994. Prince Henry Constantine became the 74th Grandmaster on 17th September 1994 and is also the Protector. Are these two positions compatible?

The Sovereign Order of Saint John of Jerusalem has a 'World Headquarters and a 'Convent' in Tennessee, U.S.A.. They also invoke as their 72nd Grandmaster Prince Crolian Edelen De Burgh and their 73rd Grandmaster was also Don Roberto II. Their 74th Grandmaster is a Dr. John L. Grady.

Might one say this is the Church of Christ, sensorily revealing itself to us, not only in the pluriformity of Christian religious communities, churches, parishes and congregations, but also in a multitude of Orders of St. John and therefore all these Orders are actually belonging together? [9] It seems at first

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[7] Commission Internationale Permanente d'Etudes des Ordres de Chevalerie-The International Commission for Orders of Chivalry, *Régistre des Ordres de Chevalerie* (Edinburgh 1978).

[8] Infra p. 240, Chapter VIII. SIXTH PHASE (1940-2004).

[9] Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 138.

glance that the Orders mentioned sub numbers 2 through 10 are all split-offs of SMOM, SMOM being a solely Roman Catholic Order. The Knights of Malta were always a religious Roman Catholic Order, where they not? It will however be shown below, that it is argued by some that SMOM may just as well be qualified as a split-off from the Order of St. John formed or headed by Czar Paul I after the dissolution by Napoleon in 1798 of the original Order (we call the Order formed or headed by Paul I the 'Russian Order'). It seems that the other above mentioned Orders, numbers sub 6 through 10, are all a direct or indirect split-off from the American Order.

The Order of Saint John of Jerusalem, Knights Hospitaller Russian Grand Priory of Malta (number 7), say that they are one of the independent branches resulting from the 'division of the Order of Saint John of Jerusalem'. What division? When did this take place? On the other hand they say that they base their traditions since 1798 on the 'Grand Priory of Poland as absorbed within the two Russian Grand Priories' (author: Catholic and Orthodox). According to de Taube [10] 'Russian Grand Priory' was the original name for a mainly Orthodox composed Russian Grand Priory, while 'Russo-Catholic Grand Priory' was the name of a Catholic Russian Grand Priory. In this study, we will always refer to the two as respectively the 'Russian Orthodox Grand Priory' and the 'Russian Catholic Grand Priory'. These Priories allegedly survived in exile after the Russian Revolution of 1917.

The Sovereign Order of Saint John of Jerusalem, the Hereditary OSJ (number 8), also seems to be a split-off from the American Order. It mentions as its 'Grand Prior International', the selfstyled (?) Marquis and Don Vella Haber. The Marquis Don Vella Haber used to be a Grand Prior with the American Order, but apparently he set up his own organisation. This seems to happen quite often.

The Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem, Chevaliers de Malte (number 9), with Grandmaster Prince Henry Constantine III and Headquarters at Saint Paul's Bay, seems to be a split-off from 7. Number 10 seems to be a split-off from number 9, or from 7.

I.3. Even more Orders of St. John

There are many other Orders of St. John. Joklik [11] mentions seventeen Orders of St. John in varous countries, who in his view are mere private associations. Joklik, favouring the Hereditary Order, said there is an

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[10] De Taube, *Notice historique sur le Grand Prieuré Russe de l'Ordre de Malte, fondé en 1798* (Paris 1982), co-signed by Grand Duke Andrew of Russia, point 1.

[11] Otto F. Joklik, *Die Ritter von Malta* (Wien 1976), p. 45-46.

extensive list of private associations, who are calling themselves Orders of St. John. According to Joklik, these private associations were constituted in various countries for humanitarian purposes, but cannot be compared with the original Order in its historical continuity or with the historical branches of the original Order. Joklik did not reveal his criteria, so doubt prevails. The only thing he said was these Orders are not able to derive themselves from the original Order.

I.4. Direct and indirect historical roots

This seems to indicate that Joklik is distinguishing between direct and indirect historical roots or between having historical roots and having no historical roots whatsoever. Stair Sainty, favouring the 'Alliance-Orders, but to whom much is owed for his in-depth and tenacious research of facts concerning 'false Orders', gives an even more detailed overview than Joklik, [12] of what he calls 'Self-styled Orders which illegitimately claim to be an offspring of the genuine Order of St. John / Order of Malta'. According to Stair Sainty 'The earliest Orders of chivalry were those that sprung up during the times of the Crusades for the care and protection of pilgrims to the Holy Places. The two major orders based in Jerusalem were the Order of the Hospital of St John (the Hospitallers) and the Order of the Temple of Solomon (the Templars). Of these two, only the former has survived down to the present day. There are five modern Orders which are recognised as being direct sucessors to the medieval Hospitallers: The Sovereign Military Order of Malta ; The Most Venerable Order of St John; The Johanniter Order (Bailiwick of Brandenburg); The Johanniter Order (Netherlands) and The Johanniter Order (Sweden).'

I.5. Alliance Orders versus self-styled Orders

According to Stair Sainty: 'The last four of these are collectively known as the Alliance Orders. There are also about twenty very small Orders of St John, most of which claim descent from the former Russian Orthodox Grand Priory. These are bogus or 'self-styled' orders and are not recognised by the five orders listed above nor by the International Commission for Orders of Chivalry.' We note the terminology 'self-styled', 'illegitimately claim', 'bogus', [13] 'false', 'recognised' and 'direct successors'. We note that The Ecumenical Order is regarded by Stair Sainty as the number 1 'false Order' on his list of the 'most important of the unrecognised 'Orders' of St. John of

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[12] Stair Sainty, *Orders of Saint John,* passim.
[13] Bogus meaning counterfeit, false.

Jerusalem'. Furthermore, we note there is indeed a multitude of Orders of St. John. We also note that Stair Sainty put the word 'Orders' between parentheses and the adjective 'unrecognised' seems to be an important criterion. Finally, we note claims of survival of the original Order down to the present day.

One can see this is a complex and important matter, already alone in view of the number of Orders of St John involved. A rough estimate is, that there are presently about 150.000 people world wide, calling themselves 'Knights of St. John'. About 44.000 thereof belong to the 'International Alliance of Orders of St. John' who claims the others are not recognised. To compare with other, perhaps more or less similar organisations, there are presently about 5 million Freemasons, 1.4 million Lions and 1.2 million Rotarians world-wide. We also know this is a hotly debated matter, at least in the orbit of Orders of St. John and of scholars interested in the question what makes a legitimate Order of St. John, an outcome which also has many practical implications. The factions that allegedly splintered away from the main body, usually have deep seated feelings with respect to recognition, genuineness and legitimacy. [14]

I.6. Purposes and method of this study

This study will however not deal with all Orders of St. John. This study is not a work which specifically investigates each one of them, or a study of all alleged false or genuine Orders of St. John. One would very quickly drown in details then. In this context, we would like to remark that we have great respect for the tenacity with which authors like Joklik and Stair Sainty, but also many others involved in the lengthy and detailed discussions – pro or contra – are dealing with the various difficult issues. On the other hand, we fear that many seem to be forgetting that the original Order, as it existed before the Surrender of Malta to Napoleon, in 1799, to which they all refer and try to connect, was not so admirable as almost invariably claimed and was dissolved.

This study rather is a case-study approach into the legitimacy of Orders of St. John, also instigated by the prima facie apparent lack of abstract legal norms in this field. It will concentrate on The Ecumenical Order and on its alleged predecessor, The American Order. The American Order is supposed to be the father of a number of offshoots. If the father is illegitimate, it will be difficult to argue the children are legitimate. It is probably possible by concentrating on The Ecumenical Order to find some light in the darkness and to try to find some acceptable criteria for the legitimacy of an Order of

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[14] Smith/Storace, *Order of St. John of Jerusalem*, p. IX.

St. John. The approach followed is inductive, rather than deductive. However, there is no induction without deduction and vice versa. Inductively, we cannot make a single step without deducting again, as every inductive investigation will have to start presupposing something which was not found by induction. [15]

The study will not only yield conclusions about the legitimacy of The Ecumenical Order. It will inevitably also yield conclusions about the Knights of St. John in general and more particularly about the legitimacy of all Orders of St. John (in general). Such investigation will also be useful to The Ecumenical Order and to other Orders of St. John. The study can contribute thereto that Orders of St. John and their Knights, as well as others can more uniformally assess what does and does not constitute a subjective or false allegation.

Finally, it is felt useful to present a picture of what happened in the past and to analyse this for the purpose of this investigation. Trying to find or create coherence and order in an amorph mass, seeking backgrounds, connections, implications and principles, is the main task of the historical and legal researcher. [16]

I.7. Caveats

Although all efforts have been made to collect relevant facts and to correctly interpret these, it always remains possible something was omitted or interpreted wrongly. It also has to be remarked that the subject matter of this investigation is rather difficult to tackle. It covers a wide time span and many different subjects and fields. We will be discussing or touching on the problem of legality and legitimacy, the nature of an Order, corporations, canon law, monastic life, Crusades, just war, colonialisation, the feudal system, taxation, the relationship between Church and State, the Investiture Controversy, nobility law, sovereignty, internal organisation structures, Ottoman expansion, piracy and buccaneering, the Enlightenment, the French Revolution, the law of treaties and other public international law, church splits, chivalric definitions, tradename law, competition law, the law of private law legal persons, association law, accounts law, etc.

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[15] Scholten, *Asser-Van Der Grinten-Maeijer 2-II, Vertegenwoordiging en rechtspersoon-de rechtspersoon* (Deventer 1997), p. 5.

[16] According to E.M. Meijers, *De taak der rechtswetenschap ten aanzien der vrije rechtspraak* (Haarlem 1910), the first task of legal science is to inform legal practice; Carel Stolker, *De dag verga, waarop ik geboren werd* (Oratie, Leiden 2003)*;* J.M.Smits, 'The Europeanisation of national legal systems; some consequences for legal thinking in civil law countries", in Marck van Hoecke, *Epistemology and methodology of comparitive law* (Oxford 2004), p. 229-245; Asser-Vranken, *Vervolg*, p. 120.

This study also is on the crossroads of history, legal history, social sciences and legal science and legal philosophy, theology and canon law. At the same time this shows the limitations of this study. Ideally, multi-disciplinary research should be carried out into the phenomenon of Orders of St. John. [17] Sources on the one hand are plentily available, but sometimes contradictory and inaccessible or hardly accessible. The same remark was made by Hafkemeyer. [18] On the other hand, the objective is not primarily to – on the basis of new, unprinted sources – enlarge the knowledge of and insight in the questions and the phenomenon, but – on the basis of what is known – to reach a new vision on the questions and the phenomenon and thus also to contribute new ideas, understanding and knowledge. [19]

I.8. A law finding exercise

This study is an historical and legal case-study. We feel that a socio-psychological study of the phenomenon Orders of St. John might also be interesting and hope to have contributed thereto also with this publication. However, this publication is an historical and legal case study into the legitimacy of Orders of St. John and an attempt, based thereon, to establish proper and more generally acceptable legitimacy criteria. Therefore, the essence of this study is also law finding. Where are the norms and what do they say? How can and should they be applied? What are the decisive factors in this context? [20]

I.9. What is legitimacy?

What then is legitimacy? Legitimacy could be defined as the quality or state of being legitimate. Legitimate is inter alia accordant with law or with established legal forms and requirements, or conforming to recognised principles or accepted rules and standards. Legitimacy therefore seems to be primarily a legal notion, but it is not only a legal notion, while we note that the first part of this definition seems to refer to legality and the last part has a wider implication and meaning far beyond mere legality. [21]

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17 Compare Asser-Vranken, *Vervolg*, p. 119-120.
18 Hafkemeyer, *Rechtsstatus*, p. V.
19 J.E. Spruit, *Metopen, verzamelde essays over het Romeinse recht en zijn geschiedenis* (Deventer 2002), p. 345; Nederlandse organisatie voor wetenschappelijk onderzoek, *Standards of good practice in law research* (Den Haag, November 2004).
20 Asser-Vranken, p. 45 for the problems and p. 76 for the tools.
21 Hoge Raad 11 April 2000, N.J. 2000/590; European Court of Human Rights 5 January 2000, N.J. 2000/571; Hoge Raad 7 March 2000, N.J. 2000/363; Hoge Raad

It strikes us that the word legitimacy mainly figures in cases which reach the Hoge Raad (Dutch Supreme Court) and therefore could be qualified in principle as major cases. But the concept does not only play a role in certain cases decided by the judiciary. The legitimacy of the judiciary itself is also regularly under scrutiny. [22] Legality and legitimacy are also discussed widely nowadays in the framework of public international law. [23] People seem to be groping for legitimacy everywhere.

A definition is difficult and is seldom provided, but a distinction is and has to be made between legality and legitimacy. Something can be legal but then is not necessarily also legitimate. Something which is legitimate is not necessarily also legal. Legitimacy is sometimes confused with legality. Legality is an insufficient but very necessary and useful minimum criterion. [24] Legitimacy at any rate seems to be referring mainly to something which goes beyond the positive written law and could even go beyond the positive unwritten law. Legitimacy therefore also inherently is a vague concept. Therefore it will also be hard or impossible to agree on a definition of legitimacy. Any definition of legitimacy will apparently have an arbitrary character.

I.10. Neutral and normative concepts of legitimacy

In sociology and politicology, a neutral definition of legitimacy is often used. [25] The social acceptance of for example rules of behaviour or rules of law by the citizen, is the main thing here. But when a lawyer is referring to legitimacy, he is not referring to a neutral definition of legitimacy. Lawyers may not satisfy themselves with an empirical concept of legitimacy. [26] When a lawyer is referring to legitimacy and is basing himself on the assumption that legitimacy is one of the purposes of democracy, he is talking about legitimacy with a normative content, i.e. relating to or determining norms or standards or conforming to or based on norms. Therefore the lawyer is not only looking at social acceptance but also - in the context of the system of the law - looking at what is just and what is not. Law is a science of norms

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14 December 1999, N.J. 2000/164; European Court of Human Rights, 12 October 1998, N.J. 2000/134; European Court of Human Rights, 23 September 1998, N.J. 2000/29.

22 Gribnau, *Legitimacy*, see also the important literature quoted by him.

23 Joerges, *Legitimacy*.

24 H.L.A. Hart, *The concept of law* (Oxford 1961); David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar* (Oxford 1999).

25 Slim, *By what authority?*, provides the following working definition of legitimacy for NGO's: 'the particular status with which an organisation is imbued and perceived at any given time that enables it to operate with the general consent of peoples, governments, companies and non-state groups around the world'.

26 Joerges, *Legitimacy*.

above everything else and legal research will of necessity have a normative character. [27] What is the opinion about how things legally should go or be?

I.11. Legality and legitimacy

Legality can be said to be referring to conformity with rules that have been codified in or are deemed to be part of the positive law. Legitimacy can be understood as a perceived right beyond the positive law, based on consent derived from an agreement on shared values. Legality and legitimacy are the two dimensions of legal validity. In the late 19th century and the early 20th century, legitimacy was often simply equated with legality, i.e. conforming to the positive written law. [28] In 1963, Dutch trial law changed, in that it was then taken up in the written law [29] to enable cassation also where positive unwritten law was violated. Compare to this Scholten, who sees law as the body consisting of written and unwritten rules (objective law), individual rights (subjective rights), law created by judicial and arbitral decisions and law resulting from individual law creation. [30]

I.12. Transcending effect of legitimacy

On the one hand, putting the legitimacy requirement to the law has a transcending effect. The positive written law is being transcended and supplemented by unwritten law, requiring more than the positive written law or restricting the positive written law in its effect. For example, behaviour which does not go against the written private law, can be contrary to positive unwritten norms of good morals, [31] or to the carefulness befitting in social traffic towards somebody else's person or good and thus oblige the perpetrator to indemnification. [32] On the other hand, in criminal law, one

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[27] P. Scholten, 'De structuur der rechtswetenschap', in *Verzamelde geschriften* (Zwolle 1949), p. 432-470.

[28] Fockema Andreae, *Rechtsgeleerd Handwoordenboek* (Groningen-Djakarta, 1951). The 13th edition, of 2004, only mentions 'legaliteit' (legality). See further for positivism, inter alia Alfred Verdross, *Abendländische Rechtsphilopsophie, ihre Grundlagen und Hauptprobleme in geschichticher Schau* (Wien 1963). Positivism has a very long tradition: Gai., Inst. 1,5: 'Constitutio principis est, quod imperator decreto vel edicto vel epistula constituit. Nec umquam dubitatum est, quin id legis vicem optineat, cum ipse imperator per legem imperium accipiat'.

[29] Art. 99 Wet op de Rechterlijke Organisatie (Law on the Judiciary, Wet van 18 april 1827, Stb. 20).

[30] Asser-Scholten, *Algemeen Deel*, passim.

[31] Gribnau, *Legitimacy*, refers to the internal morality of the law, not to be confused with the external, non-legal dimension of morality.

[32] In The Netherlands since HR 31 January 1919, 161 (Lindenbaum-Cohen); since 1992 taken up in the Dutch Civil Code as Art. 6:162 paragraph 2.

wants to stick primarily to the written law ('nullum delictum sine praevia lege poenali'). Some might even say that a criminal law system, which does not apply this basic rule, is illegitimate. [33]

I.13. The role of justice

We said that a definition of legitimate could be accordant with law or with established legal forms and requirements, or conforming to recognised principles or accepted rules and standards. We do not necessarily reject here 'accordant with law', or 'with established legal forms and requirements'. An Order of St. John should in principle and primarily be a legal organisation. It should in principle be formed, organised and administrated and function in accordance with its proper legal regime – it is hard enough already to establish what this is: an association under a national legal system, a legal person 'sui generis' under a national legal system, for example an ecclesiastical community, where the national legal system recognises such entities as separate legal persons, or an entity under public national or international law and if so, what type of entity – and with the applicable law in general. Its activities should in principle not be contrary to the applicable law. However, we feel we have to reject in this definition 'conforming to recognised principles or accepted rules and standards' as insufficient. The adjective 'just' in our view is lacking here.

The text should therefore rather read in our view: 'conforming to principles or rules and standards recognised as just', although we admit we cannot judge the higher justice. The Dutch jurist Paul Scholten said that legal science is more than learning of the written law; law does not go up in the written law: without equity no law. [34] The French jurist Domat (1625-1696) said: 'C'est aussi dans le discernement de l'équité que consiste principalement la science du droit.' Whatever the legal considerations of a judicial body might be, its judgements by definition have to be just and therefore in that sense equitable. [35] At least they have to be recognised and

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[33] Nazi-Germany's Reichsstrafgesetzbuch, § 1: 'Bestraft wird, wer eine Tat begeht, die das Gesetz für strafbar erklärt oder die nach den Grundgedanken eines Strafgesetzes und nach gesundem Volksempfinden Bestrafung verdient. Findet auf die Tat kein bestimmtes Strafgesetz unmittelbar Anwendung, so wird die Tat nach dem Gesetz bestraft, dessen Grundgedanken auf Sie am besten zutrifft.'

[34] Asser-Scholten, *Algemeen Deel*, p. 249.

[35] North Sea Continental Shelf Cases (ICJ Reports 1969), § 88, p.48; Gustav Radbruch, *Grundzüge der Rechtsphilosophie* (Leipzig 1914), p. 1956, 336 f.: 'Wo Gerechtigkeit nicht einmal erstrebt wird, wo die Gleichheit, die den Kern der Gerechtigkeit ausmacht, bei der Setzung positiven Rechts bewusst verleugnet wird, da ist das Gesetz nicht nur unrichtiges Recht, vielmehr entbehrt es überhaupt der Rechtsnatur.'

accepted as such. Law (recht, Recht, droit) and statutory law (wet, Gesetz, loi) do not entirely coincide. Legality (rechtmatigheid, Rechtmässigkeit, légalité) is wider than conformity with statutory law. Legality does not entirely coincide with justice (Rechtfertigkeit, Justice). Justice (procedural and material) is wider than legality. Law is not by definition just. For a major part, justice defines the content of the law, but legality is not per se the same as justice.

I.14. Is granting legitimacy possible?

Another important point is, whether it is possible to *grant* legitimacy? Can one grant legitimacy to an organisation? If so, on the basis of which criteria? Or can legitimacy only be *confirmed*? Can legitimacy only exist when it is expressly declared or confirmed by some authority to be present? Or is legitimacy something which has to be present by itself, but therefore then can only be confirmed? Does 'recognition' (what recognition, in what form and by whom will be required then?) for example have constitutive effect, or does it have declaratory effect only? Can an organisation be declared legitimate or legal or illegitimate or illegal just by a declaration to this effect by an authority? What authority would then be competent to grant recognition? Which criteria would it have to use? Would this be a Government or a Sovereign, or another authority, private or public? If some organisation would comply with the reasonable requirements of legitimacy, would it then have a right to be recognised? Can it compel a confirmation of legitimacy? From whom?

Kooijmans is of the opinion that in international public law recognition can only be declaratory, i.e. accepting already existing circumstances. He rejects the 'constitutive doctrine', because there is no central authority recognising States on behalf of the whole international community and because there is no international duty for States to recognise a State once it has complied with the criteria for statehood (territory, population, effective government. [36] An entity possessing a territory, a population and a sovereign government becomes a State, whether or not it is recognised by other States. [37] Accordance with law or established legal forms and requirements raises the question which law and which legal forms and requirements and recognised principles or accepted rules and standards, are relevant here. For our investigation seem to be relevant first of all the possession of common historical roots with the original Order of St. John, as it existed before the Surrender of Malta to Napoleon in 1798. The requirements put to the

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[36] Kooijmans, *Internationaal publiekrecht*, p. 32.
[37] Seidl-Hohenveldern, *International economic law*, p.79.

presence of these common historical roots no doubt have to be reasonable and fair: 'in dubio pro reo'. But all Orders of St. John seem, as we have seen and will see below, relatively newly reconstituted or newly started, although practically all will argue the opposite.

I.15. The charity aspect

We are further for the time being assuming that we are talking here indeed about charitable organisations, because charity is invariably claimed by the Orders themselves to be and to always have been, their main task, main commitment and main activity, in theory and in practice. This is one of the most important Hospitaller traditions, so they say. As we shall see, it may well be doubted that the original Order was always and consistently and substantially charitable. But this important aspect of the original Order is invariably invoked by all Orders of St. John. But what is charity? Charity is derived from the Latin caritas and could be defined as benevolent goodwill toward humanity, toward the needy and suffering and aid given to those in need. A charity is engaged in relief of the poor.

But there were and are so many of these organisations. What is the difference between them? And if it is being a non-profit religious and charitable organization devoted to Christ and to Christian charity, what is the difference then between these and other similar organisations?

I.16. The chivalric aspect

The organisations of St. John are all calling themselves chivalric and Orders. What is chivalry? [38] Chivalry can be defined as the system, spirit or customs of medieval Knighthood. Part of the Hospitaller tradition seems to be the chivalric aspect and the way things were organised in the original Order. A chivalric Order should at any rate be distinguished from those who form a group of people who received a decoration (or 'Order', like the Order of the British Empire). One can be decorated in various ways. Generally, a decoration is the award by the Government of an exterior, honorable, distinguishing sign, to someone who is deemed eligible therefor on account of certain of his achievements. The person can receive some medal or be awarded an Honorary Doctorate. He can be appointed Professor Honoris causa, etc. He can also be granted nobility. In some countries with a nobility

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[38] Richard W. Kaeuper, *Chivalry and violence in medieval Europe* (Oxford 1999); Sidney Painter, *French chivalry, chivalric ideas and practices in mediaeval France* (Baltimore 1940); Edgar Prestage, *Chivalry, a series of studies to illustrate its historical significance and civilizing influence* (New York 1928). See further the extensive bibliography on p. 34 of this last book.

system this may happen, for example in Great-Britain or Spain, while not at all in other countries with a nobility system, when the local nobility is closed there, like in The Netherlands.

This nobility, in view of the necessary fons honorum, can only be awarded or granted by a reigning or not voluntarily having abdicated King or Queen, although the element 'not voluntarily having abdicated' is not always accepted, or through 'investiture' in a chivalric Order by this Order itself. In that case the Order involved, which can be a national or a supranational chivalric Order, should be a legitimate chivalric Order. It should dispose over the necessary fons honorum. This then is what we are talking about here. This has to be distinguished from being awarded a military or civil State Order or a Royal House Order, even if the terminology – Knight, Officer, Commander, Grand Commander, Grand Cross, Grand Collier or Special Grand Cross, or Grand Cross First Class, etc., – being used there, is more or less similar and the two subjects are intertwined.

I.17. Meaning of Order

What is an Order? The word Order is derived from the Latin 'Ordo' which can be said to also mean row, like in a row of chairs. It also means rank or class. It is also a group of people organised in a formal way as a fraternal society, for example the Masonic Order, or a community under a religious rule, especially one requiring members to take 'Solemn Vows'. We will see below that Order had a very wide meaning in the Middle Ages. A club spirit had already developed among Knights. Are there recognised principles or accepted rules and standards in this area? Should an organisation have a certain religious aspect and what is religious, to be deemed to be or to be recognised as an Order of St. John? Are there formal and material requirements for being religious?

I.18. Questions confronted

Questions which in our view have to be confronted in the framework of a search for acceptable criteria, to responsibly determine what makes a legitimate Order of St. John, can be ranged into categories. A first category could be questions into the nature of an Order of St. John. Is the Order involved a religious Order? Does it have to be a religious Order? Is the Order involved a chivalric Order? Does it have to be a chivalric Order? Are there generally recognised principles or accepted rules and standards in this area of chivalry and Orders?

Another category has to do with the activity undertaken by these Orders. Is the Order involved a charitable, Hospitaller type of organisation? Does it need to carry out certain specific charitable activities and what is the

substance thereof and is a certain substance required? Is there any specific international public law governing the set-up and management of Chivalric charities? Are their activities governed by specific international and national public law? Do they comply with that law?

A third category has to do with general legal aspects, divided into international public law and private law aspects. As to public law: the original Order was 'Sovereign', or at least held itself out as such. Sovereign in the sense of being sovereign under public international law or free from interference by others in its affairs, i.e. 'independent'. Does an Order of St. John have to be sovereign in this sense to be deemed to be a legitimate Order of St. John? Some even call themselves a State or a 'State in exile'. Is there any truth in this statement? Is the Order involved a State, or does it have other international public law legal personality? Does it have to take into account internal law, i.e. the constitution or statutes and regulations and customs of another organisation? If so, which one's? As to private international law and private national law aspects: are these chivalric charities organisations of a public or of a private law nature? Do they have public law or private law legal personality? Is the Order involved governed by specific private law? Does it comply with that law? Does it have to take into account also the internal law, the statutes and internal regulations and customs of another organisation and if so, which one's and are these still applicable and sufficiently defined and compatible with notions of independence?

A fourth category of questions has to do with legal and historical continuity. This can be divided into a period from 1798 till 1803; a period from 1803 till 1908 and a period from 1908 till about 1983. As to the period from 1798 till 1803: did a Papal Brief of 1803, appointing Tommasi as Grandmaster, disturb the organisation and statutes (in a wide sense) of the original Order, if it still existed after the Surrender of Malta to Napoleon in 1798 and after its – if so – reorganisation by Czar Paul I, to such an extent that this Papal Brief can be said to have founded another Order? A question also raised by Harrison Smith, but which he did not want to answer. [39] Or did the original Order already 'die' as a chivalric Order upon the occasion of the Surrender of Malta in 1798, or even before that date? Or was it validly dissolved after the Surrender, by Napoleon? As to the period from 1803 till 1909: these are questions concerning the alleged continuity of an Order of St. John in Russia. Did the original Order of St. John or the Order of St. John formed or headed by Czar Paul I, remain in existence in Russia till around 1890, or 1910, or even 1917? As to the period from 1908 till about 1983: this is a sub category of questions about certain relocation and identity

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[39] Smith/Storace, *Order of St.John of Jerusalem,* Preface, p. XII.

claims. Did a representative of the House of Romanov, acting together with descendants of Hereditary Knights, duly relocate and/or reconstitute the original Order, or the Order formed or headed by Czar Paul I, to, respectively in the USA? Is The Ecumenical Order the same entity as The American or The Shickshinny Order, or is it the, or just a legal successor thereof?

A fifth category has to do with competion law aspects. Does the Order involved have a right to its name and its signs? A final sixth category is questions about whether Orders of St. John can be distinguished from other more or less similar organisations.

1.19. The status quaestionis

What is the status quaestionis (or rather quaestionum)? Guy Stair Sainty and François Velde are the ones who immediately come to the fore when the general question is discussed what makes a legitimate Order of St. John; Stair Sainty in a less systematical manner than Velde. François Velde refers to various definitions of legitimacy, provides a historical definition of Orders of Knighthood, refers to international attempts to find accepted standards and provides definitions of Orders of Knighthood. Stair Sainty provides a lot of useful facts and stimuli, but does not systematically deal with the legitimacy question. While both efforts are very valuable, particularly Velde's, who hopes that his thoughts 'might provide food for thought to others who are perplexed by this question, as I am', a more systematic and more in-depth approach will be interesting and useful. In this connection we would also like to mention James Algrant, [40] who also provides a list of Orders of St. John and also refer to the writers mentioned below. [41]

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[40] J. J. Algrant, C.St.J., *The Proliferation of Russian and other'Orders' of St.John* (1995).

[41] G. Bascapè, *Gli Ordini Cavallereschi in Italia* (Milano 1972);
F. Bonanni, *Catalogo degli Ordini Equestri e Militari* (Roma 1711);
A. van Bosbeke, Chevaliers du XXème siècle: enquete sur les societés occultes et les Ordres de Chevalerie contemporains (1988); J. Bresson, *Ordres de Chevalerie* (Paris 1844);
L. Cappelletti, *Storia degli Ordini Cavallereschi* (Livorno 1904);
Patrice Chairoff, *Faux chevaliers vrais gogos* (Paris 1985);
L. Cibario, *Ordini Cavallereschi*, Fontana (Torino 1850);
F. Cuomo, *Gli ordini cavallereschi nel mito e nella storia di ogni tempo e paese* (Roma 1992);
R. Cuomo, *Ordini Cavallereschi Antichi e Moderni* (Napoli 1894);
Melchior D'Épinay, *Revue des Oêuvres Hospitalières Françaises de l'Ordre de Malte* (Paris 1977);
A. Favyn, *Le Théâtre d'Honneur et de Chevalerie* (Paris 1620);

However, the approach taken by Algrant to answer the question seems too simple, although his way of stating the problem appeals to us:

> 'The question most often raised is: how to distinguish between the genuine and false orders of St. John. The answer is simple. The genuine orders are in the order of their establishment: The Sovereign Military Order of Malta, headed by its 78th Prince Grand Master His Most Eminent Highness Fra' Andrew Bertie; The Bailiwick of Brandenburg of the Knightly Order of St.John of the Hospital in Jerusalem, known as the Johanniter Order, headed by its Herrenmeister, H.R.H. Wilhelm Karl, Prince of Prussia; the Grand Priory of the Most Venerable Order of the Hospital of St.John of Jerusalem, of which H.M. Queen Elizabeth II is Sovereign Head and H.R.H. the Duke of Gloucester is Grand Prior; the Johanniterorder I Sverige, which is under the high protection of the King of Sweden and the Johanniter Orde in Nederland, under the protection of

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Robert W.Y. Formhals, *White Cross: Story of the Knights of Saint John of Jerusalem, with particular emphasis on the Hospitaller Order of St. John of Jerusalem, Knights Hospitaller since 1964 under Royal Charter of Peter II, King of Yugoslavia* (Camarillo, California, 1979),
F. Francesco, *Storia degli Ordini Monastici, Religiosi e Militari* (Lucca 1737);
B. Giustiniano, *Historie Cronologiche della Vera Origine di Tutti gli Ordini Equestri* (Venezia 1672);
M. Gritzner, *Handbuch der Ritter-und Verdienstorden* (Lipsia 1893);
E. Guadagnini, *Origine degli Ordini Cavallereschi* (Venezia 1925);
Peter Kurrild-Klitgaard, 'Knights of Fantasy - An Overview, History, and Critique of the Self-Styled 'Orders' called 'of Saint John' or 'of Malta', in *Denmark and other Nordic Countries*, Center for Chivalric Studies (University of Turku, 2002).
F. Menenni, *Militarium Ordinum Origines Statuta Symbola et Insignia* (Macerata 1623);
F. Menestrier, *De la Chevalerie Ancienne et Moderne* (Paris 1683);
V. Merika, *Orders and Decorations* (London 1967);
De Montells y Galán, *Diccionario de Ordenes de Caballería y Corporaciones Nobiliarias* (Madrid 1994);
Muraise, *Histoire Sincère*;
S. Patterson, *Décorations et Ordres de Chevalierie de la Collection Royale Britannique* (Paris 1996);
M. Perrot, *Ordres de Chevalerie* (Paris 1820;
R. Peyrefitte, *Les Chevaliers de Malte* (1957);
F. Sansovino, *Della Origine De' Cavalieri* (Venezia 1570);
Onorato da Santa Maria, *Dissertazioni storiche critiche sopra la Cavalleria antica e moderna, Secolare e Regolare* (Brescia 1761);
Sherbowitz & Toumanoff, *Order of Malta*;
Sire, *Knights of Malta*;
Smith/Storace, *Order of St.John of Jerusalem*;
A. Spada, *Onori e Glorie*, 3 Volumi (Milano, 1977; Brescia, 1980; Brescia, 1983);
Stair Sainty, *Orders of St.John*;
A. Wahlen, *Ordres de Chevalerie* (Bruxelles 1844);
R. Werlich, *Orders and Decorations of all Nations* (Quarker, USA 1974).

> H.M. Queen Beatrix. All other self-styled Chivalric groups which use the name of St.John in their appellation are, in my view spurious. The next question most frequently asked concerns the criteria used to determine the authenticity of an order of St.John. One of the reasons why the question is difficult to answer is that the United States has no Chivalric tradition and maintains no official government entity empowered to set criteria to determine the historicity and validity of orders of chivalry. The IRS can and does grant tax-exempt status to bona-fide charitable and non-profit organizations. Thus, in the United States any legally-constituted, but not necessarily historically authentic association or sodality can take on the trappings of chivalry, add St.John to its name and, so long as it is not involved in fraudulent activity, obtain tax-exempt status if it meets the relatively simple requirements. Thus, it is up to the Most Venerable Order to set its own guidelines to evaluate the authenticity of an order of St.John. These guidelines are:
> 1) The order maintains a proven uncorrupted historical and traditional link with the original Order of the Hospital of St. John of Jerusalem founded in A.D. 1099 or
> 2) The Order is under the protection of a reigning sovereign and/or is recognized as a Chivalric order by the ruling government of the country where it is seated'.

The point is when and how it is proven whether an Order maintains an 'uncorrupted historical and traditional link' with the original Order of St. John and what this is and whether this is not too arbitrary and therefore objectively not possible, while his wording also seems to imply that the original Order does not exist anymore. Furthermore, it seems that the second criterion 'The Order is under the protection of a reigning sovereign and/or is recognized as a chivalric order by the ruling government of the country where it is seated.' is not worth much, if proper criteria are not applied for the awarding of the protection and/or the recognition mentioned, although we note that Algrant refers to 'genuine and false orders' and to 'guidelines to evaluate the authenticity of an order of St.John', while we refer to the legitimacy. What constitutes a religious Order, has been the subject of many debates, although not often in the framework of Hospitaller or chivalric Orders. What constitutes a chivalric Order has been amply discussed, inter alia in the framework of the 'International Commission for Orders of Chivalry', but there is no consensus. Although a lot has been written about Hospitaller or St. John organisations, not much has been written about their charitable status or activities, except by Stair Sainty, member of SMOM, who emphasized the substantiveness, traditionally allegedly needed thereof, to qualify as a real Hospitaller organisation. Various articles discuss the public international law personality of the original Order and of the present Papal Order SMOM.

Much has been published about the historical continuity aspects. We mention Smith/Storace, members of an alleged false Order of St. John – the King Peter Order – who investigated the period from 1798 till the late 20th century and Sherbowitz & Toumanoff, members of SMOM, who investigated the period 1798 till around 1830. In this context we also mention Foster, [42] who seems to be a proponent of those, who in Paris, in the early 20th century formed yet another Order of St. John [43] and who also thouroughly investigated the period from 1798 on, like Algrant. [44] Stair Sainty again, particularly extensively investigated the period from 1908 and also published on the international law aspects of SMOM. Please refer to the bibliography.

I.20. How the questions will be dealt with

We will deal with the questions as follows. In Chapters II through VIII, we will look at the history of the original Order and The Ecumenical Order, in sofar as deemed relevant by us from a macro point of view and in sofar as deeemed relevant by us for finding answers to our questions. The same approach was used by Zeijlemaker in his study on Freemasonry. A large part of his study – which he qualified as an attempt to a serious dissection of the phenomenon of Freemasonry and its practice – was of necessity devoted to historical data. However, this did not make his study a 'history of Freemasonry'. [45] Neither should our historical part be deemed a complete history of the phenomenon Knights of St. John. This study also does not contain a systematical discussion of every change in the legal position of the various Orders of St. John in their various phases, which – by the way – could be said to presuppose the idea of legal and historical continuity. Such a presupposition could also follow from the conviction cherished by every Christian religious community, that its origin lies in the one originally undivided 'Church of the Gospel' (read Order) and which is supposed by them to live on till the end of time. [46] As said, we are primarily concerned with legitimacy. Also, to take into account every change would be on the one hand unnecessary and on the other hand prohibitive from a time constraint point of view and in view of the sheer numbers of Orders of St. John, even if one would for example only look at the 'Alliance Orders of St. John'.

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42 Foster, *Hospitallers from 1798.*
43 'Declaration of Hereditary Commanders', Paris, 24 June 1928.
44 Algrant, *The Russian connection*, leaning heavily on Muraise, *Histoire sincère*.
45 Zeijlemaker, *De Vrijmetselarij ontleed*, Voorwoord.
46 Van Drimmelen van der Ploeg (eds.), *Kerk en recht*, p. 139.

For critique on microcosm, refer to Sherbowitz & Toumanoff's '*The Order of Malta and the Russian Empire*', which seems to lack a macro point of view of the Order as it existed before the Surrender of Malta, or of the Papal Order. [47] We will comment on the historical events with in the back of our mind the above questions and the purpose of our study 'à cheval entre histoire et droit'. In this context, we will divide the history of the original Order in six phases. Then we will discuss some definitions of chivalry and chivalric Orders in Chapter IX. In Chapter X, we will discusss some aspects of the organisation of the original Order. In Chapters XI through XV, we will discuss four representative contemporary Orders of St. John and their organisation. In Chapter XVI, we will discuss the legal nature of The Ecumenical Order and its organisation. In Chapter XVII, we will discuss the specificity of an Order of St. John. In Chapter XVIII, we will discuss some competition law aspects. In Chapter XIX, we will, in the light of the knowledge gained in the foregoing chapters, finally try to formulate acceptable criteria for the legitimacy of an Order of St. John. In Chapter XX, we will then provide certain specific and general conclusions of the research. These will of necessity have a wider bearing than only on The Ecumenical Order itself. In this context and borrowing sociological terminology, this study hopefully also is the beginning of a discussion of certain metaphysical-hierocratical and /or biologistical-aristocratic legitimacy legends in the context of Orders of St. John. Bruin's study [48] is a sociological study of the significance of the two most important Dutch decorations instituted by law. Sociological study of chivalric Orders still seems to be in its infancy. [49]

I.21. The self-portrayal of the Ecumenical Order

Self-portrayals of The Ecumenical Order can be found in several publications issued by The Ecumenical Order or by its Grand Priories. Annex 1 reproduces a publication, The Ecumenical Order itself put in various of its brochures and on the internet (around 2000). [50] It can be seen that in this self-portrayal The Ecumenical Order first of all provides a summary of the history of the original Order and then makes it into its own. This is common practice among Orders of St. John. See for an example Joyner's *The courage that changed the world.* [51] This publication was heavily criticised by Stair Sainty. Stair Sainty says he does not challenge the

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47 Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire.*

48 Bruin, *Kroon op het werk.* See also infra p. 322, *XII.8. Does the Johanniter Orde have recognition?*

49 Dronkers, *Maatschappelijke relevantie.*

50 For example 'Solemn Investiture, 28th October 2001, Toronto, Canada', program.

51 R. Joyner, *The courage that changed the world* (New Carolina, 1998).

right for Cumbo's organisation to exist; his criticism does not belittle any humanitarian work this 'Order' does; more humanitarian work is needed in this world, not less, but that historical claims which have been made, are rightly challenged by him. Stair Sainty's criticism may have demonstrated various mistakes and/or omissions in Joyner's work, but this criticism does not seem to contain the finer nuances either. Rather interesting is Stair Sainty's contention that 'In 1810 the Russian Grand Priory had formally separated from the Order, and could not object as it was by then a separate Order, and consisted nearly wholly of Orthodox Christians, who were Russian Nobles.'

The picture given by Joyner and others, also The Ecumenical Order, is a romantic one, but indeed 'In the kindly process of time the Crusaders have been credited with a nobility of purpose which only a few of them posssessed'. [52] It has to be admitted that the Knights not only performed 'heroic' deeds, but also less heroic deeds. Their galleys for example were rowed by slaves and slave debtors, [53] who led a miserable and short existence. When Napoleon occupied Malta in 1798, he still found about 525 Turkish slaves there, who were soon exchanged against Christian prisoners from the Berber States and the Levant. By Decree of 16 June 1798, he abolished slavery and annulled the 'bonavoglie' contracts, as contrary to human dignity. In the 19th century slavery was gradually abolished. [54] The Judaeo-Christian-Islamic tradition has been tolerant of slavery. Canon law sanctioned slavery. [55] Canonically, serfdom, a form of dependent labour besides slavery, was the dependent condition of much of the Western and Central European peasantry from the time of the decline of the Roman Empire until the French revolution. [56] In name the Knights were celibate, but at any rate on Malta they usually had mistresses and/or even a family and in many cases dispensation of celibacy was granted.

Nevertheless, in the public eye they embody the classic ideals of Christian chivalry. In the public eye these are the defence and help of widows, orphans and the poor and the aid of the sick. Indeed they presently seem to do quite a lot for the sick and needy, the original and primary reason given for the foundation of the Order of St. John. But what is its importance from a

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52 Morton, A *Traveler in Southern Italy* (London 1969), p. 141.

53 'Bonavoglie', people who owed money and could discharge their debts by rowing a galley for a number of years. Technically speaking, these bonavoglie were debt slaves.

54 The British Parliament prohibited it in 1806, the Vienna Convention on 8 February 1815 and so on.

55 Karlheinz Deschner, *Kriminalgeschichte III*, p. 507-545 and the abundant literature quoted there.

56 Marc Bloch, *Slavery and Serfdom in the Middle Ages*, trans. William Beer (Berkeley, 1975).

quantitative point of view, in comparison with what others do? This leaving aside for the moment that it is hard to measure what they are doing, because most Orders of St. John do not publish much essentials, at least not to others than to their members.

At any rate the Popes have always taken an interest in the original Order and at various times intervened or tried to intervene in its affairs. In 1797, the Papacy was already under great pressure, in view of the French Revolution and subsequent events and in view of Pope Pius VI's appropriate denunciation of the excesses of the French Revolution in 1791. In general, the French Revolution had devastating consequences for the Papacy and the original Order. The reason that the original Order increasingly looked to Russia instead to the Pope, was plainly a reason of self-protection and of sheer survival. Under the circumstances, as will be clear below, it was vital to try to find stronger Protection than the Pope could provide.

As will be seen from the comments provided below (Chapter VI), it is submitted that indeed Paul I became the first non celibate, non Roman Catholic to become Grandmaster of the Order, if one believes that the original Order survived Napoleon. It will be argued below that not only did Paul I become a de facto Grandmaster, but also that he was a legal Grandmaster, either of a new 'Russian Order', or of the revived original Order.

As will be seen below (Chapter VII), the statement 'The Order in the United States was formed and established by virtue of the authority exercised by the qualified Knights and hereditary Knights whose ancestors had received Letters Patent of hereditary rights conferred by the 70th Grandmaster (author: Czar Paul I) and others' cannot be proved convincingly but also not convincingly disproved. Material will be cited and discussed in connection with this statement. It will be argued that the The Ecumenical Order nevertheless in principle has a right to be recognised by the 'International Alliance of Orders of St. John' and by those who either as Monarchs or Governments or in another capacity allegedly recognised members of this Alliance in a certain way.

The Ecumenical Order is presently not internationally recognised by States as a 'Sovereign Order'. The American Order was also not recognised as such in the past by the USA, upon reconstitution in New York, even if it is claimed that at that time they received a 'State Certificate of Incorporation' from the US Secretary of State, furnished with the official 'US Treaty Ribbons and the official US Great Seal', whatever that may mean. The United Nations is alleged to in the past (around 1960) have considered granting the American Order some kind of non-governmental organisation status, which at any rate has been withdrawn in the meantime, if it was ever granted. The American Order itself claimed it withdrew under protest, because it wanted a different, more fitting status. Perhaps The Ecumenical

Order and maybe also the American Order can be recognised as a chivalric and as a dynastic Order under the criteria laid down by the 'International Commission for Orders of Chivalry'. [57] But indeed certain royalty and clergy are not averse to wearing the insignia of The Ecumenical Order, as seems to have been confirmed by the Royal Protection of H.M. King Michael I of Romania and that of His Holiness the Syrian-Orthodox Patriarch of Antioch. [58] By stating that 'Sovereign and international, it is the oldest surviving religious and military Order of knighthood' and 'Continuing its humanitarian programme of more than nine centuries', The Ecumenical Order claims or at least creates the semblance to claim, to be the continuation or only successor of the original Order as it existed before the Surrender of Malta in June 1798. Can The Ecumenical Order indeed claim to be a rightful or linear continuation of this original Order? In this context the question also will be whether it is a rightful or linear continuation of the two Russian Grand Priories disccussed below, or at least a rightful or linear continuation of the Orthodox (or Ecumenical or Non-Catholic) Russian Grand Priory discussed below. Were these Priories or the titles granted ever officially abolished or factually 'suppressed', or were they only economically and then only partly suppressed? Did these these Priories or one of them legally and factually continue their (its) existence in Russia up till the Russian Revolution? Was the original Order, respectively were these Priories or at least one of them, prior thereto legally relocated from St. Petersburg to New York or legally reconstituted there? Can other Catholic and Protestant organisatons be deemed to be a reconstitution of parts of the original Order? Does the Papal Order SMOM, to be discussed below, have to be seen as a reconstitution of an original large Roman Catholic part of the Order, notwithstanding the fact that it made an alliance with Anglican and Protestants reconstitutions of former splitt off's, who are also deemed to be reconstituted parts of the original Order, although they were entirely newly formed? Furthermore, it will be discussed below, whether The Ecumenical Order, irrespective of the above, nevertheless might qualify as a legitimate Order of St. John and as an Order of chivalry, in the sense of all proper definitions which are presently being used or should be used (but not in the original sense of the word chivalric), but also that no present Order of St. John is a chivalric Order in this latter sense anymore and finally, whether The Ecumenical Order in principle is a charity.

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[57] Infra p. 290, *IX.7. The International Commission for Orders of Chivalry*.

[58] Antioch used to be the capital of Syria. Palestine was a part of Syria.

I.23. Historical investigation needed

At this stage, it is our purpose to look at the historical, legal and other background to these points and interpret the material in a critical way and based on the result thereof, try to tackle the matter further. It is necessary to look at the developments from the early beginnings of the original Order till the present times, in sofar as these can reasonably be deemed relevant, to be able to try to place things in a macro perspective; to try to let the facts speak for themselves as much as possible and to simultaneously provide comments where deemed appropriate for the purpose of the study. The same approach was used by Alain Blondy. [59] Hafkemeyer [60] also tried to place the legal aspects in a wider chronological historical perspective, but appears biassed by admiration for his object of investigation. Empirically demonstrable facts are the basis of all historical research. However, we well realise that facts alone are not the whole historical truth. Whoever thinks to find historical truth without taking into account the facts, is failing as much as whoever is mistaking the facts for that truth.

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[59] Alain Blondy in Mallia-Milanes, *Hospitaller Malta* (Malta 1993), p. 659-685.

[60] Hafkemeyer, *Rechtsstatus*, p. 45. Refer also to Berthold Waldstein-Wartenberg, Rechtsgeschichte *des Malteserordens* (Wien, 1969).

II A CRITICAL LOOK AT THE HISTORICAL DEVELOPMENTS

II.1. Various ways to approach the original Order's history

Dividing history in phases may be qualified by some as always arbitrary, but has to happen anyway and is determined by the themes treated. The author would like to offer the traditional division as mentioned below in II.3, as a tool to confront the material. There are several sub-phases to be distinguished in each phase. Other divisions are well thinkable. For example, one could base oneself on the religious or on the economic aspects of the Order. Or one could base oneself on the influence of various nationalities of Grandmasters or of Knights as groups in various times on the Order's affairs. Or one can look at the Order from the point of view of its constitutional developments, i.e. from a relatively democratic, charitable into a military, oligarchic and archaic organisation. One could also base oneself on phases or degrees of influence of certain parties on the Order. We have tried to place the relevant events in a wider historical framework. This is also essential for a true picture and a true understanding of the power-plays in which the Order and its successors played a part, but not necessarily the major part. We will raise a lot of questions, but not all of these will be worked out. In sofar, they are raised to stimulate doubt and further research. We will only work out those points we deem vital for our lawfinding quest. It will be necessary to flash back and forth in our comments on the historical events.

II.2. Difficulties in trying to write the original Order's history

As said, we will here take the approach of dividing the history of the Order in the traditional phases, but in which all abovementioned aspects will be more or less touched upon. In this connection, it is necessary to remind ourselves of the following words of Hafkemeyer:

> 'Jeder, der es unternimmt, die Geschichte der Ritter des hl. Johannes zu Jerusalem, zu Rhodos und zu Malta zu schreiben, sieht sich sofort grössten Schwierigkeiten gegenüber, denn die Geschichte dieses berühmten Ordens ist tatsächlich zum grossen Teil die Geschichte des Mittelmeers und umfasst 700 Jahre, wenn man von den Tätigkeiten des Ordens in anderen Teilen Europas und der neuen Welt absieht. Nimmt

> man dies hinzu, so ist es von den frühesten Anfängen im 11 Jahrhundert bis zum heutigen Tage eine Zeitspanne von mehr als 900 Jahren! [61]

We disagree with this statement in so far as it might equate the history of the Mediterranean with that of the Order. This, if this is meant, is another example of inflating the historical importance of the Order and thus one's own importance as alleged continuation. But we agree that the history of the original Order and what happened after Napoleon Bonaparte dissolved and abolished it, up till 2006, covers quite a long period and is full of complications.

We wholeheartedly agree with Hafkemeyer that we still have to investigate this history, [62] but also remark that as history will always be poly-interpretable, there automatically will also always be a difference of opinions as to the legal fundaments discerned or discernable on the basis of historical research. There are inclinations to reason away or just omit what one does not like to see, or to look at the original Order or the Pope with awe and thus idealise the original Order and its history. On the one hand we can lean on what others wrote about the history of the original Order, but we cannot omit events we deem relevant for our subject from a historical-legal point of view. Neither can we abstain from our our own interpretation from a historical-legal point of view of these events. On the basis hereof, our research does not start as from the late 18th century, but from or already before the original Order was formed and then intensifies as from the late 18th century.

II.3. Distinguishing phases

In Chapters III through VIII, six phases in the history of the original Order (Chapters III through V), respectively the phenomenon of Orders of St. John (Chapters VI through VIII), are dealt with. Before proceeding with these

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[61] Quintin Jermy Gwyn, Grand Chancellor and Hospitaller of SMOM, in a foreword to Erle Bradford's J*ohanniter und Malteser, die Geschichte des Ritterordens* (special issue by Weltbild Verlag GmbH, ISBN 3 - 89350-347-1).

[62] Hafkemeyer, *Rechtsstatus, p. 45:* 'Um die juristische Entwicklung des Malteser-Ritter-Ordens und die Ursprünge seiner gegenwärtigen Rechtsstellung beurteilen zu können, ist es notwendig jeweils der historischen Untersuchung der einzelnen Entwicklungsphasen eine historische Einführung voranzuschicken. Denn ohne die Kenntniss der geschichtlichen Tatsachen ist es nahezu unmöglich, die Rechtsgrundlagen zu erkennen, aus denen sich die bis in die Gegenwart fortbestehende aussergewöhnliche Rechtsstellung des Ordens entwickelte. Insbesondere deswegen, weil das historische Bild des Malteser-Ritter-Ordens zumeist als sich in den Kämpfen gegen die heidnischen Völker im Mittelalter erschöpfend dargestellt wird.'

chapters, we would like to briefly set out what each chapter will be dealing with.

The first phase (1050-1291) in the history of the original Order is the phase in which the original Order is developing from a charity into a giant trust construction and a well-oiled military machine, like the Ottoman Empire. As long as it kept on attacking, it retained its combat quality and vigour. [63]

The second phase (1291-1523) is the phase of retreating from the Holy Land to Rhodes, loosing the original purposes and becoming a sovereign naval power. This power, as a consequence of being on a strategic and commercial point in the Mediterranean and also carrying on buccaneering or legalised piracy from there, as one of the main bases of its existence and success, in which context it had to have good harbours in strategic places, naturally continued to be confronted with the Turks and the Venetians.

The third phase (1530-1798) begins with the retreat from Rhodes to finally Malta, later teeming with slaves, where the Order continued its privateering as well as its conflicts with the Venetians and developed again, as on Rhodes, into a rich mediterranean economic hub and slowly became free-thinking and partly ecumenical.

The fourth phase (1798-1803) begins with the inevitable Surrender of Malta and the flight from Malta to St. Petersburg, where the Order became fully ecumenical, if it can be said to have continued at all after the Surrender of Malta.

The fifth phase (1803-1940), beginning with the appointment of Tommasi 'Motu Proprio' Pope Pius VII, thereby creating a new, Papal Order, is a rather desastrous and later also very dormant phase, not only in this newly constituted Papal Order but almost everywhere, till the appointment of Johann Baptist Ceschi a Santa Croce as Grandmaster in 1879, by Pope Leo XIII, constituting in our view yet another new, Papal Order. This was caused by a Catholic reaction all over Europe and by the reaction or revival of the Papacy and by the various national Catholic, but also Protestant and other reconstitutions in the second half of the 19th century of various parts of the original Order as it existed before the Surrender of Malta. Among these reconstitutions we find the alleged reconstitution of the two Russian Grand Priories, founded on the basis of two Treaties of the original Order with Russia, into the American Order.

The sixth phase (1940-2004) is the phase in which various Orders of St. John, real or false, are occasionally disputing each other's legitimacy and the Papal Order, started in 1879, together with the Protestant reconstitutions

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[63] Sutherland, *Achievements I,* p. 13, referring to Rome: 'and it was only when she had nothing more to conquer that her vigour began to decline.'

recognised by it, created an ‘International Alliance of Orders of St. John’ and also other Alliances of St. John were created. It is also the phase wherein all Orders of St. John, recognised or not, whatever this may mean, finally became wholly charitable again and honorary only.

III. FIRST PHASE (1050-1291): DEVELOPING FROM A CHARITY INTO A TRUST CONSTRUCTION AND A WELL-OILED MILITARY MACHINE.

III.1. From Roman times to the First Crusade

From the fourth century A.D. to the First Crusade (1097), we see a rapid development of Christianity, an equally rapid development of Islam, important Norman influences, the rise of feudalism, the beginning of Western European colonialism and the start of the long East-West Schism. After the Romans under Constantine occupied Palestine (324), Jerusalem was conquered by the Persians (614), recovered by Byzantine Emperor Heraklius (610-641) and conquered again (636), this time by Moslems. In 624, the Prophet Mohammed changed the direction of praying from Jerusalem into the direction of Mecca, but Jerusalem remained a Holy City of Islam. Mohammed made his ascunsion to heaven from the 'Qubbat es-Sakhra' rock in Jerusalem.

Christianity developed relatively quickly into an overriding power in Western Europe. [64] Roman Catholicism organised along the organisation of the Roman Empire and followed Roman law, the 'lex generalis omnium'. [65] Christianity was and is transnational. Where there was chaos after the fall of the Western Roman Empire, as well as during this trouble, Roman Catholicism was used as a unifying and civilising force. It claimed and claims submission from people in the material as well as the immaterial aspects of their lives. [66] This made it suitable to be used by those seeking or trying to stay in power and particularly the Franks – starting from Clovis and especially Charlemagne – allied with it for this purpose and it allied with them. There were some rather ambitious but very able clerical and other people in Rome and elsewhere in Europe, evidently. [67] Followed many

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64 Rodney Stark, inter alia *The rise of Christianity* (1997) and *One true God: historical consequences of monotheism* (2001).

65 J.E. Spruit, *Cunabula Iuris, elementen van het Romeinse privaatrecht* (Deventer 2001), p. 522-523, for a succint bibliography.

66 According to Thomas Aquinas, *Summa theologica* (Benziger Bros. edition, 1947), question 72, 'Sin is a word, deed or desire against God's law'.

67 Von Jhering, *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung I* (Leipzig 1907), p. 1: 'Dreimal hat Rom der Welt Gesetze dictirt, drei Mal die Völker zur Einheit verbunden, das erste Mal, als das römische Volk, noch in der Fülle seiner Kraft stand, zur Einheit des Staats, das zweite Mal, nachdem dasselbe bereits untergegangen, zur Einheit der Kirche, das dritte Mal im Folge der Reception des römischen Rechts im Mittelalter zur Einheit des Rechts; das erste Mal mit äusserm Zwange durch die Macht der Waffen, die beiden andern Male durch die Macht des Geistes. Die welthistorische Bedeutung und Mission Roms in ein Wort zusammengefasst, ist die Ueberwindung des

internal struggles between Orthodox and non Orthodox and many struggles between Holy Roman Emperor and Church, Church and France and Spain, Church and Italian cities, up till the late 19th century, Napoleon III intervening in the finally created Unitarian State of Italy to protect the rights of the Church. The Holy See active in the United Nations on the basis of the sovereignty over Vatican City, granted by Mussolini in 1929. The Church performed essential government tasks and is often alleged to have been the only one capable thereto. Like practically everything in this life, everything connected with the Church has good and bad intertwined. Anyhow, the social role of religion and Church is very complex and according to Stuurman, cannot be caught in one, all elucidating scheme. [68]

The same phenomenon as with Christianity happened in the case of Islam. Islam is also monotheistic and transnational and intertwined with the State and the law. Islam had and has a claim to be universal. It has a missionary zeal. The observance of the five pillars and the obligatory use of high Arabic for all religious interests, created and maintains a bond. Islam also claims to have possession of the truth. Islam, according to the Prophet Mohammed, from the beginning not only had to play a spiritual role, but also a social and political role.

Moslem expansion continued to move also into a westerly direction. Arab troops beleaguered Constantinople and Tariq crossed via Gibraltar to Spain (711). They were able to obtain control over a large part of the trading routes and inflicted heavy damages on the economy of the Byzantine Empire. They threatened the heart of Western Europe. [69] They became lords of the Mediterranean. This caused an economic revolution. From 650, the sea trade which furnished the West with the goods of the Orient, steadily shrank. Islam had shifted the balance of power in the world. [70] They established the Emirate of Cordoba in Spain and even sacked Rome in 846.
In the 9th and 10th centuries, we also see the rise and gradual integration of the Normans and a gradually developing agricultural crisis in South Western France and in Italy, leading to continual famines, reaching its apex around 1000. Then a flowering time followed till the 13th century. [71] Agricultural

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Nationalitätsprincips durch den Gedanken der Universalität'. On the other hand, J.E. Spruit warns against over-estimating the effects in every day legal practice of the finely chiselled thoughts of some tens of top lawyers which Rome produced from just before A.D. till the mid third century in a thin, but unbroken tradition: J.E. Spruit, *Metopen*, *verzamelde essays over het Romeinse recht en zijn geschiedenis* (Deventer 2002), p. 277-278.

68 Stuurman, *Verzuiling*, p. 82.

69 In the Battle of Poitiers, 732, Franks under Charles Martel defeated Muslims from Spain under Abd al-Rahman. Previous ideas about this battle have not been sustained by recent scholarship.

70 Henri Pirenne, *Mohammed and Charlemagne (*New York 1939).

71 Le Goff, *De woekeraar*, p. 81.

production did not keep pace with the population increase. This led to feudalism [72] as a means to counter the ongoing division of land. Church and noble groups began to buy up smaller parcels of land. Land which was grouped together, should not become divided again. [73] The right of primogeniture meant that the other descendants had to find a position either in the Church or in military service or elsewhere.

The year 910 saw the foundation of the Benedictine abbey of Cluny in Burgundy, exercising a very important influence on renewed ecclesiastical and social life. The reform movement of Cluny was coupled to the action willingness of the Knights, who became embedded in the religious system. As history shows, this often was a deadly combination. In the meantime there was a thriving Moslem civilisation in Cordoba, Bagdad and Cairo and a thriving Orthodox Christian civilisation in Constantinople.

In the year 962, Otto I of Saxony was crowned Emperor of the Sacred Roman-German Empire. These were years of hunger and unrest and constant conflicts, internally and also with the 'Moors'. In fact, it was a ruthless and manicheistic society. [74] But at least from 1048, we find merchants from Amalfi caring for sick Christian pilgrims in Jerusalem. We like to believe they were prompted by charitable motives rather or more than by economic motives The Amalfitans fell under the Eastern Roman Empire during the reconquests of Justinian the Great (527-565) and traditionally had close economic ties with the Levant. At the turn of the millennium, Amalfi and Pisa monopolized trade with the Far East. These ties continued after they were conquered by the Normans. The Normans gradually infiltrated Sicily and Southern Italy in the 11th century and then went on into an easterly direction. The Papal coalition army was wiped out in the Battle of Civita (1053), between the Sicilian Normans and Pope Leo IX (1049-1054). The Sicilian Normans however submitted to the Pope as their feudal lord and their lust for land was redirected into an easterly direction. On 16 July 1054, Cardinal Humbert, an influential Benedictine, born in Lorraine, left a Bull of Excommunication on the altar of the Hagia Sophia in Constantinople. This is generally seen as the beginning of the Great East-West Schism. It partly ended only in 1965, when mutual excommunications were solemnly lifted by Pope Paul VI (1963-1978) and Patriarch Athenagoras I. [75]

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[72] Feudalism, as the more general notion, must be distinguished from feudo-vassallic relationships (= Lehnswesen in German).

[73] In the United Kingdom, aristocracy and gentry presently still own about one third of the land, as against half in the early 19th century.

[74] Le Goff, *De woekeraar*, p. 72.

[75] Apart from the 'Filioque dispute' (i.e. whether the Holy Spirit only emanates from the Father or also from the Son), and other religious questions, for example what kind of bread was to be used at Holy Communion, the reasons were problems with missionary activities in Bulgaria of the Greek-Orthodox Church and the suppression of the Greek-

In a letter to Michael Cerularius, Patriarch of Constantinople, Pope Leo IX had invoked the Donatio Constantini. [76] This document, a forgery with far-reaching consequences, made around 754, but dated on 330, [77] was the basis for Papal claims of supremacy over the other Patriarchates (Constantinople, Antiochia, Jerusalem and Alexandria) in all religious matters, as well as over all Western temporal powers. [78]

Forgery of documents was common practice in the Middle Ages. Many preserved documents are forged, although the border line between real and false is a fluid one. In the Donatio Constantini, Constantine the Great (c.280-337), who reigned as sole Roman Emperor of West and East from 324 till his death, had allegedly granted Pope Sylvester I (314-335) and his successors, the spiritual and the temporal supremacy over Rome and the Western Roman Empire. The document is also mentioned in the Decretum Gratiani (1140). A constitution to Aetius, Governor of Gaul, strongly supporting Leo I, the Great (440-461) and recognising the primacy of the Bishop of Rome among the bishops of the West, had been issued in 445 by Emperor Valentinianus III (425-55). Rome tried to take back via Christianity what it had gradually lost during the decline of the Western Roman Empire, when the City of Rome and also Italy itself were not big players anymore, but rather the object of policies made by others. Another document invoked by the Church, was the Donatio Pepini. [79] This document dates from 756. It was based on a promise made by King Pepin III, the Short, to Pope Stephanus II (752-757). The King of the Franks obliged himself to restore territories conquered by him from the Longobards, not to the Byzantine Emperor, but to Pope Stephanus II and his successors. As a consequence, the Church State territory came into being and the temporal power of the Church began to increase. Charlemagne, in the framework of symbiosis between the Franks and the Roman Catholic Church, confirmed and extended the Donatio Pepini in 774 and in this context invoked the Donatio Constantini as justification for the Donatio Pepini. The Pseudo-Isodorean Decretals, made

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Orthodox rite in Southern Italy by the Roman Catholic Church. That there are still frictions, became also evident on 29 December 2001, as on that date it was published in the newspapers that the Roman Catholic Church was 'chasing souls' again in Russia, to the detriment of the Orthodox Church (though it was recognised by the Roman Catholic Church that Orthodoxy is equally capable to save man as Roman Catholicism). On 11 February 2002, it was announced that the Roman Catholic Church would form four Russian bishoprics, i.e. in Moscow, Saratov, Novisibirsk and Irkutsk. This was seen by the Russian-Orthodox Church as a provocation.

76 Deschner, *Kriminalgeschichte IV*, p. 393-412; H. Fuhrmann, *Konstantinische Schenkung und abendländisches Kaisertum. Ein Beitrag zur Überlieferungsgeschichte des Constitutum Constantini* (DAM, 1966).

77 Reichstag at Quierzy, April 754, first appearance.

78 These claims dating from Pope Leo I (440-461).

79 Deschner, *Kriminalgeschichte V*, p.181-189; H. Fuhrmann, *Päpstlicher Primat und pseudoisidorischen Dekretalen* (QFIAB 49, 1969).

in the 9th century, are still used in modern Canon law as the basis for the exclusive Papal right to call an Ecumenic Council at Rome. [80] Another example is the false 'Privilegium maius' (1359) of Rudolf IV Habsburg, considerably expanding Habsburg claims against the German Reich and the Holy Roman Emperor. [81]

The general idea was that a right evidenced by an earlier document would have more validity than a right contained in a later document. A document would also be less susceptible to challenge if it was issued by a high authority, like an Imperial, Royal or Papal Bull.

In 1055, the Christians were expelled from the Holy Sepulchre compound and the pilgrim roads were closed for some time. During the Spanish Crusade (1064), mostly Norman French fell into Spain. In 1071, the Siculo-Normans drove the 'Greeks' out of Southern Italy by conquering Bari. The Normans also took Palermo from the Saracens after having conquered Calabria. Is it not surprising that Palermo, conquered by the cruel Normans, became a cultural center of the highest importance for Western Europe under Frederick II, King of Sicily, from 1198 to 1250? [82] Sicily was a major trading base. It was an important part of the Mediterranean trading network. Robert the Guiscard of the Siculo-Norman dynasty in Sicilia, in the framework of actions in Epirus and Albania, then laid siege on Durazzo, Albania and takes it in 1082. In 1090, Count Roger the Norman completed the conquest of Sicily on the Arabs and occupied Malta.

On 27 November 1095, Pope Urbanus II (1088-1099) called for a Crusade at Clermont. With tremendous success, he connected pilgrimage with war against the heathen and with spiritual wages. Mayer is very instructive in this connection. He explains the 'Frérêche', or 'Fraternitia', as it had developed in the Mâcon, in the 11th century, as a very strong control by the family over its land; a very strong control by the pater familias over the members of his family; a conscious effort to restrict marriages to keep the population growth under control (the oldest son alone could marry and legally procreate) [83] and consequentially part of the family having to become clergy, which was a way out of the family community and dictatorship straight into another collectivity, the Church. Particularly in the Mâconnais, the call for a Crusade by Pope Urbanus II met with great enhusiasm. We also find the Frérêche at Amboise and north of the Loire.

But another and perhaps more important reason for the Crusade was the fact that since the Turkish conquest of Palestine on the Fatimids, the much

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[80] Philip Schaff, *History of the Christian Church, Vol. 4*, p. 268-273 (Oak Harbor, WA, 1997).

[81] Vajda, *Felix Austria*, p.129.

[82] J.M. Hobson, *The eastern origins of western civilisation* (Cambridge 2004).

[83] Mayer, *Kreuzzüge*, p. 78 and p. 26-28.

coveted goods from the Orient did not flow to the West anymore. [84] Steenkamp refers to the very important Battle of Manzikert (1071) in which the Seldjuks crushed a Byzantine army, also composed of Norman mercenaries. The Seldjuks came too close to Constantinople which would have been the reason for the First Crusade. This contradicts the action of Cardinal Humbert. [85]

III.2. The origin and nature of the Order carried by the First Crusade

In 1097, the First Crusade started. Many Siculo-Normans participated in it. They quickly conquered Antioch, a hub on the silk and spice route and one of the five Christian Patriarchates (Constantinople, Rome, Antioch, Jerusalem and Alexandria). Baldwin of Boulogne took control of Edessa and became Count of Edessa, later first Latin King of Jerusalem (1100-1118). [86] In 1099, the Fatimids were defeated in the Battle of Akkon. On 15 July 1099, Jerusalem, a Patriarchate, was conquered by the Crusaders. Godfrey of Bouillon then allegedly gave a constitution to the Hospital. Further Crusading followed in Spain, Portugal, the Baltic littoral and the south of France.

The original Order seems to have been a private initiative. Many religious Orders, as well as many other institutions, started as a private initiative. What a religious Order is, is difficult to define, but refer for example to the disputes in Islamic law schools about the question whether one becomes a real Muslim by just pronouncing the 'shahada' (confirmation), or by one's deeds. Surely formal and material characteristics are necessary to be able to speak of a genuine or legitimate religious Order. The same goes for what makes a contemporary legitimate Order of St. John. Words alone are not enough. To pronounce vows of obedience, chastity and poverty and to dress like clergy alone, is also not enough.

Religious Orders usually start by an initiative of a member of the clergy which is later adopted and adapted by the relevant religious umbrella organisation. In the present case, it should be noted that it is questionable what origin the alleged founder of the Hospital, the 'Blessed Gerard' had, Italian or French and it may even be questioned whether Gerard was indeed a member of the clergy, or was more than a secular member of the clergy, while it should also be noted that it is not certain whether Gerard was indeed the founder.

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[84] In 1099, when Jerusalem was conquered, the Fatimids had in the meantime again replaced the Turkomans.

[85] Steenkamp, *Ridderorden*, p. 23.

[86] Crowned 25 December 1100. Brother of Godfrey of Bouillon.

There are many tales about the origin of the Hospital. The main theories revolve around whether there was a hospital already even before Christ and the Hospital of Gerard was a continuation thereof, or whether this hospital was newly started after the conquest of Jerusalem by the Crusaders in 1099. The religious character of the original Order at that time can be doubted. Furthermore, the original Order is deemed to have been devoted to St. John the Baptist, but could also have derived its name from the Orthodox St. John the Almsgiver. [87] Finally, it is said that Amalfi merchants, Amalfi originally belonging to the Eastern Roman Empire, bought the site. It is unclear when and how the original Order acquired this site.

The not always reliable Catholic Encyclopedia mentions that the Order is said to have existed before the Crusades and is not extinct at the present time. It quotes no source for the first (untrue) contention. We also hold that the second contention historically and legally is not true, as we shall explain infra. We might even question whether the motives to start the organisation were entirely idealistic. Usually, there are several motives involved. Vacua will always be filled anywhere and obviously, there was a need at the time for a place to sleep, as well as a place to be nurtured after a certainly long and dangerous journey, or after having been wounded in a battle or skirmish.

But we are tempted to believe with Koster, that 'The origin of the Order is to be found among the attendants of a hospital in Jerusalem who just before the Crusades formed a band of dedicated men of rank nursing sick pilgrims and later, joined hands in the defense of the Christians in the Holy Land.' [88] Except, that we place a question mark with the words 'of rank'. It is precisely to this dedication and the connected Christian religious spirituality, all contemporary Knights of all Orders of St. John, recognised or not, are often referring to and harking back to.

III.3. Alleged recognition by Baldwin I as legal person

In 1112, Baldwin I then allegedly recognised and confirmed the Brotherhood of Hospitallers as an international corporation. It is not difficult to find out why this recognition was done, if it was done. [89] The obvious advantage will have been that recognition and backing by the highest local government organ added additional prestige and privileges. A legal person can be defined as a subject of rights and obligations which is not a natural person. It

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[87] John Eleemosynarius, died 616, Patriarch of Alexandria and Greek-Orthodox Saint, noted for his pious works; replaced by John the Baptist after the Great East-West Schism started in 1054 or after the militarisation of the original Order.

[88] Koster, *Prelates*, p. 17.

[89] Beltjens, *Origines*, p. 245, referring to the 'acte confirmatif' of 30 December 1120 of Baldwin II

has to be recalled that Italy was the cradle of many innovative legal concepts already at that time and also later, such as double bookkeeping, banks, drafts, the concept of insurance, etc. The advantages of the concept of legal capacity and legal personality are probably also clear.

But it is more difficult to establish what an international corporation was in those days. Roman Law knew public and private corporations. Municipia (cities) and coloniae (colonies) were generally and of old recognised as legal subjects. Legal subjects could also be of a private law nature. From the beginning of the Christian era, private corporations or associations became subject to strict government control. The number of private law associations existing in the beginning of the Christian era in the Roman Empire will not have been very considerable. There were a number of crafts guilds and funeral guilds. Legal capacity was granted to the collection of changing, physical members of a community. A concept of 'universitas' was known in Roman Law and used by the medieval lawyers as a basis for their theories about legal personality. It was however not, or not clearly expressed in Roman Law that a universitas enjoyed the same legal capacity as a natural person, which is the decisive step. [90] The Church took over Roman law concepts, but legal personality developed rather slowly.

III.4. The privileged position of the Church

The Edict of Milan (313) issued by Constantine (c.274-337), allowed the Christian religion on a footing of equality with other religions. Theodosius I (c.346-395) made it the State religion (381). This caused the formation of many churches, convents and charities. These received many gifts, in the form of land or in another form. They continued in the event of changes in members or managers. They participated in legal traffic as legal entities. It is essential to realise that the Church began to enjoy tax exemption already as from Constantine the Great. [91] The Church then gradually filled the void caused by the gradually declining influence of Italy on the Roman Empire. 'The imperial authority gradually declined, and the Papal power rose on its ruins.' [92] The Church also was a most important instrument of Roman and other Italian families to continue playing a role and continue influencing and

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[90] F. Schulz, *Classical Roman law*, (Oxford 1961) p. 86.

[91] Codex Justinianus 1,2 DE SACROSANCTIS ECCLESIIS ET DE REBUS ET PRIVILEGIIS EARUM, Spruit. Chorus, *Corpus Iuris Civilis VII*, p. 76-96.

[92] Sutherland, *Achievements I,* p. 15. Mussolini (in the Italian parliament on 21 June 1929): 'La tradizione latina imperiale di 'Roma è rappresentata dal cattolicismo' and 'Penso e affermo che l'unica idea universale, che oggi essiste a Roma, è quella che s'irradia dal Vaticano'.

trying to control and take advantage of developments.

III.5. Piae causae and fraternitates

'Piae causae' were trusts, already known in later Roman Law. These were not associations but also not yet foundations. Foundations were only in the 19th century analysed as a separate legal category of legal persons, next to corporations in the sense of associations. Trust is the English terminology for a legal construction to administer a certain estate. Someone with a certain estate grants this estate to someone else, a person or a business, to administer this estate. The trust concept is the most probable intermediate form towards legal entities not being corporations, for which legal personality was operated. Justinian legislation equalled piae causae to corporations for their legal capacity, irrespective of their trust character.

Piae causae could be founded independently, as guest houses or hospitals for strangers, pilgrims, poor, orphans or foundlings, etc. This needed an estate in the form of money or real property with proceeds. Money did not play a large role yet in the early and high Middle Ages. It was mainly still a barter economy. This also explains the rise of the feudal society. One was usually remunerated in the form of grants of land. So was the Hospital remunerated for its services. Only in the later Middle Ages, supplies of coinage become more plentiful in Europe.

The canonists played a decisive role in the development of the notion of legal person. There were also 'fraternitates'. Their members protected each other and granted each other support in times of impoverisation, fire damages, ship wrecks, etc. They swore each other an oath of allegiance. This oath was deemed not very fitting in feudal medieval society, where loyalty to the 'liege' was given an overriding place. The early Middle Ages therefore generally prohibited the old guilds, but their number increased from the 13th century, a time in which also the cities were coming up strongly. Fraternities formed by guilds which occupied themselves with charity, were admitted. These were usually connected with the Church in some way. From the use of the words 'Fratres' and 'Confratres' in the original Order's beginnings, we might infer that the Order in the beginning was viewed as a fraternitas, a charity. In those times, this meant a strong religious influence. Life in medieval Christianity, in all relationships, was saturated by religious notions. There were no things and no acts which were not brought in connection with Christ and the Faith. Everything was based on a religious concept of all things and according to Huizinga, there was an enormous deployment of deep believing. [93]

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[93] Huizinga, *Herfsttij*, passim.

In the beginning, the Order therefore must have been an informal, not purely religious, but mixed charitable co-operation form, which then passed into the stage of a formal co-operation in the form of an association and for practical purposes assumed a religious appearance. A public law or even an international public law body was neither present or intended rightaway. As we shall see, the organisation nevertheless later developed into a public law organisation, a sovereign State on Rhodes and even more so on Malta, but formally it maintained an association and a religious character. When Malta surrendered, this body definitively lost its State character, as we shall explain infra. [94]

III.6. International complications of the spreading Order

The original Order owned estates in Western Europe and in the Holy Land, but also had national divisions in the form of 'Languages' (or 'Langues' or 'Tongues'), at least since the Order was on Rhodes. [95] How can one legally qualify this body and its national divisions and Grand Priories, Priories and Commanderies?

We have to take into account that they may have to be qualified differently in the various stages of their development and we can qualify under our contemporary legal conceptions or try to do so under the vaguer legal conceptions of the time. Seeing the inextricable relationships between Church and Governments and between religious and temporal affairs which particularly in the Middle Ages existed at least till the Reformation, the Order of St. John, although started as a private organisation, up till moving to Rhodes (from 1306) and becoming sovereign there, had been legally developing into an international public law body 'sui generis'. But its Western European territories (Grand Priories, etc., collectively called 'outre-mer') remained embedded in the feudal system.

After moving to Rhodes and becoming more or less sovereign there and even more so after moving to Malta (1530), the Order slowly became a somewhat doubtful Sovereign State, while its European territories remained embedded in the feudal system.

It will be clear all this presented difficult problems. How can a subject of one State also simultaneously be a subject of another State, the Order? To whom does the subject owe 'allegiance' in case of conflicts? Is a Commandery exempt from local tax, because it is the government property of some other State or a Church Order? Does a Commandery fall under the

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94 Infra p. 156, VI. FOURTH PHASE (1798-1803): BECOMING MORE ECUMENICAL IN RUSSIA UNDER GRANDMASTER PAUL I.

95 Infra p. 105, *IV.2. Reorganising the Order in the aftermath of the loss of the Holy Land.*

local jurisdiction or is it immune therefrom? Essentially, these are the same difficulties as presented by the Church's development. The Church mushroomed into a competing organisation, a religious organisation competing for temporal power with the developing national States and spreading all over their territories like a fungus. [96] On the other hand, there was a striking similarity in organisation between the Church and the feudal State. [97]

III.7. The influence of the Investiture Controversy on the Order's development

As the conquests of the Crusaders continued, so grew the Order. In 1111, there existed an organisation, a community formed by laymen, Knights and others ('Fratres'). This organisation evidently was an organisation in which a fraternal co-operation between civilians, soldiers, i.e. Knights and Serjeants and clergymen was unfolding, with originally one clear objective in mind. This was the nursing of sick or wounded pilgrims. Therefore a practical and humanitarian organisation.

Pope Paschal II (1099-1118) was confronted with several anti-Popes. His reign was plagued by the Investiture Controversy. In 1107, settlements on the issue of lay investiture had been made with Kings Henry I of England and Philip I of France. Pope Paschal's struggles with the Emperors Henry IV and Henry V, however, proved inconclusive. After unsuccessful negotiations in 1106, 1107, and 1110, he officially condemned Henry V, who invaded Italy. In February 1111, the revolutionary Pact of Sutri was concluded between Pope Paschal II and Henry V. Henry V renounced the right to investiture. Paschal agreed to have the Church return all lands and rights received from the Crown, except Papal land. This unique and radical agreement, when promulgated in the presence of Henry V at St. Peter's in Rome, on 12 February 1111, caused a furor, particularly among the high nobility and the high clergy. It was the first attempt to separate Church and State, but failed, particularly because of furious episcopal resistance. The bishops and the ecclesiastical nobility saw their vested interests threatened.

A popular rising forced Henry V to leave Rome. He took Pope Paschal with him as a prisoner. After two months of captivity, Paschal consented to Henry's demands on investiture [98] and on 13 April, 1111, he crowned Henry

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[96] Churchill, *History of the English speaking peoples II*, p. 43, for examples in England during the times of Henry VIII.

[97] P. W.A. Immink, *La liberté et la peine. Étude sur la transformation de la liberté et sur le développement du droit pénal public* (1973), p. 232.

[98] Treaty of Ponte Mammalo, 11 April 1111. Declared invalid by the Synod of Lateran, March 1112.

as Holy Roman Emperor. However, strong opposition arose in the Curia against Pope Paschal. A Council declared invalid the privilege (also depreciatively called the 'pravilegio') he had granted Henry. Archbishop Guido of Vienne excommunicated the Emperor. Pope Paschal revoked the privilege in 1112 and renewed his earlier condemnations of regal investiture in 1116. The problem remained unsolved until 1122, when Pope Calixtus II (1119-1124) concluded the Concordat of Worms (23 September 1122). [99] This secured a relative peace between the Church and the Empire.

The Investiture Controversy had direct or indirect influence on the development of the Order of St. John. [100] Precisely in the tumultuous interim period between the pact of Sutri and the Concordat of Worms, the Blessed Gerard made his bid to obtain Papal backing and tax exemption for his organisation. On 15 February 1113, Pope Paschal issued the Bull Pie Postulatio Voluntatis. [101] An essential element therein was tax exemption and that the organisation would always be able to elect its own Master. This Papal Bull did confirm the organisation which already existed, but according to Hiestand [102] did not constitute it as a regular religious Order under Papal spiritual or temporal jurisdiction. [103] The organisation did not become a regular religious Order, but an Order with a unique character, i.e. it was consisting of chivalric laymen (Knights), who suddenly became 'professed', normal laymen and real clergy men, but who became subject to the professed Knights. The Order was declared in various Bulls to be not entirely subject to the Pope, or to the Pope alone.

Evidently, at the time something stronger than King Baldwin's recognition and confirmation was felt needed, in view of the need for funds, which could be fulfilled by having the organisation appear as a religious Order. The Papacy at that time was not yet at the apex of its power, which was the case under Pope Innocent III (1198-1216), but it was the only truly transnational organisation and already had tremendous power.

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[99] Basically distinguishing (but not in Bourgogne and Italy) between the spiritual and the temporal investiture, leaving the Emperor the temporal investiture, although this is much more complicated.

[100] Infra p. 80, *III.18. Canon law*.

[101] Infra p. 66, *III.9. Brief analysis of the Bull Piae.*

[102] Hiestand, *Anfänge*. Koster, *Knight's state*, p.1 for secular/diocesan and regular clergy.

[103] Compare Coriden, *The code of canon law1983*, Canon 117: 'No aggregate of persons or things intending to obtain juridic personality, can achieve it unless its statutes have been approved by the competent authority'. The binding text is the Latin text.

Hooking on to the Order was also a practical matter and not purely a religious affair. By becoming part of this Order, one was able to invoke against feudal (temporal) and spiritual Lords that one belonged to the Church, was part of its organisation and under Papal Protection. Therefore one should not be touched, respectively should be deemed to be outside the temporal jurisdiction and should not be taxed. At the same time one was exempted from taxes levied by the Church itself (inter alia – but certainly not limited to – the tithes). It is obvious that the consequences of this tax move by Gerard and the Pope have been tremendous, also for the Church, but particularly for the Emperor and for the developing French and British central powers, as the experience with the Templars, who also became extremely powerful and wealthy, has shown.

Was this all foreseen? At any rate, there was the powerful example set by the development of the Church itself. Once it was liberated by Constantine from all personal services to city and State and from all business taxes and allowed to accept inheritances, it really took off. Freedom from all personal munera, since 313. The Church allowed to accept inheritances, in 321. Prohibition for 'the rich' to join the Church and thus avoid taxes, in 320. The Church finally 'owning' about one third of Europe in the Middle Ages.

The organisation acquired from the Pope a Protection, whatever this may exactly mean, but it meant quite a lot in practice and most important, tax exemption and had at least the semblance of being a religious Order of the Church. It acquired fiefs and castles in the Holy Land which financed its activities there and through the tax exemption, it formally acquired many other possessions in Western Europe, which it called Grand Priories, Priories and Commanderies. This entailed the acquisition of jurisdiction, high, including the right to inflict capital punishment, or at least low jurisdiction. Very generally speaking, we can say that the right to levy taxes, was connected to the owner of a low jurisdiction. [104] Knights usually had low jurisdiction only.

In the full Middle Ages particularly, but also until much later, there were two competing legal orders, existing next to each other, the spiritual and the temporal one. How devastating this could be, was inter alia demonstrated by the clashes in the last decades of the 18th century between Grandmasters, Bishop of Malta, Inquisition and Jesuits, inter alia ably described by Ciappara. [105] This carried on until the Reformation, respectively till the end

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[104] Grapperhaus, *Belasting, vrijheid en eigendom* (Amsterdam 1989), particularly p. 70-71.

[105] Ciappara, *Roman Inquisition*.

of the Ancien Régime. The territorial jurisdictions of the Church were the Archbishoprics, the Bishoprics, the Archdeaconate, the Deaconates and finally, the Parishes. The spiritual courts judged according to Canon law. They were competent to judge over spiritual goods, marital law, wills, blasphemy, sacrilege, heresy, witchcraft, various sexual offences and 'alia malia, quae contraria sunt Deo'. [106] A rather wide definition. On top of that, formally and materially, sat the Inquisition. It was formed on the precedent of the Spanish Inquisition by Pope Paul III (1534-1549) in 1542, by the Bull Licet ab Initio. It was placed above all fifteen Congregations in 1588, as the 'Suprema', by Sixtus V (1585-1590).

The Church claimed jurisdiction ratione personarum (think of privilegium fori, personae miserabiles); ratione rerum (think of causae spirituales, inter alia the sacraments); ratione peccati (think of sub peccati praetextu, usuria, denuntiatio evangelica). To delineate the limits of each other's jurisdiction, the spiritual and temporal authorities concluded treaties with each other (concordates).

What was the basic structure of taxation in those days? [107] There were basically four cases in which the Lord of the land had the right to levy extraordinary taxes which could not be raised out of the taxes from the low jurisdictions and these were the 'emergency of the land', a rather wide definition; raising funds to pay ransom to free the Lord, when he had fallen into enemy hands; raising funds in connection with the marriage of his daughter and finally, to pay the purchase price for neighbouring land, or, in some regions, to cover the costs of receiving knighthood, or to join the army of the Emperor for a voyage to occupy Rome. The paradox was that the Lord of the land, to confirm his position, needed money, but to obtain this, had to award rights, which prejudiced his position. The same was the paradox resulting from the Pope granting tax exemption to the Order of St. John. He did not necessarily receive money, but received backing. But in a later stage, Popes appointed their 'nephews', or other favourites as Commander or Prior, etc. The first example of this Papal attitude was when the Templars fell into disgrace. Certain Templar estates went to the Pope.

The Church, or rather the Archbishop, levied taxes from the clergy as their spiritual and temporal leader. He taxed the clergy subordinated to him in his entire diocese, in accordance with the Church laws, therefore also across the borders of his own temporal territory. This led to tensions with neighbouring rulers. The proceeds of these taxes however usually landed

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[106] For ratione materiae, ratione personae, see Monté ver Loren/ Spruit, *Hoofdlijnen,* p. 54-55.

[107] Henri Pirenne, *Economic and social history of medieval Europe* (New York 1937); M.M. Postan (ed) et al., *The Cambridge economic history of Europe, I-III* (Cambridge 1956-1963).

solely in the temporal coffers of the Archbishop. Next to this, he tried to tax the clergy as a class, in the same way and under observation of the same principles as with other classes. The taxation by the Archbishop therefore had two bases: the subordination of the clergy to the Archbishop (Roman Law) and the fact that the Archbishop as temporal Prince and the clergy, as a class, were standing towards each other in an equal relationship of mutual obligations (German law). The Archbishop required the consent of the clergy as a class to receive taxes, but many convents and chapters had obtained an exemption, for whatsoever reason. Furthermore, taxation by temporal rulers of the clergy, required a permission from the Pope.

Military obligations; toll (teloneum), [108] abbeys and convents often being exempted, but levying toll; gifts, made by various clergy and the aristocracy; concessions for markets; the right to strike coin; the four above mentioned extraordinary taxes; the spiritual and temporal taxation of church goods; the protection monies payable by Jews; taxes raised by cities, in the beginning only with consent of the Lord of the land; grants of the right of seal to cities; taxes on income from real property; excises on wine and beer, etc.; tithes; voluntary grants of monies in exchange for rights and/or privileges, etc., were the instruments of taxation one would normally be confronted with. [109] They were levied by a variety of spiritual and temporal rulers.

Tithes ('teogothian' or tenth), were a custom dating back to Old Testament times, adopted by the Church. Laymen contributed a tenth of their income for religious purposes, often under ecclesiastical or legal obligation. The money, crops, farm stock, etc., was used to support the clergy, maintain and construct churches and assist the poor. Despite serious resistance, it became obligatory, as Christianity spread across Europe. It was enjoined by ecclesiastical law from the 6th century. It was enforced by secular law from the 8th century. In the 14th century, Pope Gregory VII (1073-1085), in an effort to control abuse, outlawed lay ownership of tithes. During the Reformation, the Augustinian Martin Luther (1438-1546) approved in general of paying tithes to the temporal sovereign. The imposition of tithes continued for the benefit of Protestant as well as Roman Catholic churches. Gradually, however, opposition grew. Tithes were repealed in France during the Revolution (1789) without compensation.

It will be clear from the above remarks about taxation that the tax exemption granted to the organisation was a very important benefit. Gifts made to the Order and properties donated to the organisation, according to the Bull also remained outside the temporal and spiritual jurisdiction. Like

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[108] The Order of St. John received freedom of tolls in 1130 (J.C. Lünig, *Codex Ital. Diplom. vol IV*, 1451).

[109] Deschner, *Kriminalgeschichte VIII,* p. 87 ff., provides a detailed overview of the many spiritual taxes.

the Order of St. John, the Templars had obtained an exempt status. Pope Honorius II (1124-1130) exempted the Templars in 1128 (Council of Troyes). It can be seen that it was very useful from various points of view, to donate a property to the organisation and to continue running and enjoying it, while having to pay reasonable 'responsions', [110] a kind of trustee fee or contribution, to the organisation only. These responsions were originally supposed to be used primarily for charitable purposes. Later on they were used for everything, but particularly for building activities. The Church, on the other hand, by confirming the organisation as an Order and giving it tax exemption and confirming this several times, fostered a financially viable and strong organisation which was therefore inclined to back it and could play an essential role in the fight against the 'Infidels'. Self-interest was coupled to usefulness for the Church, in its policies against the Emperor, the Kings and the Turks and to idealistic beliefs and acts.

We should place the granting of this privilege in the framework of the Pact of Sutri and surrounding events. Something was granted by the Pope as a deal, a quid pro quo and may be qualified as not validly granted or the grant would have been subject to nullification, if the Investiture Controversy would not have been settled. It was an action to tie a great number of 'vasalli' to the Papacy, by giving them this tax exemption. 'Capitanei' were the great feudal lords, the 'valvassores majores' were the greater of the lesser feudal lords, while the 'valvassores minores' were the smaller feudal lords, under whom in turn we find the 'valvassini', the peasant vassals. The freedom of the valvassores was often endangered by the bishops.

III.9. Brief analysis of the Bull Piae

What does the Bull Piae say? The essential text of the Bull is reproduced below. We let follow the Latin original: [111]

> 'Paschalis episcopus, servus servorum Dei, venerabili filio Geraudo, institutori ac preposito Hierosolymitani Xenodochii, ejusque legittimis successoribus in perpetuum. Pie postulatio voluntatis effectu debet prosequente compleri. Postulavit siquidem dilectio tua Xenodochium, quod in civitate Hierusalem juxta beati Joannis Baptiste ecclesiam instituisti, apostolice sedis authoritate muniri, et beati Petri apostoli patrocinio confoveri. Nos itaque, piis hospitalitatis tue studiis delectati, petitionem tuam paterna benignitate suscipimus, et illam Dei domum, illum Xenodochium, et sub apostolice sedis tutela, et beati Petri

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[110] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title V*, p. 29, item 1.

[111] Beltjens, *Origines*, p. 437 and Delaville, *Cartulaire*, tome I, no 30, p.29 and 30.

protectione persistere decreti presentis auctoritate sancimus. Omnia ergo que, ad sustentandas peregrinorurn et pauperum necessitates, vel in Hierosolymitane ecclesie vel aliarum ecclesiarum parrochiis et civitatum territoriis, per tue sollicitudinis instantiam, eidem Xenodochio acquisita, vel a quibuslibet fidelibus viris oblata sunt, aut in futurum largientel Deo offerri, vel aliis justis modis acquiri contigerit, queque a venerabilibus fratribus Hierosolymitane ecclesie episcopis concessa sunt, tam tibi quam successoribus tuis et fratribus peregrinorurn illic curam gerentibus, quieta semper et integra conservari precipimus. Sane fructuum vestrorum decimas, quos ubilibet vestris sumptibus laboribusque colligitis, preter episcoporum vel episcopalium ministrorum contradieltionem Xenodochio vestro habendas possidendasque sancimus. Donationes etiam, quas religiosi principes de tributis seu vectigalibus suis eidem Xenodochio deliberaverunt, ratas haberi decernimus. Obeunte te, nunc ejus loci provisore atque preposito, nullus ibi qualibet surreptionis astutia seu violentia preponatur, nisi quem fratres ibidem professi secundum Deum providerint eligendum. Preterea honores omnes sive possessiones, quas idem Xenodochium ultra seu citra mare, in Asia videlicet vel in Europa, aut in presenti habet, aut in futurum largiente Domino poterit adipisci, tam tibi quam successoribus tuis hospi talitatis pio studio imminentibus et per vos eidem Xenodochio in perpetuum confirmamus. Ad hec adjicientes decernimus ut nulli omnino hominum liceat idem Xenodochium temere perturbare, aut ejus possessiones auferre, vel ablatas retinere, minuere, vel temerariis vexationibus fatigare. Sed omnia integra conserventur eorum, pro quorum sustentatione et gubernatione concessa sunt, usibus omnimodis profutura. Sane Xenodochia sive Ptochia in occidentis partibus penes burgum S. Egidii, Astense, Pisam, Barum, Ydrontum, Tarentum, Messanam, Hierosolymitani nominis titulo celebrata, in tua et successorum tuorum subjectione ac disposicione, sicut hodie sunt, in perpetuum manere statuimus. Si qua igitur in futurum ecclesiastica quelibet secularisve persona hanc nostre constitutionis paginam sciens contra eam temere [venire] tentaverit, secundo tertiove commonita, si non satisfactione congrua emendave- rit, potestatis honorisque sui dignitate careat reamque se divino judicio existere de perpetrata iniquitate cognoscat, et a sacratissimo corpore et sanguine Dei et domini redemptoris nostri Jesu Christi aliena fiat, atque in extremo examine districte ultioni subjaceat. Cunctis autem eidem loco justa servantibus sit pax domini nostri Jesu Christi, quatenus et hi fructum bone actionis percipiant, et apud districtum judicem premia eterne pacis inveniant. Amen, amen. Ego Paschalis, catholice eeclesie episcopus, ss. Ego Richardus, Albanensis episcopus, ss. Ego Landulfus, Beneventanus archiepiscopus, legi et ss. Ego Cono, Prenestine ecclesie episcopus, legi et ss. Ego Anastasius, cardinalis presbiter tituli beati Clementis, ss. Ego Gregorius, Teracinus episcopus, legi et ss. Ego Johannes, Melitensis episcopus, legi et ss. Ego Romoaldus, diaconus cardinalis romane ecclesie, ss. Ego Gregorius, cardinalis presbiter tituli sancti Grisogoni, legi et ss. Dat. Beneventi, per manum Johannis, sancte romane ecclesie

cardinalis ac bibliothecarii, XV kalendas martii, indictione VI, incarnationis dominice anno MCXIII, pontificatus autem domini Paschalis pape II anno XIV. Benevalete.'

English: [112]

'We, Pascal Bishop, servant of the servants of God, address ourselves by the presents to Our Venerable Son Gerard, Founder and Rector of the Hospital at Jerusalem as well as to those who will legitimately succeed him until the end of times.

We have resolved to reserve a favourable outcome to the pious request which you, Gerard, have presented to us. In effect, you have asked from us that the hospital founded by you in the city of Jerusalem next to the church of Saint John the Baptist will receive the protection of the Apostolic See and will be placed under the patronage of the Holy Apostle Peter.

This is the reason why, enthusiasmed by the pious ardor with which you practise hospitality, we paternally receive your request and establish by the present decree that the Hospital of Saint John, this illustrious House of God, will from now on continue its activities under the tutelage of the Apostolic See as well as under the protection of Saint Peter.

As a consequence hereof we prescribe that you yourself, your successors and the Hospitaller Brothers, will remain in the peaceful and integral possession of everything that the Hospital has acquired thanks to your efforts, to be able to take care of the needs of the pilgrims and the poor, be it in the parishes of the church of Jerusalem, or in the parishes of other churches, or in the territories of States. You will also keep the gifts which actually have been made by the faithful or which will be made to you in the future with God's help, as well as the assets of which you will become the proprietors by any other legitimate means or which will be offered to you by our Venerable Brothers of the Episcopal Seat of Jerusalem.

We decide, notwithstanding any objection which might be formulated by the Bishops or their collaborators that your Hospital will keep the tenths of the products that you will collect in whatever place due to your investments and your work.

Furthermore, we decree that the gifts that the pious notables should have decided to make to the same hospital by reason of their imposts or taxes, are valid.

When God will call you back to him, Gerard, nobody shall be able to be put at the head of the hospital of which you are presently director and the provisor, by treachery, trick or violence; the only one who shall be able to succeed you in this position shall be the one whom the professed Brothers shall elect at Jerusalem with the aid of God.

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[112] By the author, with help from Prof. J.E. Spruit.

Additionally, we guarantee to you for eternity and to your successors in the pious exercise of hospitality, as well as to the house of the hospital by the intermediary of your persons, the possession of all domains and of all the assets situated on this side and on the other side of the seas, in Asia or in Europe, that the aforementioned house is presently holding or which it might acquire in the future with the aid of God.

Furthermore, we forbid whomsoever to light-heartedly disturb the hospital, to harass it by audacious persecutions, to steal, to fence or damage its assets. On the contrary, these assets have to integrally serve the needs and the maintenance of those for whose benefit these have been given, without any exception being able to be tolerated in this connection.

We decide that the hospitals or hospitia which in the West have been decorated with the name of Jerusalem and are falling under the responsibility of the strong- hold of Saint Giles du Guard, de Asti, de Piece, de Bali, de Atrante, de Terente and de Messine, will forever, as it is now the case, remain under your authority and under your administration as well as under those of your successors.

By consequence, if, in the future, an ecclesiastic or a layman, being made aware of the present constitution, dares to counteract it and in the event he does not come back on his illegal behaviour in an adequate way and in spite of repeated warnings which shall be given to him, we decree as of this moment and for then that he will be robbed of his positions, honours and dignities, that he will deem himself as accused before the defined tribunal for the injustice he has committed, that he will be excluded of the very saintly body and the very saintly blood of Jesus Christ, our God and our Redeemer, until he will have subjected himself, after a last examination, to a rigorous chastisement.

On the other hand that the peace of our Lord Jesus Christ will be with those who will serve justice in this place, that they may reap the fruits of their good actions and will find with the severe judge the compensation of eternal peace.

Let it be so. Let it be so. We, Pascal, Bishop of the Catholic Church, the undersigned. We Richard, Bishop of Albano, the undersigned. We Landolfus, Archbishop of Benevent, having read and signed the presents. We Conon, Bishop of the Church of Prenestine, having read and signed the presents. We Anastasius, Cardinal Priest with title of Saint Clement, the undersigned. We Gregorius, Bishop of Terracine, having read and signed the presents. We John, Bishop of Melitense, having read and signed the presents. We Romualdus, Cardinal Dean of the Roman Church, undersigned. We Gregorius, Cardinal Priest with title of Saint Chrysogonos, having read and signed the presents. Given at Benevent, by the hand of John, Cardinal and librarian of the Holy Roman Church, the XV of the Calendae of March, indiction VI, the year 1113 of the Incarnation of the Lord, the fourteenth year of the pontificate of the Lord Pope Paschal II. Goodbye.'

An important element in this Bull is the wording that the Hospital of Jerusalem shall remain both under the Protection of the Apostolic See, as well as that of St. Peter, protection and tutelage being essentially the same, vague terms. Some therefore state on this basis, that the Order was constituted by this Bull as a religious Order of the Roman Catholic Church.

Special attention is drawn to the most important clause exempting all present and future acquisitions from tax. Surely, this was a very strong motive to make donations. Also, this is in line with the expectation which usually was fulfilled, of all persons of noble birth, to be exempted from the most onerous of taxes and with the practice of the Church to grant very far reaching privileges to Crusaders. This Bull mainly is a bull of tax exemption, which is extremely important. [113] It quickly resulted in the donation of about 28.000 'maneria', [114]19.000 of which were donated to the Order and 9.000 to the Templars, who obtained a similar exemption. [115] Inter alia from the income of these maneria, which developed into the Commanderies of the original Order, a regular force of cavalry and infantry for the defence of Palestine, was financed.

III.10. Similar Bulls

There are similar Bulls. [116] We mention a few. First of all, a Bull, given in 1120 by Pope Calixtus II. [117] Like Pope Paschal II, Pope Calixtus II was heavily involved in the Investiture controversy. Pope Innocentius II (1130-1143) gave at least four Bulls, i.e. the Bull Ad hoc nos, disponente, given at Pisa on 16 June 1135, in which the Papal privileges granted and regularly encroached upon by lower clergy, were confirmed and imposition of the interdict or excommunication on churches under Hospitaller authority, was forbidden and these were allowed carrying on celebrating divine offices even during a general interdict, provided bells were not rung, the laymen were expulsed from the churches and the doors were closed; [118] the Bull Christianae Fidei Religio, given at Pisa on 7 February 1137, authorising the 'frères' to start farms, churches and cemeteries in scarcely populated areas

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[113] For the original Order's economic aspects, see also the literature mentioned in Mallia-Milanes, *Hospitaller Malta*, p. 12, note 63.

[114] Domains of different extent, from the *maneriolum* of one plough to the *latifundium* of fifty ploughs.

[115] Matthew Paris, Hist Major, p. 544, quoted by Gibbon, *Decline and fall IV*, p. 229, note 5.

[116] R. Hiestand, *Papsturkunden fuer Templer und Johanniter* (1984) and Beltjens, *Origines*, p. 439 ff.

[117] Delaville, *Cartulaire*, tome I, no 48.

[118] Beltjens, *Origines*, p. 375 and p. 445-446 and Delaville, *Cartulaire*, tome I, no 113, p. 95-96.

for the use of all those residing there, providing similar possibilities in more densely populated areas, but in that case only for use by those 'belonging to their table', authorising the frères to look for 'confrères' who were obliged to annually make a gift to the Order in return for their 'confrèrerage' and entitled to be buried even during an interdict, but not during an anathema and finally confirming the exemption of not having to pay tithes; [119] the Bull Omne datum optimum, given in 1139, in which the Templars were put directly under the Holy See and the Bull Quam amabilis Deo, given at Laterans on 7 May 1140, 1141 or 1143, one version of which is false and antedated to March 1130 (according to Beltjens to make the Popes of the late 12th century believe that Pope Innocent II had approved the milititary activity of the Order at that time), [120] the true version exhorting the clergy to support the frères, urge people to join as confrères, promising one seventh remission of annual penitences to those who would financially support the Order or become confrères, reminding the clergy of the previous Bull's contents not to bother the frères, allowing them to once a year while travelling by, open up churches in an area under interdict and celebrate divine offices there, but only after having expulsed the excommunicated and finally allowing clerks to provide their services for a year or two, with episcopal authorisation, but without being able on account thereof to revoke their benefits and ecclesiastical income. [121] Pope Innocentius II had to cope with the Anti-Pope Anacletus II till 1139, was involved in troubles with the German King Lothar III and needed all the support he could get. Then there is a Bull given in 1144 by Pope Lucius II (1144-1145), confirming the exemption of the Order of St. John from the jurisdiction of the bishops. Pope Lucius II gave this Bull just one year before his violent death by a stone throw. He suddenly obtained the support of Roman noble families. The Bull of 21 October 1154, [122] given at Laterans by Anastasius IV (1153-1154), was adding to Christianae Fidei Religio again and provided the possibility to build up the own clergy and to receive free laymen as servants. The Bull of 1154 by Pope Hadrian IV (1154-1159). Hadrian IV, the only English pope, was like Lucius II engaged in many troubles with German Kings and Emperors and would-be Emperors.

We conclude these Bulls created organisations in an organisation and pulled away Knights from Bishops and gave Knights a very advantageous position.

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[119] Beltjens, *ibidem,* p. 376-377 and p. 447-450 and Delaville, *Cartulaire*, tome I, no 122, p. 101-102.

[120] Beltjens, *ibidem,* p. 379.

[121] Beltjens, ibidem, p. 379-382 and p. 451-454 and Delaville, *Cartulaire*, tome I, no 130, p. 107-108.

[122] Beltjens, ibidem, p. 455-458 and Delaville, *Cartulaire*, tome I, no 226, p. 173-175.

They have used this to the full.

III.11. The feudal relationship

The feudal relationship is a combination of vassallage and beneficium. [123] Vassallage is a legal relationship whereby a party, the vassus (or vasallus), acquires protection from another party, the dominus or senior and in exchange therefor submits himself to his authority and obliges himself to loyalty, obedience and service to his protector. In particular military service in the form of heavily armed cavalry. To enable the vasallus to afford such precious military service, the dominus granted him rights to land, producing income, by way of a loan. This was first called beneficium, then feodum or feudum. This terminology is connected to the word fee, indicating both wages and loan and standing for a remuneration for services rendered or to be rendered. It was a kind of remuneration in a time when money was scarce. It could also involve a hereditary feudum. Knights theoretically enjoyed a certain tax freedom because of their military value.

Commendare is the expression used already since Merowingian times. Persons would voluntarily subordinate themselves to a more powerful person, like the King or another lord. Commendatio is the word used for the legal act, whereby one person through homagium [124] would gain the protection of a Lord, but on the other hand would undertake certain obligations, while keeping his freedom and not becoming a slave. 'Servicium vel obsequium'. Obsequium later replaced by the duty to stay loyal. The oath of loyalty became a 'sacramentum' almost. The relationship theoretically is a voluntary one, but caused by need of protection and services in return. It has its origin in a lower social sphere, although the voluntary character is always stressed. Commendatio created a personal lien. Beneficium was the way to put the personal relationship on a material basis. Without this basis, the vassal could not perform his services. The services were the provision of advice and to perform military duties. No payment of rent was due from the chivalric feudum. Here is a difference with the concept of the Order of St. John, where annual responsions were required. [125] As long as there would be a successor in the feudum, the feudum would normally not revert to the dominus. It is also possible and happened quite often, that the feudum did not originate from the estate of the dominus, but from the estate of the vassal himself. These were feuda oblata, which came

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[123] Monté ver Loren/Spruit, *Hoofdlijnen*, p. 58-71.

[124] Ruediger Niehl, *Juridica Vocabula*, University of Mannheim 2005: 'Homagium seu hominium, barbare, Huldigung/Verpflichtung/ obsequiorum et obedientiae promissio jurata. Juramentum fidelitatis.'

[125] Infra p. 96, *III.27. The influence of constant war on the position of the knights.*

into being because someone either voluntarily, or compelled by force, transferred his allodial property to a powerful dominus, to receive it back from him by way of feudum. Thereby, he also received his Protection. It was possible for a vassal to renounce the feudum. In that case the dominus became the full owner again. On the other hand, there also were feuda without homagium and vassals without a feudum. [126]

Dominus and vassal formed a personal legal circle. Disputes connected with the feudal relationship were dealt with by the feudal court. The judicial organisation also became feudalised. A nobleman in principle only had to stand trial before members of his class. Persons of a lower class could not even testify against a nobleman. In certain cases, a nobleman could invoke a forum privilegiatum. Cases involving nobles came before nobles' courts but their jurisdiction covered nobles and non nobles. The Frankish Kings and their successors also gave immunity to the most important churches and convents, for the real property of these institutions. This means that it was prohibited for the Royal civil servants, therefore the counts in the first place, to enter the immunities to perform any acts of office there. Gradually, the immunities acquired not only jurisdiction in smaller matters, but also in important matters, low and high jurisdiction. Usually, the immunity privileges also entailed that the immunity did not have to pay taxes. This enabled the ecclesiastics to become large land owners.

The Order really started to develop when it received tax exemption and immunity in many cases. On the one hand the basis for its success was its pseudo-religious character, on the other hand when on Malta, most of its history there consists of endless jurisdictional battles with the Inquisition, the Bishop of Malta and the Popes. [127]

III.12. The trust aspect revisited

In the Middle Ages, as presently, the trust played a large role. [128] It was and is a practical, flexible and therefore very popular legal concept. The trust also is a forerunner of the foundation, an equally popular legal concept. As widely known, a trust enables a trustee to hold title to and possess property and to use it, or rather manage it, for the benefit of others (beneficiaries). It served and serves as an important tool for avoidance of probate trials and inheritance taxes. Also Germanic and French law knew it, like Islamic law knew it. The trust was also commonly used by the Templars for royal and ecclesiastical investors, who valued privacy from the public and each other.

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[126] Mitteis, *Lehnrecht und Staatgewalt*, p. 108.
[127] Koster, *Knight's state*, extensively.
[128] David J. Hayton, *The law of Trusts, Fundamental Principles of Law* (London 1998).

The trust is one of the world's first tax shelters. It avoids taxation of inheritances and transfers. During time, the trust concept was refined. Many species could be distinguished. But the principal actors stay the same and can be summed up as follows. The Grantor or Settlor conveys legal title to his property to the Trustee, who undertakes to manage it under the Trust Declaration, for the Beneficiary. The Beneficiary receives an equitable title to the income or assets of the trust. A Protector attempts to insure its objectives are met and the law is observed. The Protector does not manage the trust, but may veto certain decisions. [129]

Like the Pope and the Order, the Order being the Trustee, the Pope being the Protector and the Knights being the Settlors and/or the beneficiaries.

III.13. The jus patronatus; the privileged position of hospitals

Many subjectless estates for many specific purposes existed. We mention church factories, i.e. estates to fund the maintenance of church buildings; convents, i.e. estates managed by and for the benefit of the conventual association of monks or nuns; capitula, beneficia or prebendae, i.e. sources granted for life, to take care of the living of certain persons charged with the authority and the obligation to perform certain religious functions or to look after certain church affairs; pastoral beneficia, i.e. estates to take care of the living of pastors and vicaria, i.e. estates to take care of the living of priests charged with celebrating one or more holy masses weekly at a certain altar, who could also be charged with spiritual care and in that case had beneficia cum cura animorum.

Here, we also find the patronus. Commanderies jus patronatus play an important role in the Order. [130] Therefore we need to say something about the patronus. We will see later on that the concept of jus patronatus also plays an important role in the framework of the Russian Family or Hereditary Commanderies, which in turn play a role in the discussions on the legitimacy of those Orders of St. John claiming descent from the Russian Order, because they claim to have Hereditary Commanders.

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[129] J.H.A. Dyer and A. van Loon, 'Anglo-Amerikaanse trusts en het Nederlandse recht', *Preadviezen, Mededelingen van de Nederlandse Vereniging voor Internationaal Recht, Nederlandse groep van de International Law Association* (No. 87, juni 1983).

[130] Infra p. 167, *VI.9. The Foundation of the Orthodox Russian Grand Priory a reactionary move;* p. 179, *VI.15. Family commanderies as international legal person;* p. 197, *VII.3. Czar Alexanders's Decree of 1810;* p. 312, *X.10. The Commandery jus patronatus;* p. 358, *XV.5. The Code of SMOM;* p. 414, *XIX.2. The criteria put forward by Stair Sainty* and p. 442, *XX.2. General conclusions.*

The deeds establishing the vicariates [131] often indicated as patronus the heirs of the founder. The saying was 'patronum faciunt dos (means), aedificatio (building), fundus (land)'. If the same person fulfilled all three requirements, he became ipso jure patron. The right of patronage might be personal (personale), real (reale), spiritual (ecclesiasticum or clericale), lay (laicale), mixed (mixtum), hereditary (haereditarium), restricted to the family or to a definite person (familiare; personalissimum), individual (singulare) or shared (ius compatronatus), complete or diminished (plenum or minus plenum). A patronage could be obtained through inheritance ex testamento or ex intestate, or by exchange, by purchase, or by prescription.

The patronus could indicate the person to be benefited and could present this person (ius praesentandi) to the ecclesiastical superiors empowered with the right of appointment (collation). The important ius praesentandi involved that in case of a vacancy in the benefice, the patronus could propose to the ecclesiastical superiors empowered with the right of collation, the name of a suitable person (persona idonea). If this person was available at the time of presentation, the ecclesiastical superior was bound to bestow on him the office in question. [132]

The beneficiary would then inter alia enjoy the proceeds of the estate. Besides the right of presentation, the rights involved in patronage were honorary rights, utilitarian rights and the cura beneficii. More than once, a patronus was able to make himself the beneficiary and then regarded himself as owner of what was regarded as part of an estate belonging to his family, although under Canon law the founder had no proprietary rights. Often a Saint was deemed to be the owner of the estate. It is significant that after the militarisation of the Order, new foundations became few and usually were jus patronatus.

A hospital could be a religious place. This species fell under religious jurisdiction. Other hospitals fell under temporal jurisdiction and had fewer privileges. A confirmation letter by the Bishop made the hospital and its goods bona ecclesiastica. The hospitals thus acquired the same position as

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[131] A vicar is a Roman Catholic priest who acts for another higher-ranking clergyman. A vicariate is the religious institution under the authority of a vicar. In canon law, the vicar is representative of a person clothed with ordinary ecclesiastical jurisdiction. As to their powers, vicars are constituted either in divinis, as parochial vicars and auxiliary bishops, or created vicars in jurisdiction, as vicars capitular and vicars general, to exercise power in the external forum, either voluntary or contentious. Some writers also distinguish vicars a lege, or those whose powers are perpetual and prescribed in law and vicars ab homine, who depend entirely on delegated powers and are removable at will.

[132] R.G.C.M.M. van Basten Batenburg, *Het toezicht door de overheid op vicariestichtingen, de beeindiging van een overheidstaak*, Stichting Vicarie Sancti Nicolai van 27 october 1501 (Winterswijk 989), p. 5-6.

the churches. This meant the right of asylum, intransferability, except by special consent, usually from the Bishop, immutability of destination and: freedom of taxes. Think also of the one third death tax due to the Church.

III.14. Motives for bringing in the maneria

All this resulted in a flood of goods flowing from the temporal into the spiritual realm, particularly in France. This resulted in action by the temporal jurisdiction to avoid erosion of the tax base. In the beginning, the transfer into religious jurisdiction was not subject to any government restrictions, but since the 13th century, the King of France (France not to be confused with the present France in a geographical sense), started to levy a 'droit d'amortissement'. This was a tax levied on real property, payable in the event one wanted this to be transferred to religious institutions.

In lists of for example the hundred most popular businesses, the advice to start one's own church or sect is usually mentioned rather high and there have been and are many legal disputes about whether or not a certain organisation is really religious and can rightfully claim any consequent benefits. If we then also think of the interdict, we can say that belonging to the Order gave a good position also from this point of view. One was not only more or less free from taxation, but also from the interdict. The interdict was one of the severest penalties for disobedience to the Church. A city or a whole region could be deprived of the necessary spiritual assistance. One has to distinguish between excommunication, the blocking of all contact of a certain individual, or individuals with the rest of the Christian community and the interdict. Interdict was the suspension of a notable (Prince) or a community, from all sacramental functions of the Church. For example, one's dead would not be able to be properly buried. The last rites are among the most important. If one belonged to the Order somehow, one was not hit by this.

Seeing all this, the conclusion is that the tax exemption and the concept of the Order fitted very nicely into the above developments. The motives to donate or bring in the maneria were complicated and certainly not only religious. Goods had to be defended against the two branches of feudalism, [133] the great feudal lords and the small feudal lords and against the local ecclesiastics. It is therefore not surprising that particularly in the first third of the 12th century; one sees 'a wave of grants' to the Order. [134] Those who

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[133] F.L. Ganshof, *Feudalism* (New York, Hagerstown, San Francisco, London, 1964).

[134] Sire, *Knights of Malta*, p. 101; M. Gervers, 'Donations to the Hospitallers in England in the wake of the Second Crusade', in *The Second Crusade and the Cistercians*, ed. by M. Gervers, p. 155-161, New York, St. Martin's Press 1992.

made substantial 'gifts' were often appointed as administrators for life (preceptor) and often the jus patronatus was involved. This meant that the position of preceptor stayed in the family. Sutherland mentions the will of 1130 of King Alfonso I, of Aragon and Navarre, naming the Knights of the Hospital and the Temple heirs and succesors to both his crowns, under the stipulation they should support him in all his wars against the Moorish princes, who had established themselves in Spain. This will was not respected by his subjects, which is significant again. The claims of the Orders were set aside by the grandees of the two kingdoms, who conferred them on princes of their own election. [135]

We conclude that the original Order was also a giant trust construction, respectively the system gradually developed as such. It enabled those who donated to it, to continue running and enjoying what they donated. The Order was the nominal owner, for a trustee fee (responsions), which hardly ever changed. This is also an important reason why the system continued even after the original Order as a military institution had long outlived its publicly professed purposes and usefulness. This is also the reason why after the Surrender of Malta, respectively the downfall of Napoleon, one frantically tried to revive the original Order, or to reinstate it. It was a convenient alibi. Significant is also that practically all Commanderies founded in Italy in the 19th century in the wake of the Restoration, were founded jus patronatus, to be able to keep clinging on to them as a family.

III.15. The original Order never was a regular religious Order of the Church

Most writers seem to agree that the Order never was a religious or monastic Order in the traditional sense of the word. [136] The Roman Catholic Church's present Congregation of Religious inter alia judges constitutions of regular and other Orders. Under Canon law, an Order of the Church is a conventual organisation with public, either temporary or perpetual, vows. Acts contrary to these vows are canonically not only not permitted, but also void. The professed person canonically has no private ownership of his goods. The male Orders are exempt. They had a privilege whereby their persons and goods were exempted, with exceptions, from the jurisdiction of the local ordinaris, or of the immediate higher Church authority, to be placed under the jurisdiction of another, usually own superior, or of a higher Church authority. This privilege became particularly popular in the 11th century and

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[135] Sutherland, *Achievements*, p. 63-64.

[136] Bruin, *Kroon op het werk*, p. 26 refers to (translated): 'free communities of knights, organised on a spiritual basis during the crusades'. Koster, *Knight's state*, p. 1.

exemption of Orders and monasteries was the rule in the 12th century. Cluny, whose importance was great, was already placed under the Holy See in 910. This Benedictine organisation was instrumental in a far reaching reformist movement in the Church and had a lot of influence, also in Rome. Even reigning sovereigns became exempt and placed directly under the Holy See. [137]

III.16. Monasticism

The original Order of St. John was clothed in a monastic organisation. The origin, progress and effects of monastic life have been admirably analysed by Gibbon. [138] He speaks of the indissoluble connexion of civil and ecclesiastical affairs. The social and economic importance of the monastic movement can hardly be overrated. It started in Egypt in 305 [139] and was introduced in Rome by Athanasius in 341. Its development is intertwined with economic aspects. Contrary to the situation in the first Christian centuries, the Frankish mission in the early Middle Ages, developed from top to bottom. [140] Christianity had pervaded all aspects of life, socially and economically and it is recalled that in the barbarous medieval society, the class of the priests had been able to become regarded as the foremost class. This was a big difference with the times of Charlemagne, when the King had a decisive say over the Church and regarded himself as Lord and Father, King and Priest, Leader and Protector of all Christians (defensor ecclesiae). This power was slowly but steadily eroded by the class of the priests.

There are various types of monasticism: the eremitic, religious recluse type, the quasi eremitic type and the cenobitic type. [141] Then we have the quasi monastic type. Leaving aside non Christian monasticism, we can say that the eremitic type includes the early Christian hermits or anchorites, and this type is emphasising living alone and a highly regularised, contemplative life. The quasi-eremitic type is a transition between the eremitic type and the cenobitic type and is constituted by loose organisational structures, without hierarchic links to mother institutions and without external hierarchies. [142] The cenobitic type is having formulated rules and cenobitic institutions. Cenobites live under a common and regular discipline. Benedict of Nursia

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[137] Faustino de Gregorio, 'Brevi note sull'instituto delle esenzione nelle fonti canonistiche classiche' (*Il diritto ecclesiastico* 110, 1999).

[138] Gibbon, *Decline and fall II*, p. 502 ff;

[139] William Harmless, *Desert Christians: an introduction to the literature of early monasticism* (Oxford, 2004).

[140] Le Goff, *Civilisation*, p. 186.

[141] Giles Constable, *Medieval monasticism: a select bibliography* (Toronto 1976); David Knowles, *Christian monasticism* (New York 1969); Jean-Martial Besse et al. (eds.), *Abbayes et prieurés de l'ancienne France* (Paris, 1905-present).

[142] The Mount Athos tradition.

(c. 480-543/547) was the father of Western European cenobitism. His 'Regulae' set the model for all subsequent Roman Catholic monastic Orders. [143] Poverty, chastity, [144] obedience and stability and institutionally held property. Male Orders furthermore have a strict lock (clausura). This means their ways of interfacing with the outside world are severely limited. The male branch of these Orders is called First Order, the female branch Second Order and associated monks, priests and laymen, are the Third Order. In this context we remark there were women in the Order, who at least on Malta had a severe lock. There were no women convents on Cyprus or on Rhodes. Taking everybody in the Order together, we can conclude that the large majority of the Order were non-professed people.

III.17. The charity aspect overshadowed by the military aspect

Although the quasi-religious and quasi-monastic Order of St. John, the Templars and the Teutonic Order, had used the Benedictine rule till the 13th century, they cannot be deemed true monastic or true religious Orders, at least not as the Order of St. John developed. The original idea was the protection and guidance of pilgrims en route to and in the Holy Land. This was soon completely overshadowed by the military side. Nothwithstanding St. Bernard of Clairvaux and any Augustinian concepts of a just war, we hold that the fact that the military side completely overshadowed the Hospitaller side, automatically means the religious character disappeared.

We also hold that with the military side, great wealth was amassed and the military side, after moving to Rhodes, respectively Malta, was not a real genuine military side. Finally, during the military period, the charitable aspects were more and more neglected. There was a constant and untenable conflict between the fighting and the charitable aspects of the Order from a truly Christian point of view. [145]

Indeed the Knights made vows, but they could retain at least one fifth of their estate and testate this and this could be sizeable. We also draw attention to various Statutes saying the Knights had the right to obtain and beqeath certain property, had the right to fit out own galleys, were allowed to own

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[143] The mendicant Orders of the Franciscans, the Dominicans and Augustinians are also belonging to the cenobitic type.

[144] Stuurman, *Verzuiling*, p. 241: According to Stuurman, Christianity essentially is a sexist ideology in which the entire ambivalence of men towards the female is compressed into a ritual image.

[145] See also Helen Nicholson: *The Military Orders, welfare and warfare* (1998); *Templars, Hospitallers and Teutonic Knights, Images of the Military Orders, 1128-1291* (1993); *The Knights Templar: A New History* (2001*; The Knights Hospitaller* (2001); O'Callaghan, *The interior life*.

their own house on Malta, etc., after the Great Siege particularly. [146] The Knights were not poor, but rich. They enriched themselves even more in the Order. [147] Celibacy, formally introduced mainly to preserve Church assets, as of 1059 by the important Lateran Synod at Rome, [148] at which it was also said that nobody could receive the government of a Church from a layman – in this connection it is interesting to again note that in the original Order, the clergy was subordinate to the Grandmaster – was probably never really observed. They had no lock. Their conventual life was a mere appearance. If exemption was formally given by the Bull Piae, it was also given without any restriction. This seems to be unusual.

We conclude that the Order perhaps formally was an Order complying with the requirements therefor, but not materially. We hold that the Order of St. John never was a real part of the Roman Catholic Church, until 1961, when the Papal Order was clearly established by the Roman Catholic Church to be an Order of this Church. [149] But even now, a Roman Catholic religious institute is only formally defined. The criteria are making perpetual vows or perpetually renewed temporary vows, living in common and separating from the world. The difference between a religious and a secular religious institution is the nature of the vows – which are semi-public vows, recognised private vows, or social vows – and the living in the world. [150]

III.18. Canon law

How can Canon law [151] come into the picture if these Orders were only quasi monastic and quasi-religious? Canon law is the body of law made within certain Christian churches – the Orthodox churches also have their canon law – by lawful ecclesiastical authority for the government of the whole Church, or some part thereof. It incorporated genuine as well as false material. It therefore decided not according to the origin but to the validity. Canon law started to be compiled as of 325 A.D. in the East and West. [152]

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[146] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem.*

[147] Sutherland, *Achievements*, p. 163; 'Ascetic privations gave place to chivalric gallantry; and when men of noble birth and high fortume became knights, the vow which imposed a community of property was dispensed with, or explained away to the satisfaction of conscientious scruples.'

[148] See however Codex Justinianus 1,3,19; Authenticum '*Multo magis*' ad h.l., Spruit. Chorus, *Corpus Iuris Civilis VII*, p. 105, j°: p. 625.

[149] Infra p. 251, *VIII.10. Pope John XXIII approves the Constitution of thePapal Order.*

[150] Coriden, *The Code of canon law 1983*, Canon 607 and Canons 710 and 712.

[151] H.E. Feine, *Kircherliche Rechtsgeschichte. Die Katholische Kirche* (Köln-Wien 1972).

[152] Monté ver Loren/Spruit, *Hoofdlijnen*, p. 48-56.

The Decretum Gratiani [153] was the first real compilation. The General Council of Trent (1545-1563) then marked a movement toward uniformity of legislation from the Holy See. [154] In 1917, the Codex Juris Canonici was promulgated. A revised Codex was promulgated in 1983. [155]

The Gregorian Reformation, initiated by Pope Gregory VII (1073-1085), laid down some fundamental principles of Canon law. Among these, that for possession of every ecclesiastical office, choice and appointment by Church authorities was necessary. This was in the midst of the Investiture Controversy which took about fifty years and can be compared with the Thirty Years War in its devastating consequences for Germany and Italy. It it is then striking that in 1113, Pope Paschal II apparently allowed the Order to always elect its own Master, thus underlining the quasi monastic and independent character of the Order. It would also have been strange, that where Knights usually disputed the Church's or anyone's authority, they would have accepted Papal authority over their Order. They used the Pope as Protector, for tax and other reasons and he used them, particularly as a counter weight against the power of Kings and Emperor. The whole organisation was set up to take advantage of the religious ideals and fervour of the masses, or at least adapted itself thereto very well, but at the same time always strived to stay independent from the Church. The Pope always tried to get the Order under his control, but never really succeeded.

The assumption of Protection by the Pope formally and materially did not mean assumption of legal supremacy over the Order. The relationship with the Protector was a symbiotic one, necessitated by the fabric of medieval society. To be able to achieve anything at all, one needed the backing of the Church. [156]

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[153] Originally called 'Concordia discordantium canonum', dealing with sources of the law, ordinations, elections, simony (selling of ecclesiastical offices), law of procedure, ecclesiastical property, monks, heretics, schismatics, marriage, penance, sacraments and sacramentals.

[154] Also recovering the position of bishops over privileges and exemptions of chapters, monasteries, fraternities and other corporate societies and the jus patronatus.

[155] Coriden, *The Code of canon law 1983*; *Wetboek van canoniek recht* (Baarn, 1996); J. Listl, H. Schmitz (ed.), *Handbuch des katholischen Kirchenrechts* (Regensburg, 1999).

[156] Koster, *Prelates,* p.16: 'In this period it was quite common that civil and ecclesiastical powers were closely interwoven and hardly differentiated. At the same time there was a continuous strife between Popes and sovereigns for supremacy. Together they formed a particular figuration in which the characteristics were determining moves and countermoves'.

This the more so since the development of Canon law. [157] Canon law was also based on the idea that the norms of laws emanating from the Church are superior to all other laws. This idea was wide spread.

III.19. The overriding influence of Popedom on medieval government and society

Popedom was able to grasp a lot of control over Western Christianity, step by step. As we saw, the 8th century Donatio Constantini (c. 760) [158] is a forged document through which the Popes were able to control Rome as a territorial basis for their temporal power, the Patrimonium Petri. It also was intended to legally back up Roman and Papal imperialism. The Pope, as leader of the class of ecclesiastics, wanted to be and felt superior to the class of warriors. The well-known struggle in the Middle Ages between Sacerdotium and Imperium. Priesthood claimed to be the moral and legal head of the entire Western civilisation. Basically, this already commenced under Pope Nicholas I (858-867).

The convents played a big role in remedying the state of religious-moral decay the Church had found itself in. [159] The Gregorian Reformation enabled the Church to shake off lay control. Pope Gregorius VII (1073-1085), who had also been a monk at Cluny, invented (or better applied) the concept of the Militia Sancti Petri. It was the duty of the faithful to devote themselves to this militia. He also santioned the concept of a war of agression and maintained a standing army. It was no coincidence that particularly during the later Crusades, the power of the Church was great. The Popes tried to submit the Christian rulers under their authority, as vassals of the Holy See. Imperium should be subjected to Sacerdotium, pursuant to the Augustinian, respectively the Two Swords doctrine. This doctrine, based on Luke 22:38, was already used by Pope Gelasius I (491-496), [160] then refined by Bernard of Clairvaux [161] and laid down also in the Saksenspiegel. According to Pope Gregorius VII, the Pope was to have universal spiritual and temporal power, only the Pope could appoint Bishops, the Pope could dismiss Emperors, release people from vows of fealty to unfair sovereigns, the Pope is above judgement and the Church can never be wrong and is a Saint by the merits of St. Peter. [162]

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[157] Peter G. Stein, *Roman law in European history* (Cambridge 1999).
[158] Proved to be a forgery by Lorenzo Valla in 1440, pursuant to an assignment by King Alfonso of Naples. The Donatio was revoked by Napoleon.
[159] G. Schnürer, *Kerk en beschaving in de middeleeuwen* (Haarlem 1949), p. 2.
[160] Letter to Emperor Anastasisus, *Epistulae* 12, 2 (Mirbt-Aland nr. 462).
[161] Bernard of Clairvaux, *De consideratione*, 4, III, 7 (Mirbt-Aland nr. 584).
[162] Dictatus Papae, 1075. Inter alia forbidding lay investiture of priests.

In 1077, the Emperor Henry IV (1050-1106) went to Canossa under Pope, later Saint, Gregory VII, but in March 1084, he took Rome from the Pope.

Under Pope, later Saint, Innocentius III (1198-1216), the idea was announced that the Pope is not only the substitute of Peter, but of Christ himself on earth. This Pope exercised temporal power in the majority of the Christian nations and intervened in Aragon, Castil, Portugal, Norway, Bohemia, Hungary and particularly in Sicily, Germany, England and France. Under his pontificate, the catastrophical Crusades against the Cathars [163] or Albigenses, [164] in the South of France, the repression of heresy by force, the Great East-West Schism and the massacre and pillage of Constantinople by the Crusaders [165], took place.

In the 14th century, Popedom suffered a heavy crisis by the humiliation of Pope Boniface VIII and the Avignon exile. Pope Boniface VIII succeeded Pope Celestine V, who had been a puppet of Charles II of Anjou under suspect circumstances. He quickly became involved in a fight with the French King Philip the Fair about Papal temporal supremacy, [166] but was humiliated in 1303 at Anagni by the French representative, [167] who allegedly simply smacked him, which ended the discussion. This marked the practical, but not the theoretical end of the worldly aspirations of medieval Papacy. [168]

III.20. Militarisation continued

However, we are not that far in time yet with the developments of the Order. On 3 September 1120, the Blessed Gerard died. Also in 1120, King Baldwin II of Jerusalem [169] provided a number of Knights with a headquarters in the Temple of Solomon. This was the start of the Templars. [170] They followed the Benedictine Rule. The Templars can be seen as competition – the Order of St. John's Statutes prohibited membership of the Hospitallers by a

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[163] 'κάθάίροσ'.

[164] Name derived from the city of Albi in the south of France.

[165] Refer to III.26. *The Crusader conquest of Constantinople.*

[166] The Pope had announced the Papal supremacy in two Bulls: Clericis Laicos (1296) and Unam Sanctam (1302), the curialist theory.

[167] Guillaume de Nogaret, lawyer and politician, prime advisor of Philippe Le Bel, also in charge of the 'dismantling' of the Order of the Templars. He personally arrested the 140 Templars of Paris.

[168] The very powerful 'Society of Jesus' was still supporting the Pope's complete authority over the Catholic Church in individual countries in the mid 18th century. Suppressed by Pope Clement XIV (1769-1774) in 1773, by the Brief 'Dominus ac Redemptor', after great pressure by the leading Catholic powers. See also the Bull of 1627 by Urban VIII (1623-1644) 'In Coena Domini', asserting spiritual power's supremacy over temporal power again.

[169] Baldwin du Bourg, a cousin of Baldwin I.

[170] This name came into being around 1140.

member of another religious Order – which quickly became equally important and even more important later. [171] On the other hand, as far as militarisation is concerned, they are the forerunner of the Hospitallers. Perhaps the first Order became too powerful in King Baldwin II's eyes, or it happened just as things are happening nowadays: an organisation is created and some fall out of it and form a similar organisation, respectively a good idea is emulated. In fact, if one was a Knight, one belonged to the Hospitallers, the Templars or to the Teutonic Order (created later, in Acre, about 1190). [172] These were the three main subdivisions of the order or class of Knights.

The Templars militarised very quickly. Their leader was Hugo de Payns (de Paganis), for whom Bernard of Clairvaux wrote 'De Laude Novae Militiae', sanctioning the concept of a Military Order. The Templars were based on the strange but popular idea of warfare as a penance. This also served as a basis for the Crusades. Against this idea inter alia Isaac de l'Étoile, around 1147, [173] Walter Map, during the Third Crusade and Jacob of Vitry, Bishop of Akkon.

Around 1120, Master Raymond du Puy divided the Order in three classes, i.e. Priests (capellani), Knights of Justice (milites) and Serjens or Serving Brothers (servientes). [174] Du Puy also came forward with new rules and vows. Priests and Serjens did not have to show gentilitial descent. Knights had to be of noble extraction, bore arms and monopolized the dignities of the Order. Priests performed religious services and ministered the sick. Serjens served in the field or in the infirmary and enjoyed various privileges in common with the Knights. Certain commanderies were specially reserved for them. [175]

According to the Catholic Encyclopedia (with which we agree this time): 'Strictly speaking therefore, the Hospitallers of Jerusalem only began with Raymond of Provence, to whom they owe their rule. This rule only deals with their conduct as religious and infirmarians, there being no mention of Knights.' [176] This decision to militarise was confirmed by Pope Calixtus II.

In 1128, the Templars were approved by the Council of Troyes. Immediately thereafter followed a host of donations. The Templars already

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[171] Although according to Sutherland, *Achievements I*, p. 58, the Order of St. John 'encouraged with generous zeal the formation of this new fraternity, and granted it pecuniary assistance'.

[172] See also Bull of 23 February 1192 of Pope Celestine III (1191-1198).

[173] O'Callaghan, *The interior life*, p. 8-9: Isaac, fellow Cistercian, referred to 'Monstrum Novum.'

[174] Conventual priests and priests of obedience, servants of arms, received in the convent and servants of office.

[175] Sutherland, *Achievements I*, p. 50.

[176] Catholic Encyclopaedia.

existed for about eight years then. This would indicate that this approval, with the relevant tax benefits, was the primary reason for the donations.

In 1144, Imad ad-Din Zangi, Lord of Mosul and Aleppo, rebelled against the Crusaders and terminated their control over Edessa. This prompted a Second Crusade (1146-1148) which ended with the failed Siege of Damascus. Nur ad-Din ibn Zangi of Damascus and Mosul (1146-1174) then gave the Muslim world the idea of a Holy War in the entire Eastern Mediterranean. Saladin (1138-1193), the first Ayubbid sultan, served in his court. Saladin succeeded Nur in 174 in Damascus.

In 1152, the Statutes of the Order became based on the Augustinian rule. The previously applicable Benedictine Rule was substituted by the Augustinian Rule. The Augustinian rule called for less austerity and contemplation, more common life and common work, in charity and harmony. It was combining clerical status with a full common life. This underlines the quasi-monastic character of the Order. In spite of various troubles between the Knights and the Bishops, these Statutes were recognised in 1154 by Pope Anastasius IV (1153-1154). Reference is made to 'Pauperos commilitones Christi' and to vows of chastity, obedience, not poverty, but sine proprio [177] and to a vita communis. Consors (women) could also join. The Order was acknowledged as an Order of Knights (Ordo Militiae S. Joannis Baptistae Hospitalis). It was relieved of tithes again.

How may we interpret this? As time progressed and the organisation and conflicts with the Muslims grew, the need was felt to stronger regulate things. In the meantime, the class of Knights had obviously become the most important. They were the most powerful and the wealthiest and the Order had quickly militarised. [178] It employed mercenaries in the 1130's. It had taken part in the defence of certain frontiers. By assuming the duties of Knights, it had been transformed into a military organisation. Simultaneously, the stricter Benedictine Rule was replaced by the more relaxed Augustinian Rule. Le Goff also distinguishes between the spiritual Order, which in his view started in 1099 and the military Order, which in his view started in 1154. [179] Somehow the two stayed merged, although there was no real religious Order, but only a quasi-religious Order with (later) a quasi-charitable, nursing character.

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[177] According to Le Goff, C*ivilisation*, p. 170, most early medieval people already owned nothing or near to nothing.

[178] Gibbon, *Decline and fall*, p. 229: 'The austerity of the convent quickly evaporated in the exercise of arms' and Mayer, *Kreuzzüge*, p. 78, where he observes that: 'Aus der Kaufmansgründung war damit ein ständisch exklusiver Ritterorden geworden'.

[179] Le Goff, C*ivilisation*, p. 533.

In 1154, the Order of St. John had militarised. Before 1148, there is no reference to a Brother Knight in the Order. Grandmaster Raymond du Puy (1120-1158/60) was instrumental in militarising the Order. [180] This militarisation was a consequence of the fact that most Knights who had fought in the first and following Crusades, went home after fulfilling their vows to conquer the Holy Land. Under King Baldwin III (1130-1162), the Latin Kingdom covered the entire Holy Land from the coast to the heights east of Jordan. The southern border ran from Ascalon to the Red Sea. A few thousand Europeans ruled a far greater number of Easterners. But the local feudal lords only had the obligation to serve a specific limited number of days. The Orthodox Christians in the Kingdom were not satisfied. They now fell under the spiritual authority of the Roman Catholic Church, while they themselves followed the Orthodox rite. The Moslems did not keep quiet. The militarisation of the three Knightly Orders was the solution found, creating a kind of standing army from the second half of the 12th century.

III.21. Militarisation as logical consequence of earlier developments

Charlemagne had forbidden priests to wear arms. In practice, his reign meant an important step on the road to evolve the concept of war in Church ethics. Pope Nicholas I (858-867) spoke out repeatedly against an armed clergy and soldiering by priests. Italian clergy (Atto of Vercelli), in the late 10th century, still opposed fighting and soldiering by priests and regarded it as a work of demons, not of priests. In the 11th century, Cardinal and Teacher of the Church and counsellor of Leo IX, Petrus Damiani, was a strong opponent, not only of Holy Wars, but of all war. At the same time, priests were fighting all over the place and the warrior class slowly became a part of the Church. War in service of the Church or in defence of the weak, came to be regarded as Holy. It became a religious duty, not only for the King, but also for every individual Knight.

Developments could not be stopped. The Order also militarised in imitation of the Templars. So did the Orders of Calatrava, Santiago, Alcantara, the Teutonic Order, St. Thomas of Acre, Montjoie, St. George, The Brothers of the Sword and S. Stefano. The Templars and the Order of St. John became very rich and even acted as international bankers. This wealth was amassed by about 300 Knights in each Order. This overshadowed the charitable or Hospitaller side. Koster rightly says 'They constituted themselves into a Military Order with religious overtones.' [181]

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[180] Sire, *Knights of Malta*, p. 6.
[181] Koster, *Prelates*, p. 17.

Miles or eques or caballarius is the Latin for Knight. The term Miles seems to have been used for the first time in the early 10th century. [182] The Knight is part of the feudal aristocracy. Knights are also referred to as valvassori minores or secundi milites. These were inferior vassals, who were generally holding feudal territories which they had often acquired from ecclesiastics. Since approximately 1075, or earlier, the class of Milites had become a hereditary caste. This was also based on legislation issued in 1037 by Conrad II (1024-1039), a Salic or Franconian Emperor, who played the valvassori minori against the valvassori majori and the grand feudal lords, also the ecclesiastical ones, thus considerably diminishing the power of the latter.

The Knight distinguished himself first of all by carrying arms, riding on horseback (development of heavy cavalry). [183] This already dated from the times of Charlemagne. The core of his army consisted of heavy cavalry. The equipment needed for a Knight can be estimated at the time at a value of 18 to 20 cows. The Knight also distinguished himself by his lifestyle (hunting, castles, tournaments, war) and by his ethics (the oath of loyalty, extremely important in a feudal society) and by generosity.

For various reasons, Knights became a closed class in the 13th century. The old Germanic tribes, among whom the important Franks, already distinguished between nobles, freemen and slaves. [184] These three classes, typical for Indogerman peoples and the class of the clergy, later supposed to be the highest class, still very much subsisted in the Middle Ages. Some say the Middle Ages went on till the French Revolution, because only then the class system was more or less abolished. [185] At an early age, the young noble started physical exercise. He then became a squire or shield bearer to a Knight and would serve him and accompany him on his travels. At maturity, about 18 to 20 years old, he would be proving his worth, preferably in real combat. Theoretically, nobody by being noble, could automatically become

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[182] Le Goff, *Civilisation*, p. 123, refers to 971.

[183] Lynn T. White Jr., *Medieval Technology and Social Change* (Oxford 1962): 'The horse has always given its master an advantage over the footman in battle, and each improvement in its military use has been related to farreaching social and cultural changes'.

[184] Publius Cornelius Tacitus, *De origine et situ Germanorum*; caputs 25 and 44 refer to nobiles, ingenui, liberti or libertini and servi; Savigny, *Beitrag*, 14:4-14:18.

[185] The Communist Manifest of 1847, by Marx and Engels, says: 'The history of all hitherto existing society is the history of class struggle'. Nobility is a class of 'free', who were able to obtain a privileged position. See also an interesting description of the Victorian social hierarchy in the 19th century, in David Ross, *The Irish Biographies, George Bernard Shaw* (2001), p. 12 f.f.

a Knight ('Nemo aeques nascitur, sed per habentem potestatem solita sub formula' and 'Licet generis nobilitas in posteros derivetur, non tamen equestris dignitas') although Knighthood was in principle reserved only to nobles ('Ad militarem honorem nullus accedat, qui non sit de genere militum'). Ministeriales were 'unfree', who could become a Knight. The Order of St. John, once militarised, applied the same principle. It checked the nobility of a candidate for Knight of Justice in four ways, i.e 'testimonial', 'literal', 'local'and by 'secret enquiry' and assumed such candidate had already been knighted by a Catholic Prince, but if this was not the case, the person who took his profession or some other Knight of the Order could knight him. [186]

At the occasion of being knighted, the Investiture, he swore loyalty to his Liege and to defend the Church, ecclesiastics, women, widows, orphans and other defenceless persons and to always behave bravely and nobly. Characteristic for Knighthood was the dubbing with the accolade, the tip on the shoulders with the sword, his last humiliation, 'in the name of God, St. Michael and St. George'. [187] The Church made Knighthood its servant. [188] But all major positions in the Church were usually filled by nobles. The ideal of Knighthood can probably best be described as 'an arduous fight for a Holy Cause'. The Crusades were the high point of knighthood and at the same time its decline. Many did not return and many became heavily indebted. Due to the first Crusade and the victory of the Church over the Emperor in the Investiture Controversy, Papal prestige had considerably increased.

The Knight as a cavalryman comes to the fore in the feudal world because of a variety of military, religious, social and cultural reasons. The cavalry was the assembled body of noble warriors. 'In these equestrian cohorts lay the pride and the strenght of the army.'[189] The word Miles became synonymous with the word noble (nobilis, the nobilis originally being the 'Uradel'). A kind of brotherhood, a kind of warrior fraternity or guild, came into being across the borders, in all countries or regions where feudalism had spread, composed of those who were Knights and therefore

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[186] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 11, item 2 and p. 120-133.

[187] The accolade consists of a tip with the (blessed) dubbing sword on the left shoulder, the right shoulder and the head. The tip on the left shoulder means 'be valiant', the tip on the right shoulder 'be loyal', the tip on the head 'be sincere'.

[188] A powerful example from the old medieval German Investiture formulae, $10^{th}/11^{th}$ century: 'Hear our prayers, o Lord and with the hand of Your Majesty bless this sword with which Your servant desires to be girded, so that he will be able to defend and protect the Churches, widows and orphans and all servants of God against the attacks of the heathen and may become the terror of all who are seeking to take their lives.'

[189] Sutherland, *Achievements I*, p. 33.

cavalrymen and active in the same field and governed by the same laws, customs and code of honour.

Those who joined the military Orders usually belonged to the lesser nobility. To speak of higher and lower nobility is a misnomer. Knights were not the Uradel. [190] Knights are the lesser nobility. Many joined mainly to improve their situation. Knights were not paid, but the spoils of war would be split. Land conquered, would be divided among bishops, priests and temporal vassals. In this context, we refer again to the Frérèche or Fraternitia in the Macon. Indeed, the coming into being of the military Orders was a logical and natural consequence of the economical and cultural developments.

III.23. Chivalry and the medieval pathos of life

It is probably not possible to understand what happened without going in here and in the following paragraph somewhat deeper into the notion of chivalry. As mentioned, chivalry is the system, spirit or customs of medieval Knighthood. Knighthood is defined as the qualities befitting a Knight and chivalry is also defined as Knights as a class or body. Nobility is defined as the quality or state of being noble in character, quality or rank and as the body of persons forming the noble class in a country or State. The prerequisite for nobility is virtue ('virtus nobilitat'). Virtue is defined as a particular moral excellence. Knights were supposed to be those nobles who defended the poor, the sick and the defenceless. Gibbon, anticipating on his version of the story of the Crusades, provides a wonderful portrait of chivalry. [191]

In the Middle Ages, there was great pathos of life. [192] A general passion permeated life in every aspect. In this, the mentality differed tremendously from the present day mentality. In many aspects, life in the Middle Ages had the character of a fairy tale. The main notions in which one lived, were those of the folk song and the romance of chivalry. The life of kings was surrounded by an atmosphere of adventure and passion. The duty of honour and revenge, in spite of Christianity, played a large role, to which was coupled the old and very strong belief of loyalty to the Liege, as one of the primary feudal and knightly virtues. The medieval sense of justice was unshakable and still mainly heathen and culminated in the need for revenge. A crime was simultaneously a threat to humanity and an assault on God's

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[190] Savigny, *Beitrag*, 64:1-64:10 and 68:1-68:7, who also says there were Knights without a feudum and feuda held by persons who were not Knights, ibidem, 59:26. This is perhaps most obvious in the case of feuda held by clergy.

[191] Gibbon, *Decline and fall*, p. 204.

[192] Huizinga, *Herfsttij* and Le Goff, *Civilisation*, passim.

majesty. There were only two extreme possibilities, the full measure of criminal punishment, with the accompanying satisfaction justice had been done, as well as an almost animal enjoyment in executions, or forgiveness. Some main sins in the view of the Church were and are pride (superbia), greed (cupiditas), the will to to dominate others (libido dominandi) and opulence (luxuria). The city of Valletta called itself 'Humilissima', but was called by others 'Superbissima' sometimes. General is the complaint in the literature of the time against the rich and the greed of the Great. People, not without reason, saw their lifes as a sequence of mismanagement, extortion, war and robbery, death and scarcity and pestilence. Interesting to note is also that the main virtue in the view of the Church was obedientia. An escape was evidently needed. It could theoretically be forsaking the world; improving the world, which was blocked or appeared to be blocked by the doctrines of Christianity, or a flight into a dream.

III.24. The dream of a noble and heroic life

The entire medieval aristocratic life is based on the attempt to play a dream and French Knightly culture strongly cultivated this dream of a beautiful life in the form of a hero ideal, concentrating on the serious battle of a ferocious and proud race with its own hubris and rage. But the age of feudalism and a flowering Knights class is nearing its end already in the 13th century and is then followed by the period in which the cities and the Kings, whose power rested on the funds put at their disposal by the cities, slowly started to control society. The only thing left to the Dominus out of the Feudum, after the usefulness of Knights had disappeared because of military developments, was a right to an ever inflating fixed amount, whenever a new vassal acted and the chance to get back the feudum somehow, for example because of lack of heirs or breach of loyalty. Nevertheless, the noble way of life continued to influence society long after nobility lost its dominating significance and here we also have to seek the psychological origin of the desire of many to join a chivalric Order, even or particularly nowadays. Money is probably the prime status symbol, but if one has riches as well as rank, what could be more beautiful? [193]

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[193] R. van Luttervelt, *De buitenplaatsen aan de Vecht* (Lochem 1970), p. 62-64, explaining that noble titles connected to the acquisition of certain estates in the Province of Utrecht, greatly heightened their popularity to 17th century Amsterdam patricians desirous to embellish their bourgeois names with the aura of noble titles and estates. In the long run, the number of estates was too small for the growing class of regents. Everyone wanted to adorn himself with a second name.

Society in the Middle Ages was essentially hierarchical and static. It really remained so till the French Revolution. There were not only the three well known classes or orders of clergy, nobility and the third class, the villains (peasants). Every grouping, function, profession or occupation, was seen as a class, or order. Protecting the Church, increasing the faith, saving the people from oppression, fighting tyranny and strengthening peace, were all more or less exclusive tasks of the nobility, who at the same time as it was feeling compassion for them, which was their duty – it was the duty of a noble to protect the weak – despised and mocked the villains. On the other hand, true nobility was supposed to be based on virtue and all men were religiously supposed to be equal. This would however only be realised in the after-life, not on earth. Nobility was called to buttress and purify the world, by living up to the knightly ideals. Nobility and science were later supposed to be 'the two pillars of the world' and the inclination later was to grant the same rights as to the nobility, to the magister or doctor. All high offices in the Church were in practice also reserved for people of noble birth only.

Even religious notions were brought under the Knighly ideal, for example St. Michael, the Archangel, was deemed to have been or be the first Knight. Knighly ideals and religion were very closely intertwined, for example the Knightly bath before the Accolade was given, was deemed to be a kind of sacrament. The Knighly ideals were supposed to lead to a striving for universal peace, based on the unity of Kings, the conquering of Jerusalem and the driving out of the Turks. The Crusades did not introduce the notion of war as a religious service, but strenghtened this notion.

Society was coloured by the Knighly ideal and history was recorded as the noble deeds of Knights. But the ethical ideal of Knighthood was continuously dragged down by its sinful origin, hubris raised to beauty. The glory of Kings was supposed to lie in pride and in undertaking dangerous enterprises. Respect was primary for a proud man and respect had to be earned, but the real history of aristocracy unfortunately is a continuing story of hubris, coupled to unashamed self interest. Love of glory and personal ambition is the core of French early Knighthood. Bravery was also recommended for its own sake, solely for honour and glory and not for any religious or moral reasons. Historical heroes were glorified, particularly those who had fought the Turks. [194] Religious and Knightly phantasies melted together. The basis on which the Knightly ideal was built out to a noble image of male perfection, really was the primitive ascetic emotion of pure battle courage and battle lust.

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[194] The 'Song of Roland', for example.

In the Crusades, this Knighly ideal, of necessity, but also naturally, connected itself with the 'monk ideal', in the Order of St. John, the Templars and the Teutonic Order. The connection of the Knightly ideal with religious notions, such as compassion, justice or loyalty, is not artificial or superficial. The ascetic characteristic of courageous self sacrifice, inherent to the ideal, is also strongly connected with the ethical digestion of unsatisfied desire. [195] The Knightly Orders have their strongest roots in the holy usages of primitive times before Christianity. The accolade really was a puberty rite. Nothwithstanding the Christian elements, primitive parallels are underlying very much.

The three first Knightly Orders mentioned above, were the purest embodiment of the medieval spirit and came into being by the connection of the knightly ideal with the monk ideal, when the battle against Islam had become a wondrous reality. They became huge political and economic institutions, enormous complexes of estates and financial powers. Their political usefulness pushed their religious and knightly game elements to the background and their economic satiation killed their political usefulness.

In the period in which they were flourishing and still working in the Holy Land, Knighthood had fulfilled a real political function and as class organisations, the Orders have had great significance, but this ended in the 14th and 15th century. [196] Since then, Knighthood had become only a supposedly higher form of life. The word 'Order' did have many meanings, 'holiness' or group, or social class, or 'Monks' and 'Knights' Order. Another word for the Knights Orders was 'Religion', which normally would be used for pure monks or conventual Orders. At any rate, the membership of such Knight Orders was felt as a strong and holy bond and it was also necessary to get somewhere in Knightly life to be a member of one of these Orders. Many new Orders were also set up in the late Middle Ages, for various reasons.

The vows are a testimony of the primitive origins of knighthood and most immediately find their origins in Viking times. They could be regarded to be on a par with spiritual vows, or as having a romantic, erotic nature and finally as a courtly play. The vows taken by knights belonging to the three great Knightly Orders were 'sine proprio' (or poverty, as some say), 'castitas' (chastity) and obedience. The prime virtue in the Roman Catholic Church is obedience. Furthermore, but not the least important, the continual fight against the enemies of the Cross (the 'Infidels' or 'Unbelievers'). They might be called frérêches, which got out of control. Already from the 12th

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[195] Bradford, *Shield and the sword*, p. 32: 'a repression of the natural instincts; a repression that could only find its release in that death of which 'the little death' is no more than a pale mirror'.

[196] Steenhuis, *Ridderorden*, p. 51.

century, they met a lot of opposition. Nevertheless, two of these Orders reached some kind of statehood, the Teutonic Order in the Baltic, in the 13th century and the Knights of St. John on Rhodes, in the 14th century and on Malta in the 16th century.

III.25. The Infidels turning the tables

We then see that as the Muslims achieved greater success – for example, in 1154, Ascalon was conquered on the Infidels – new privileges were granted to the Order, for example by Pope Adrianus IV (1154-1159). While the Maltese See became suffragan to the Metropolitan See of Palermo, because the Kings of Sicily enjoyed the privilege of nominating candidates for appointment to vacant sees in their lands, Alfonso VIII of Castil furthered the 'Reconquista'. He fought the Almohads for many years. As the old nobility began to become unreliable, he then used the monks and the Knightly Orders of Santiago and Calatrava. Already under Abbot Raymond, the Order of Calatrava attacked the Moors, conquered much land and won many castles and privileges.

Through an alliance with the Kingdom of Jerusalem, the Fatimide realm was then more or less degradated to a Frankish protectorate and the Franks tried to conquer Egypt under King Amalric. The Knights of St. John supported this, while the Templars were reluctant. This was the beginning of diametrically opposed policies, pursued by both groups. The Fatimids asked the Ayubbids in Syria for help. They sent Saladin. In spite of help sent by William II of Sicily to the Fatimids to stop Saladin, Saladin then conquered Damascus.

Up till these years, the Order was warned by the Popes that their first obligation was serving the poor. A crisis inside the Order seems to have occurred then. Those who were more in favour of caring for the sick and the poor, were against further militarisation and the continuous taking over of castles with attached high expenses. From then on, the Grandmaster, who used to rule rather autocratically, was obliged to ask the Chapter's consent for far-reaching decisions, among which taking over a castle. In 1172, Pope Alexander III again recognised the Order's privileges.

Also in the framework of the Crusades, the power of the Popes had been growing all the time and in 1179, at the Third Lateran Council, Pope Alexander III received the 'plenitudo potestatis', the power over all temporal power. Future legal elections of a Pope would require a two thirds majority of the Cardinals' votes. In those days the militarisation of the Order had progressed sofar that the Hospital was staffed by paid servants. But on 4 July 1187, the Crusaders were defeated at the Horns of Hattin, near Tiberias. Their army was crushed. In this fierce battle, around 15.000 Christian soldiers under King Guy de Lusignan – whose life was spared, together with

that of the Grandmaster of the Templars, while about two hundred others, Templars and Knights of St. John, were decapitated after the battle – were slaughtered by a Muslim force of 18.000, under Saladin. The outcome of this battle prepared the Muslim reconquest of Jerusalem and of the greater part of the three Latin States of the Eastern Tripoli, [197] Antioch and Jerusalem. It stimulated Europe to a third Crusade. But on 2 October 1187, Jerusalem finally fell after 88 years, precisely on the annual ascension day of the Prophet Mohammed. It was conquered by Saladin in a holy war ('Jihad'). [198] The Crusaders then retreated to Margat, Tripoli.

Also Saladin harnassed faith to his efforts by strongly using the concept of a 'Holy War', like the Christians did. Schiller sees religious wars as wars about other issues than religious ones. [199] The real issues according to him, are clothed in religious differences, to more easily inflame the combatants. An essential part of Saladin's policy was the growth and spread of Muslim [200] religious institutions. This time the Arab world was under one command and not divided, which had been the case during the First Crusade, when Jerusalem was conquered. This time the Christians were torn by internal crises and disputes.

It is also interesting that before Hattin, the Muslim population lived in great prosperity under the rule of the feudal lords and the Knightly Orders. The region was a great producer of cotton and sugar and a very important trade route to the Far East. Friendly relations had arisen between Knights and Arab Sheiks, with mutual visits. [201] Trade between Egypt and the Italian city-States remained brisk during the Crusades. However, in spite of peace treaties and armistices, Muslim merchants and pilgims were frequently attacked. Even the Red Sea coasts were targeted for Christian raids. This prompted Saladin to take up arms. Saladin was also the Protector of the sacred Muslim places Mecca and Medina. Some Crusaders then robbed a Muslim caravan which –on its way from Cairo to Damascus– was trekking alongside Crac des Chevaliers, the Jordan castle of the Knights of St. John. This was a provocation which caused the start of the Holy War.

In 1189, another Crusader castel, Belvoir, fell. Around 1189/1190, we then see the origin of the Teutonic Order, in Acre. Called 'The Hospital of St. Mary of the German House in Jerusalem' (Domus Sanctae Mariae Theutonicorum in Jerusalem). Started by German merchants, like the Order

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[197] The 'Eastern Tripoli', or in Arab 'Tarabulus Ash-Sham' in northwestern Lebanon.

[198] Saladin, a Kurd, was the founder of the Ayyubids. The last Ayyubide was deposed in 1250 when the Mamluks took over. He was considered to be a paragon of chivalry. He is the greatest Islamic hero of the Crusades.

[199] Schiller, *Historische Schriften* (Phaidon, Essen), p. 609.

[200] Muslim means 'one who surrenders to God'.

[201] Mayer, *Kreuzzüge*, p. 138 and note 75.

of St. John, during the almost two year siege of Acre, the key to Palestine, by Friedrich von Schwaben, eldest son of Friedrich I Barbarossa. The Pope once more sanctioned the military aspect of the Order of St. John and in 1191; Pope Clemens III (1187-1191) issued a Bull of Protection to the Teutonic Order. In 1192, Acre and the coast were in the hands of the Crusaders again and Acre became the new capital city. It was not for nothing that Acre was beleaguered many times. It was a very important and wealthy economic centre until the trade routes changed around 1260. The most important sources of income of the Kingdom were the customs and harbour taxes in Acre and Tyre, who were competing with the delta harbours in Egypt. Pilgrims paid a certain wealth tax, levied on what they brought with them, until 1130. In 1192, a peace treaty is concluded between the Ayubbids and the Crusaders. Free passage to the holy places in Jerusalem is guaranteed by Saladin.

In 1198, the Teutonic Order militarised. With regard to caring and nursing, the rules of the Order of St. John would apply, but the Knights connected to the Teutonic Order would follow the rules of the Templars in so far as the military aspect and religion were concerned. Confirmed in a Bull of Pope Innocentius III of 19 February 1199. Only in the mid 13th century, the Teutonic Order received its own statutes. However, the versions which were in force in their various balleys, were not always the same. An important difference between the Order of St. John and the Templars was, that the Templars were not active in caring and nursing the sick, etc. They limited themselves to being a spiritual fighting Order.

III.26. The Crusader conquest of Constantinople

Notwithstanding the above military setbacks, the Order of St. John had become very wealthy and influential at that time. The same applies to the Templars. The Knights of St. John and the Templars became more and more powerful in the Holy Land – the Italians controlled the cities, the Knights controlled the land – but also in Europe. [202] The Knights of St. John had the strongest castles, particularly north of Tripoli, concentrated at Margat and Crac des Chevaliers. In the south they had Belvoir. The Templars had Chastel-Blanc and Tortosa in the North and in the South, they had Safed and Chateau Pélerin.

From 1201-1204, we see the Fourth Crusade, which ended on 13 April 1204 with the Fall of Constantinople. The capital city of the Byzantine or Eastern Roman Empire, for centuries a bulwark against invasions from the East, was subjected to pillage and massacre for three days by their fellow

[202] The Knights of St. John 'owned' about 19.000 manors in Europe.

Christians, the Crusaders, among whom the Knights of St. John. Plundering of the city went on for years. [203] This was also a consequence of the excommunication by Cardinal Humbert of the Greek Orthodox Christians, which formally legally speaking had enabled the Roman Catholic agressors to fight their fellow, but Orthodox Catholics. It also enabled the Knights to carve out Greek estates for themselves. European Sovereigns did not participate in the First Crusade. Baldwin, Count of Flanders and Hainaut, became Emperor of the East (1204-1205). A Venetian became Latin Patriarch at Constantinople.

III.27. The influence of constant war on the position of the Knights

In 1206, Knights were constituted as separate class, next to Chaplains and Sergeants. [204] Another Crusade started, this time against the Kathares or Albigensians in the South of France, while the Teutonic Knights started their first venture into Eastern Europe. In the Fifth Crusade (1217-1219), the Crusaders conquered the important trading hub Damiette in the Nile delta. Blood bath again. In the meantime the battle for supremacy between Holy Roman Emperor Frederick II and Pope Pope Gregorius IX (1227-1241) went on and on 29 September 1227, Frederick II was excommunicated by the Pope. Not only the relationship with the Pope but also the relationships between the Emperor and the Orders of St. John and the Templars became very strained, the latter two siding with the Pope. During the Sixth Crusade, Frederick II nevertheless recovered Jerusalem in 1229, crowned himself King and made a ten year and rather humane peace treaty with al-Kamil, Ruler of Egypt.

Since 1230, separate houses (‘auberges’) had been created for the Brothers-at-Arms, i.e. the Knights of St. John and under Master Bertrand de Comps, Knights received precedence over Brother Priests. But in 1244, Jerusalem was conquered and pillaged by the Kaspian Korasmians, who preceeded the Mongols and definitively lost. The subsequent lost battle of Gaza inflicted a heavy blow on the Knights in Palestine. Crusades in 1248 (Seventh Crusade) and 1270 (Eighth Crusade), both under Louis IX (1226-1270), the later St. Louis, were to no avail. Both were complete failures. While Mamluk rule was established in Egypt and the last Ajjubbide was deposed, the Grand Priory of Germany was created and in the Mediterranenan, the Colonial Wars between Venice and Genoa were breaking out. In 1258, the Mongols destroyed Bagdad, the Abbassid capital

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[203] Nicetas Choniates, Byzantine chronoclist: ‘The Saracens are kind and compassionate in comparison with these people wearing the cross of Christ on their shoulder’.

[204] Statutes of Margat.

and ended Abassid rule. In the meantime, the Knights were fighting amongst themselves again in the War of Sabas, between Knights of St. John and Templars (1259). The Mongols were defeated by the Mamluks in Palestine and in 1261, the Latin Kingdom collapsed under the pressure of Sultan Baybars (1260-1277), [205] who applied a scorched earth policy. The Paleologues (Michael VIII Paleologue) re-take Constantinople. The Genoese maintained a stronghold in Tyre, but were excluded from Acre. Acre fell to the Venetians and the Pisans.

In 1262, Mastership became restricted to Knights. While the Anjou's were penetrating Sicily, Safed, a Templar stronghold, fell and in 1268, Antioch surrendered, 170 years after its conquest by the Siculo Norman Bohemund I. Since 1270, all High Offices of the Order were reserved to Knights only, except Prior. In 1271, Chastel-Blanc (Templars), Crac des Chevaliers (Knights of St. John) and Montfort (Teutonic Order), were all conquered by Sultan Baybars.

In 1272, Grandmaster Ugo de Revel (1258-1277) concluded the militarisation development. The nobility requirements for Knights (and nuns) of the First Class were stressed again. [206] Knights were authorised to wear a black cloak in hospital and a red tunic bearing a white cross in the camp, to distinguish them from the serving brothers. [207] Candidates, who had been a member of another Order, were declared inadmissible. [208] The employment of strange confessors was prohibited unless sanctioned by the Bishop of the Order. [209] Under Revel, it was also decided that each Commandery should contribute a fixed sum annually, styled 'responsions', payable in money or troops, to avoid fluctuating income and to cope with the problem that 'sometimes' the expenses of the Commandery were equivalent to their revenues. In the same Chapter, the Knights were forbidden to make wills, appoint heirs or bequeath any legacies without the consent of the Grandmaster. [210] 'Thus, while on the one hand, they subscribed to a statute, framed merely to pander to aristocratical pretence, they rivetted others which annihilated individuality of interest, and rendered them rich only in their

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[205] Mamluk, true founder of the Mamluk State.

[206] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 12, item 5 and p. 13, item 17, respectively p. 14, item 26.

[207] Confirmed by Bull of Pope Alexander IV (1254-1261).

[208] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 12, item 9.

[209] Vertot, ibidem, *Title III*, p. 20, item 7. See also Vertot, ibidem, p. 22, item 22, on promotions of clergymen and admittance of clergymen to the Order, stricly controlled, according to the text.

[210] Vertot, ibidem, *Title IX*, p. 68, item 20, for a statute from Grandmaster Verdale (1581-1595) which is interesting in this connection.

collective capacity'. [211] We may wonder what caused this active law making under Revel. Was he farsighted and did he try to organise for the future, in anticipation of the loss of Palestine, or was he irrealistic and thinking Palestine could be held? Fixed responsions would anyway have a far reaching negative effect on the Order's financial possibilities, as spear head organisation and necessitate seeking supplementary sources of income. But perhaps this was intended.

In 1285 followed the surrender of Margat, the main base of the Knights of St. John. In 1291, it all ended with the dramatic fall of Acre and the wounded Grandmaster of the Knights of St. John, Jean de Villiers, escaping to Cyprus. In about two centuries after the early beginnings, the Knights had been able to completely monopolise the Order. In this period fighting had become more and more important and necessary, as the Infidels had steadily hit back rather successfully. The Order had also in the meantime continuously increased its wealth by various means, also by acquiring fixed income from a great number of Commanderies in mainland Europe. One cannot build and run a castle like Crac des Chevaliers (acquired by the Order in 1142) and numerous other castles and strongholds without money and fighting men. It has to be added that also a lot of churches were built, in the beginning in the Roman style and later in the Gothic style. The Gothic style may even have been derived from Islamic examples. Castles had to be built because in the open field, the Crusaders could not resist the Muslim hordes.

III.28. The feudal system in the Holy Land

As of Baldwin I, a full-fledged feudal system had been installed in the Holy Land. A lot of people saw the Crusades as a way to become rich and or to become free feudal lords in the Holy Land and not for nothing. 'They often lived in ostentatious splendor, honouring chastity more in the breach than in the observance' [212] and 'The laws and language, the manners and titles, of the French nation and Latin church, were introduced into these transmarine colonies'. [213] The feudal system was pervaded, how strange it may seem, by a sense of liberty. To be a feudal lord could mean a large degree of freedom.

About 50 castles were built from Ile de Gray in the Gulf of Akaba to the Amanus mountain chain in the North, as a necessary protection against the

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[211] Sutherland, *Achievements I*, p. 214-215.

[212] Bradford, *Shield and the sword*, p. 28. Different Smith/Storace, *Order of St. John of Jerusalem*, p. 16 ('The rules with regard to associating with ladies in Malta were strict, and depending on the age, generally observed.'). For the Teutonic Order and celibacy in general, Deschner, *Das Kreuz mit der Kirche. Eine Sexualgeschichte des Christentums* (1989).

[213] Gibbon, *Decline and fall*, p. 226.

Arab attacks from the desert. [214] But the financial ability of the feudal lords of Palestine alone was not sufficient to build and maintain these castles. The need to build and maintain these castles, caused by the geographical situation, but also by the shortage of men in the Latin Kingdom, already in itself strongly furthered the development of the three great Knightly Orders.

These castles, granted as a fief by the King of Jerusalem or by one of his barons, slowly passed into the hands of the Knightly Orders, particularly the Templars and the Knights of St. John. They were able to do so inter alia because of their rich sources of income, also from Western Europe, at the time. The castles, designed by Italian and French architects, enabled the Crusaders to cling on to Palestine for about 200 years. The main function of the castles was fiscal and defensive. [215] Compare this with the situation of the Teutonic Order in the Baltic. Their castles were also extremely important and impregnable bastions which secured the survival of the Teutonic Order. [216] They also were centres of trade and culture. There were only two periods of intense warfare, i.e. the period of Saladin in the late 12th century and the period of Baybars in the late 13th century.

The castles fell because of the ever increasing lack of manpower, carelessness, internal strife, starvation and improved and sophisticated Muslim beleaguering techniques. Soldiers were provided by the lower feudal lords (knights), by the Knightly Orders, by the clergy and the bourgeoisie, while light cavalry was recruited from the local population (baptised muslims, called 'turcopoles'). Mercenaries and of course the annual influx of Crusaders, were also important. It was a matter of survival to attract men from Europe, willing to fight and to settle. But war never was only a public necessity, but always also a private way of earning a living.

III.29. Western European expansion and colonialism

In this framework, we would like to make some further remarks about the Crusades. [217] A Crusade formally had to be called for by the Pope, it required a vow of taking up the cross, while a collective or plenary oblate ('remissio peccatorum'), also for survivors and temporal privileges were awarded.

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[214] A.A. Kampman, 'Kruisridderburchten in het Midden-Oosten', in *Varia Historica* (Assen 1964), p. 129-149; D. Pringle, 'Templar Castles on the Road to the Jordan' in M. Barber (ed), *The Military Orders: fighting for the faith and caring for the sick* (1994).

[215] Mayer, *Kreuzzüge*, p. 154.

[216] Hans K. Schulze, *Grundstrukturen der Verfassung im Mittelalter I* (Stuttgart, Berlin, Köln 1995), p. 105-106 and Mayer, *Kreuzzüge*, p. 154.

[217] Steven Runciman, *A history of the Crusades I-III* (1991).

The history of Christianity is without doubt extremely fascinating but also very complex. [218] The Crusades are part of this history, but at the same time have to be seen in the light of a Western European expansionist and colonialist movement, caused by a mixture of Knightly, religious, demographical, economic and national motives, which started already in the 8th century. As examples of this expansion can be mentioned the Scandinavian expansion into Normandy, England and Southern Italy, [219] the French expansion into Spain (French mercenaries were instrumental in achieving the Reconquista), the Midi and the Two Sicilies and the German expansion, colonialising the North-East, in which the Knights of the Teutonic Order were instrumental. About 1018, the Normans were introduced in Southern Italy as mercenaries. The Siculo Normans were influential in the First Crusade. Erdmann rightly connects the Battle of Hastings (1066), with the Spanish Crusade (1064) and the First Crusade. [220]

Take into account also the expansion of the Italian city-states like Venice, Genoa and Pisa into the Mediterranean. Take into account also Papal expansion into southern Italy and Albania, traditionally Greek/Byzantine influenced and orientated. The events taking place between the middle of the 11th century and the end of the 13th century, among which Crusades, also have to be seen in the light of this expansion. In this context it is interesting to note that the main ports from which the Crusaders drew their supplies, were situated in Siculo-Norman territory, i.e. Bari, Messina, Otranto and Taranto, just conquered before the First Crusade and the Normans already had links with Antioch, resulting later in the Siculo-Norman Principality of Antioch.

It has to be granted that the Crusades to the Holy Land were already only because of their psychological effect, the spearhead of the medieval Christian expansionist movement. Material causes, mainly of a demographical nature, but also of an economical nature, played an important role. These were inter alia the desire for expansion of power, enlargement of territories and revenues. In the Middle East by the 'capitanei', the great lords and the valvassores majores. Valvassores minores were trying to find the same and escaping the consequences of the rule of primogeniture and escaping creditors. There were trade political aspects involved. People were also trying to escape famines and unrest and generally escaping the consequences of increased population pressure. But the Crusades also had a very important mental and emotional context, as explained supra when discussing chivalry. [221] Since Charlemagne, a mythology had come into

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[218] Thomas Head, *A guide to research in the history of the medieval Christian church*.
[219] Gibbon, *Decline and fall*, passim; Bradford, *Shield and the Sword*, p. 14 and passim.
[220] Carl Erdmann, *Die Entstehung des Kreuzzugsgedanken* (1935).
[221] Supra, p. 89, *III.23. Chivalry and the medieval pathos of life.*

being concentrating on the continuous fight between the Christian Knight and the Muslim. The highest chivalric ideal was to fight the Infidel, who was considered to be a stubborn heathen, rejecting truth and conversion. De-humanisation of the opponent was and is a common phenomenon. The Prophet Mohammed was permanently equalled to the Anti-Christ. [222] The Crusades were seen as the ideal of the 'passing', the conquering of the earthly Jerusalem as the image of the 'Heavenly Jerusalem'. This led to a series of ventures combining religious fanaticism, lust for plundering and the urge to escape increasing demographical pressure. [223] Knights and peasants alike without doubt saw a way out in the Crusades for the population growth in Europe. Land and riches and fiefs overseas might be acquired.

The Church had also awarded tremendous material and immaterial advantages to those joining the Crusades, to rich and poor alike. Pope Urbanus II (1088-1099), who called for a Crusade at the General Council of Clermont, in November 1095 and Bernardus of Clairvaux (1090-1153), who called for a Crusade in 1146 in Vézelay, also wanted to provide Christianity with a 'Grand Cause', to bring about Christian unity. The cross had become a symbol of passion, suffering, but during the Crusades it became a symbol of triumph again and received back its original meaning as under Constantine the Great: 'In hoc signo victor eris'.

III.30. Vital meaning of Christian Holy War concepts

Bernardus of Clairvaux wrote 'De Laude novae militiae', in which he defended the concept of a Holy War against the muslims. This was part of the 'Nova religio', a warrior theology exalting the Holy War for Christ. Death on the battle field in a Holy War for Christ would result in sitting at the table of Christ in heaven. These developments started at least from 1012 under Pope Sergius IV (1009-1012) and went on till at least 1464, when Pope Pius II (1458-1464) died. The strong connection between faith and war is an important phenomenon of the High Middle Ages. Compare Mayer: 'die Theorie vom heiligen Krieg und die damit verbundene Ausbildung eines christlichen Rittertums durch die Kirche und für die Kirche hat den Boden aufgewühlt und vorbereitet, und erst dadurch wurde ein Kreuzzug überhaupt möglich.' [224] An example of Bernardus' powerful writing, freely translated: 'To suffer or give death for Christ, never is a crime, on the contrary, it is glory. The warrior of Christ can kill with a quiet conscience and die in peace. If he dies, he is working for himself, if he kills, he is working for

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[222] Le Goff, *Civilisation*, p. 181-182.
[223] Bradford, *Shield and the sword*, p. 14 ff.
[224] Mayer, *Kreuzzüge*, p. 25

Christ. He therefore carries his sword for a good reason. He is ordained by God to punish evil and to raise good. When killing an evildoer, he is not a killer of man, but a killer of evil, and one should regard him as the avenger in Christ's service, the defender of the Christian people.' [225]

At Clermont, the Pope proclaimed 'plenary indulgence' to the Crusaders, the absolution of all sins and a full receipt for all that might be due of canonical 'penance'. An elaborate system of penance had been developed to mortify sins committed. 'Indulgences' commuted penance into money debts. This had an enormous effect on the sinful and fanatic medieval world and caused an enormous enthusiasm for the Crusades. The Popes took the spiritual and tried to take the temporal lead of the Crusades, thinking that in this way they had an opportunity to lead the divided and exuberant 'Respublica Christiana'. The same facility which which was instrumental for the tremendous growth of the Order, the tax exemption, was also instrumental for the success of the First Crusade. But in 1188, a 'Saladin's tithe', equal to one tenth of one's property, was levied on those, including clergy (in spite of protests), who refused to personally serve in the Crusade. [226]

III.31. Ultimate effects of the Crusades

The Crusades however did not bring unity or victory or increased trade with the Orient, or new techniques and products, or intellectual riches, nor even caused or increased a penchant for luxury. Genoa and particularly Venice were able to get rich, because of the chartering of ships and the providing of loans to Crusaders. The Crusades generally empoverished the Knight's class and also increased beginning national ressentiments between the forming nations. They also caused a lasting rift between Constantinople and the West. This culminated in the capture, slaughter and sack of Jerusalem (1099) and Constantinople (1204) and many despicable other excesses, such as habitual pogroms against Jews on the way and many other bloodbaths and general pillaging. The 'Furor Normannorum' [227] would long be remembered by the Muslims. The same fate as Jerusalem was suffered by Antioch (1097), Constantinople (1204) and Alexandria (1365). All four old Christian 'Patriarchates', existing next to Rome, were sacked. But then again, also Rome has been sacked many times. Also in 1527 by Charles V. [228] Nevertheless, some claim that even if the Christian creed sometimes and

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[225] W. Ronner, *Die Kirche und der Keuschheitswahn. Christentum und Sexualität* (1971). Beltjens, *Origines*, p. 309-311.
[226] Sutherland, *Achievements I*, p. 123.
[227] 'A fvrore normannorvm libera nos Domine..'. English prayer, 9th century.
[228] Bradford, *Shield and the sword*, p. 19.

particularly in the Crusades, gave an outlet to the forces of savagery, Christianity was always exercised or intended to be exercised to repress or canalise these forces. [229] But the development of Christianity apparently has very long been one of 'barbarians' wrestling with barbarians, with the Christian faith and with themselves, to finally give birth to all encompassing Christian love?

The need to finance the Crusades led to increased Papal taxation and the very dubious 'oblates'. Finally, the spiritual Knightly Orders, who appeared to be incapable of defending the Holy Land, threw themselves on Europe, where they indulged in many military and financial extortions. 'The world was scandalised by the pride, avarice and corruption of these Christian soldiers; their claims of immunity and jurisdiction disturbed the harmony of the church and state'. [230] This proved fatal in the case of the Templars. [231]

In view of the above, many historians see the Crusades as a fatal chimera which gave expression to many collective medieval desires and dreams. On the other hand, to say something positive about the Crusades and the geopolitical insight of the Popes, since the Battle of the Horns of Hattin, there was an ever growing number of victories [232] of the 'Turks' over Christianity, if we may see it this way, culminating in 1453 in the taking of Constantinople, except in Spain, where the Moors were forced to give up Granada on 2 January 1492.

The power of the Ottoman and other Islamic nations had grown and threatened the Christian monarchies. They had closed the land routes to the East and had made the sea route from the South Red Sea hard to access. In the course of the next centuries, the Turks kept coming west. What we really saw was a new fight for naval supremacy in the Mediterranean – which the West finally won – and the failed defence of the Balkan. Due to Ottoman supremacy there, the state building processses which took place elsewhere in Europe, did not take place there. Therefore, some may argue the Popes were at the time perhaps geopolitically not wrong from their point of view, in urging Crusades. [233] They went perhaps wrong in the direction of the

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[229] Gilbert Highet, *The classical tradition* (Oxford 1949/1976), p. 354.

[230] Gibbon, *Decline and fall*, p. 229.

[231] Infra p. 113, *IV.6. Taking over the Templar Estates.*

[232] 1182, Battle of Hattin; 1187, Fall of Jerusalem; 1261, Collapse of the Latin Kingdom; 1285, Fall of Margat; 1291, Fall of Acre; 1353, Turks obtain first stronghold in Europe; 1389, Turks destroy Serbian Realm; 1396, Battle of Nicopolis; 1453, Fall of Constantinople; 1480, First Siege of Rhodes; 1492, Moors ousted from Granada; 1522, Six Months Siege of Rhodes; 1523, Retreat from Rhodes; 1551, First Siege of Malta; 1565, Great Siege of Malta; 1571, Battle of Lepanto.

[233] Koster, *Prelates*, p. 16: 'Roman Catholic indoctrination, which then started, prepared the islands for their forthcoming role as a Christian bastion in the Mediterranean, when after the Middle Ages the time of the crusades was definitely over and another wave of Islamic

Crusades, the handling of the action and the consequent destruction of Constantinople. The Crusaders naturally went to the most strategic place in the Mediterranean. This was and probably is Constantinople. Even now, Istanbul is among the biggest cities of Europe, with about 10 to 12 million inhabitants. This is about 5/8 of the present population of the entire Netherlands, for example. It was the capital of the most important nation of the West, always a bulwark against the Turks, now called Istanbul and Turkish. The Popes kindled a fire they could not control.

But the West is not at war with the Turks anymore. On the contrary, they are respected allies of the West now and might in the long run even join the European Union as full members. Turkey would then in due course be the biggest member State in the European Union. In the course of time, people also got used to the Turkish danger. It was seen as a serious threat and not discarded or ignored, but one did not know how to cope with it. Venice and France and many famous and influential Hungarian families backed the Turkish imperialistic goals which were not very different from the political goals of the Christian powers. According to Vajda, the Turkish threat even had beneficial consequences from the viewpoint of growing democracy. [234]

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expansion had to be stopped'; Mayer, *Kreuzzüge*, p. 7: 'Man hätte erwarten sollen, dass Europa einig gewesen wäre, als es sich zu einem energischen Gegenstoss gegen die Muslime aufraffte, die vom 8. bis 10 Jh. so viel Unglück über Europa gebracht hatten.'

[234] Vajda, *Felix Austria,* p. 143-151

IV. SECOND PHASE (1291-1523): LOOSING THE ORIGINAL OBJECTIVES AND BECOMING A SOVEREIGN POWER ON RHODES

IV.1. The Order of St. John on Cyprus

In 1291, an earlier proposal to merge all Orders [235] was revived, but again not accepted. The Fall of Acre, which had become a Venetian dependence and was conquered on 18 May 1291 by Sultan al-Malik al-Ashraf, meant the definitive end of the Crusader realm. The Knights had to leave the Holy Land.

Having fled from the Holy Land, the Order of St. John established itself at Limassol, on the island of Cyprus. The King of Jerusalem, Guy de Lusignan, [236] was also King of Cyprus. Cyprus was allied to Venice. The Order became a vassal of Henri II de Lusignan, then King of Cyprus and quickly commenced building a fleet and started buccaneering. The purpose of the Order altered. One could say this is the beginning of the second phase in the development of the Order. The departure to Cyprus marks the final end of the original – theoretical, but in the beginning also practical, but at least from then on mainly theoretical – purposes of the Order. These were to take care of sick or wounded pilgrims and then to wage continuous war against the Infidels, respectively to defend the Holy Land against the Infidels and never to leave it. England and Portugal had already started sequestration action against the Order of St. John and the Temple, on the grounds they had lost their purposes, but Pope Boniface VIII (1294-1303), anxious to maintain the counter balance to the rising royal power, created by the privileges granted to the noble members of these Orders, was able to prevent this.

From Cyprus, the Order started 'naval' operations, together with the Templars. Henry de Lusignan, the King of Cyprus, was then able to get rid of the Knights, inter alia because castles could only be built there with permission from the Crown and the Knights were taxed. In the process he had to cope with a revolution stirred up against him.

IV.2. Reorganising the Order in the aftermath of the loss of the Holy Land

While weak Master Eudes de Pins (1294-1296) nevertheless complained about interference by the Pope in the affairs of the Order of St. John –he

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[235] The original proposal was from 1274, but was rejected. At the Second Council of Lyon, the Grand Logothete George Acropolites also accepted Roman Catholic orthodoxy and Papal supremacy on behalf of Emperor Michael VIII Paleologus. Later withdrawn.

[236] The De Lusignans reigned on Cyprus from 1192-1489.

would not be the only Grand-Master doing so– a war of France against England or rather a war of French against French, was going on. On 25 February 1296, Pope Boniface VIII issued the Bull 'Clericis laicos'. Through this Bull, he tried to counter a special tax levied by Philip the Fair on the French clergy. Any taxation of the clergy was forbidden without the approval of the Holy See. It was also forbidden to pay un-approved taxes and to accept the same.

The Order of St. John participated in a Crusade against Damascus and Jerusalem and in 1299 Jerusalem was reconquered, but lost again. Meanwhile, in 1301-1304, a reform of the Statutes of the Order took place under Master Guillaume de Villaret (1296-1304). Seven 'Langues' or 'Tongues' were created (Provence, Auvergne, France, Spain, Italy, England and Germany). [237] Their leaders were called 'Piliers' and six 'Offices' were created (Grand Commander, Marshal, Hospitaller, Drapier, Admiral, and Turcopilier. Later these became eight Offices). The Langues were divided into Grand Priories, Grand Priories into Priories and Priories into Commanderies. It was evidently felt necessary to tighten the connections with the Order's home bases in Western Europe. Without their means, the Order on Rhodes, at least in the beginning, would have been nothing. All income from the Holy Land had fallen away. There was little income from buccaneering yet.

The Langues came into being out of the practice of summoning general meetings, the Chapters General. They were meant to strenghten the links between the Convent or headquarters (or spearhead) and the European homelands. These Langues are usually listed in their order of precedence. Provence had a special position in the Order, due to an accumulation of 'capitular' dignities. [238] Later, in Russia, the Catholic Russian Grand Priory allegedly received similar precedence. Each Langue was headed by one Pilier and each Pilier was in charge of one of the six (later eight) 'Offices' of the Order. The Order was governed by the Reigning Grandmaster and the Sacred Council, being more or less equal to each other, until the Grandmaster developed into an absolute monarch, particularly under de Pinto and de Rohan, in the 18th century. The Chapter General, originally the democratic basis, was basically used for dealing with increases in responsions and not often. Normally, the Chamber of the Treasury dealt with responsions, passage fees, mortuaries and vacancies and prizes. The Grand Commander, who always was the chief of the Langue of France, would head this Chamber. The Grandmaster had a procurator in this Chamber. [239]

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[237] Steenkamp, *Ridderorden*, p. 27, refers to 1295.
[238] Sire, *Knights of Malta*, p. 37.
[239] Infra p. 300, X. THE ORGANISATION OF THE ORIGINAL ORDER.

Where in the course of history, Langues and/or Grand Priories and/or Priories or Commanderies, for whatsoever reason (the Reformation or 'suppression' [240] or for other reasons), fell away, the titles previously connected therewith, remained intact, respectively continued to be granted by the Order as 'Honorary' titles. [241] This is nothing new. A person for example can be a baron and not have a shread of land, except perhaps his own backyard in a suburb. This also depends on the national nobility system involved.

Furthermore, when we speak of the Order, it is very hard to be all encompassing. The Order was divided into territorial organisations which had a loose connection among themselves, even in a Langue and with the Convent, briefly in Cyprus, then on Rhodes [242] and finally on Malta. The headquarters can be said to have functioned also as an alibi for the homelands. As long as practically or theoretically, the fight against the Infidels went on and in practice the 'Corso', a system of organised legal piracy (buccaneering), [243] went on, the illusion which enabled nobility or high clergy – which basically was the same – to continue to control large estates more or less tax free under a pseudo-religious ideal, could continue. Provided it was not interrupted by other developments, as it was, such as the French Revolution. The creation of the Langues also created a lasting conflict between internationalism and nationalism in the Order. By the end of the 14th century, the Order was a virtual federation of national societies, rather than a united cosmopolitan Order.

IV.3. The collapse of Papal power; the destruction of the Order of the Temple

In 1303, Pope Boniface VIII was humiliated (smacked) at Anagni, which was instigated by Philip the Fair (1268-1314). This was the practical end of medieval Papal aspirations to not only spiritual but also temporal supremacy. At that time, the Templars left the island Ruad, their last retreat, in front of Tortosa. The humiliation of Boniface VIII by a raid of French troops on his summer residence, can be regarded as the overture of the Late Middle Ages. From then on, the national States with France in the lead, were on the rise. The influence and power of the centrally run Church in the West, was considerably reduced from this moment.

Followed rumours about the Templars and the beginning of the Order's attempt under Master Foulques de Villaret, to occupy Rhodes. Having

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[240] To 'suppress': to put down by authority or force.
[241] Vertot, *History II*, *Dissertation*, p. 128.
[242] The Collachium.
[243] Steenkamp, *Ridderorden*, p. 27, refers to security tasks, carried out for centuries.

somewhat earlier expulsed the Jews from France, under sequestration of their estates, King Philip IV, the Fair, always in need of money for his many wars, then ordered the collective arrest of the Templars and the sequestration of their property in France on 13 October 1307, which was followed by Pope Clement V (1305-1314) ordering the arrest of the Templars in every country. Pope Clement V can only be seen as a puppet of the King of France: 'Pope Clement V was a cynical casuist, Philip's creature and a man of easy conscience.' [244] At the same time, a Papal Bull granted Rhodes ('territory of schismatics and Infidels') to the Order of St. John, in perpetuity.

Much has been written about the Templars. [245] There is no doubt they were treated very unfairly and harshly and not really in a Christian manner, to say the least. They can be deemed to have been an instrument of Papal power against Philip the Fair which Philip wanted to get rid of. The Templars were also his bankers. [246] They had been in this position of bankers for about a hundred years. Like the Knights of St. John, the Templars had become very rich, due to all their special rights and many gifts. At the beginning of the 13th century, they could raise an army of around 15.000 men, among whom around 1.500 Knights. Since the beginning of the 14th century, they had become bankers for the nobility, clergy and pilgrims. Their headquarters was the Temple in Paris. Bernard of Clairvaux was their real protector and chief ideologist. [247] Like the Knights of St. John, the Templars had many serfs. They had their own priests, their own Churches and their own graveyards. Disciplin played a large role. Also in the Order of the Temple, there was not only a vow of obedience, but also of poverty and chastity. Homosexuality allegedly was rife in this Order.

Knights Templar controlled about 2.000-3.000 Commanderies in Europe, among which around 1.200 in France. But the fact that much of the property of the Templars was transferred to the Order of St. John is also indicative. After having had to leave the Holy Land and setting up shop elsewhere, there was evidently a tremendous need for money with various people. This was partially satisfied by some raids of the Order of St. John in Greece. The proceeds were mainly used to improve their headquarters on Rhodes. They had not fallen from grace, although in 1238, Pope Gregory IX (1227-1241) had accused the Knights of St. John of sheltering loose women, greediness, corruption, communication with the Greek Orthodox Church and blatant

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[244] Bradford, *Shield and the sword*, p. 56.

[245] M. Barber, *The new knighthood: a history of the Order of the Temple* (1994); H. Nicholson, *The Knights Templar: a new history* (2001).

[246] Le Goff, *De woekeraar*, p. 76, refers to an inquiry made by Philip the Fair in 1284, mentioning interest rates asked by Lombardian lenders, of between 34-266 %.

[247] Deschner, *Kriminalgeschichte VII,* p. 457.

abuse of privileges. Sutherland refers to a fatal blow to their reputation. [248] But obviously one strong organisation was still felt needed in the Mediterranean, in view of the interests of the Church and those connected with it, particularly France. The Order was trying to become established on the strategically important island of Rhodes, while the Templars were not. The Templars had become more of a 'State in the State' in mainland Europe than the Order of St. John. The Templars had repeatedly rejected proposals for merger, for the last time through their Grandmaster Jacques de Molay, in 1306. From Rhodes, the Order of St. John would allegedly continue its actions against the Infidels and might even re-conquer Palestine. Thus the basic reason for the privileges granted did not fall away in their case.

IV.4. The Order of St. John and the Teutonic Order seeking new territories

While Master Foulques de Villaret was trying to conquer Rhodes, Pope Clemens V moved the seat of the Curia, the official residency of the Papacy, to Avignon from Rome, in 1308. The Papacy would stay in Avignon till 1378. De Villaret seems to have been removed as Grandmaster, because he had become a dictator and was morally corrupt. At around the same time, the Grandmaster of the Teutonic Order took up residence at Marienburg, Masuren, now Malbork, Poland. Also this Order spearheaded a colonialisation movement. Obedience and loyalty were deemed extremely important. The vow of the Teutonic Order even required obedience till death. Chapter 26 of their statutes required the complete elimination of one's own will. As Hitler allegedly said in some speech: 'Die Partei wird in ihrer Lehre unveränderlich sein, in ihrer Organisation stahlhart, insgesamt: wie ein Orden!'. Can one draw a direct line from the Teutonic Order through German army tradition, to the 'Befehl ist Befehl' principle? [249] In that respect there is a difference with the Knights of St. John, who were more democratically minded.

The Teutonic Order formed a pivotal point in the in the Holy Roman Empire in the disputes between Pope and bishops or spiritual authority, on the one hand and Emperor or King or the temporal authority on the other hand. They colonialised Prussia and parts of Poland and waged war with the Poles and the Letvians. There were no ties with the Levant anymore. Like the Knights of St. John on Rhodes, they became a chivalric theocratic State.

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[248] Sutherland, *Achievements I*, p. 184-185.

[249] H. Rauschning, *Gesprekken met Hitler* (Amsterdam/Antwerpen 2003), p. 220-224. Refer to also the epilogue by H.W. Von der Dunk; and to John W. Wheeler-Bennett, *The Nemesis of power*, *the German army in politics 1918- 1945* (London 1953).

Their possessions were spread over more than 10 countries. This included The Netherlands, Spain and Italy. A kind of sovereignty was exercised in Prussia. As liege lord they recognised the German Emperor, but on the other hand the Pope, as the head of each spiritual institution. There was active trade with the Netherlands and England. In this trade, they played a key role. In their aspirations to achieve independence, they took advantage of the differences between Pope and Holy Roman Emperor.

IV.5. The occupation of Rhodes; the sovereignty of the Order there

In 1310, Rhodes was finally subdued by a combined force of Knights of St. John and Genoese. Later, they also took seven islands in the vicinity. [250] The Order would stay on Rhodes till 1522 and slowly became a Sovereign State. There were twenty four Grandmasters on Rhodes during this period. The conquest of Rhodes marks a special moment in the history of the Order. A territory was acquired and the Order was slowly recognised as an international legal person by the community of States (in sofar as already existing as such). Either as a perfect international person, an apparent international person or an international person sui generis. Formally, Rhodes was enfeoffed to the Order by the Byzantine Empire.

Rhodes was really occupied by a foreign agressor after three years of fighting. Sutherland qualifies it as 'nothing better than am piratical enterprise, justifiable only on the ground that the natives had entered into a league with the Infidels, and given shelter to Saracen corsairs in their ports.' [251] Under public international law, there are a number of ways of acquiring a territory. These can be distinguished in peaceful ways, i.e. 'originary' ways and 'derived' ways of acquiring territory and in violent ways of changing borders. Peaceful and originary ways are: a) occupation of stateless territory ('terra nullius'); b) accession, through natural events, or by way of artificial means; c) the forming of islands in border rivers or in territorial waters ('insula in flumine nata'); d) changes in the course of a border river and e) acquisitive prescription of a State which belonged to another State. Peaceful and derivative ways are: a) succession, by way of heritage, to be distinguished from State succession; b) barter; c) sale and d) cession, transfer of sovereignty. Violent ways are conquests, to be distinguished by their motives, which can be striving for power and glory and the very important economic and cultural motives. Next to violent and peaceful, we have to think of a group of particular other ways, such as: a) international concessions and trading posts and b) international servitudes.

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[250] Dodekanese.
[251] Sutherland, *Achievements I*, p. 249.

Here, in the case of Rhodes, we formally had no transfer of sovereignty, but an enfeoffment. But this enfeoffment comes so close to transfer of sovereignty, that it is a disguised forced transfer of sovereignty. Sovereignty stayed as 'nudum ius' in Byzantine hands. This is tantamount to relinquishment of territory. This enfeoffment went farther than the one of Malta in 1530, by Charles V, as King of Sicily. [252]

Under public international law, a Sovereign State comes into being when at least three elements are legally speaking complied with, i.e. a permanent population, a territory and a government having effective control. There are no requirements for the size of the territory. Neither is it required that the territory is exactly delimitable. There are also no requirements for the size of the population. Finally, it does not matter, who is factually exercising sovereignty, as long as it is exercised in the Sovereign's name. [253] Here, on Rhodes, we have a transfer of Sovereignty; we have a local permanent population and the Knights, a defined territory and the exclusive competence to take legal and factual measures within that territory, prohibiting foreign governments from exercising authority in the same area without consent and the effective goverment by the Knights. A new State was formed on a defined territory on which previously authority was exercised by another State, Byzantium. The Grandmaster was styled 'Prince of Rhodes' by Pope Nicholas V in 1447. In 1334, the Order also negotiated a treaty with the Pope, the King of France and the King of Cyprus, on an equal footing. [254] But the capacity to enter into relations with other States is not generally accepted as a necessary element to be complied with.

When international lawyers say a State is 'sovereign', this means that it is independent, i.e. that it is not a dependency of some other State, although one has to remember that it is debatable to which extent any country is now truly sovereign, given the growth in scope and reach of international public law. [255] The word 'sovereignty' can be substituted by the word 'independence' and the word 'sovereign' by the word 'independent'. 'The highest authority is called that authority which actions are not subject to someone else's jurisdiction, in the sense that it can be undone by the will of some other human being.' [256] A State, whose foreign or other policy is controlled by others, cannot be regarded as a State. [257] The existence of a

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[252] Infra p. 124, *V.2. The end of a seven year wandering period.*
[253] Kooijmans, *Internationaal publiekrecht*, p. 20-21.
[254] Mentioned inter alia in Varillon, *L'Epopée.*
[255] Cox, *Acquisition of sovereignty*, p. 4.
[256] Akehurst/Malanczuk, *Modern introduction*, p. 17; Hugo Grotius, *De Iure Belli ac Pacis* (I.III.VII.1); Jean Bodin, *Six Livres de la République;* Kooijmans, *Internationaal publiekrech*t, p. 2. But (also according to Grotius), this does not mean that the Sovereign is 'legibus solutus'.
[257] François, *Handboek volkenrecht I*, p. 88.

government implies the capacity to establish and maintain a legal order, in the sense of constitutional autonomy. Externally, it means the ability to act autonomously on the international level, without being legally dependent on other States within the international legal order. If therefore one regards the Knights as having acquired statehood on Rhodes, their foreign policy can never be deemed to be subject to Papal control or approval, or they would lose such statehood. We will see that also later, on Malta and in Russia, the Order took all its decisions of foreign policy, inter alia making important treaties with Czar Paul I and surrendering Malta to Napoleon, without asking prior approval therefor from the Pope.

The general rule of international law also was (and is) 'Par in parem non habet imperium', meaning that every exercise of authority by one Sovereign over the other, is illegal. The State of the Order on Rhodes was internationally recognised, inter alia by the Pope. When surrendering to the Turks in January 1523, the State of the Order on Rhodes was annexed by the Turkish Empire and went under. It was re-established later on Malta, but went under again because of the Surrender of Malta to Napoleon.[258] Thereafter, it was never re-established. There is no territory, at least not such a territory that continuation between new and previous State authority can be assumed.

But we must also realise that the process of development of the State and of the concept of Sovereignty went forward rather slowly. State sovereignty comes to the fore with vigour in the 16th century. In that century, the theory of pretended unity of a universal Church and a universal temporal empire under the guidance of Pope and Emperor, started to crumble. In theory, temporal Princes were subject to the Emperor under the feudal system and as Catholics, subject to the Pope. In practice, the power of the Emperor was limited to Europe and even in Europe, his supremacy was not recognised formally everywhere and much less in practice. The Reformation created other Christian communities than the Roman Catholic Church. More and more States appear on the scenes which are not subject to the jurisdiction of the Emperor and the hierarchical legal structure of his Empire.

It is hard to follow that an entity can be a Sovereign State on the one hand and a religious Order subject to canon law on the other hand. At any rate, it seems that the Order by becoming more or less a Sovereign State, became more independent than it already was from the Church. It is also submitted that in its international relations, the Order was subject to international law only and that international law prevailed over canon law.

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[258] Infra p. 156, *VI.1. Malta surrendered by the Order.*

IV.6. Taking over the Templar estates

In 1309, a Bull of Pope Clemens V recognised the conquest of Rhodes by the Order and in 1312, at the Council of Vienne, by the Bull Ad providam, Pope Clement V decreed the abolition of the Templars. It will come as no surprise that to this day there are many people maintaining this Order was not entirely suppressed and continued its existence regularly and uninterruptedly throughout the ages up till the present times.

Their property was transferred to the Order of St. John, or confiscated by the temporal or spiritual authorities. [259] This enriched the Order of St. John as well as the King and the Pope and made them more powerful. The Order seems to have taken advantage of the illegal suppression of the Templars without any scruples. [260] As a matter of fact, the Order of St. John fought hard where necessary, to obtain Templar possessions. The Pope and his 'nephews' acquired various Templar properties in the Provence. It can be said that money corrupts, because it was also due to the amalgamation with the Templar estates, that the Order further lost its original character. [261] The vast majority of the Templar Commanderies were taken over by Knights of St. John, except in Aragon and Portugal. Then a contraction of the numbers occurred. In France alone, 200 former Templar Commanderies were taken over. These were reduced to 108 in 1373, but eventually to 53. [262] Further consolidation resulted in 630 Commanderies in Europe, in the year 1530. [263] The trend was reversed again in the 17th century, when rich Commanderies were split up to form new, smaller ones.

1312 saw the start of the Balley of Brandenburg, then still a Catholic part of the Order. The Balley really took off in Germany only after and because of the transfer of Templar estates to the Order of St. John. The Order succeeded in taking over Templar estates in France but had to pay huge indemnities. In itself, this underlines that others than the Order of the Temple were the real owners and the Order of the Temple, which was dissolved, had only been the trustee. In 1318, in possession of the goods, the Bailiwick of Brandenburg made itself independent and the Grand Prior of Germany asserted the independence of 'his' 67 Commanderies and declared himself to be their independent Prince. Another example is mentioned by Sutherland. Sir John Sandilands resigned all the possessions of the Order of

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[259] Sutherland, *Achievements I*, p. 256, note 1, for an enumeration of British principal residences of the Templars, which devolved to the Order of St. John.
[260] Sutherland, ibidem, p. 266-269, for further details about this takeover.
[261] Sutherland, ibidem, p. 269.
[262] Probably also has to do with the 'Black Death'.
[263] Sire, *Knights of Malta*, p. 108.

St. John in Scotland to Queen Mary and received them back again 'in feu', as his own private property, with a temporal lordship. [264]

IV.7. The Order in the remainder of the 14th century

A victory over a Muslim fleet made the Convent on Rhodes solvent again. Rhodes became an important commercial centre again. In spite of the start of the Hundred Years War between France and England, rather a Capetian-Angevin war, the Order of St. John in 1338 succeeded in taking over about all Templar estates in England. Things went well and in 1344 Smyrna was captured, in which the Order of St. John participated. But from 1347-1353, the Black Death raged in Europe. About 30 % (18 million) of the European population died of the plague. About 200.000 villages were emptied. A food crisis occurred. As a consequence, the Rule of Nobility of both parents was introduced in the Order in 1350. A distinction was made between Knights of Justice, of Grace and of Devotion. There were about 400 Knights on Rhodes at that time.

The Ottoman Turks obtained a first stronghold in Europe in 1354. From there they continued their raids on the Balkans. In 1361, Edirne (Adrianopolis) became the new capital of the Ottoman empire. In 1365, Alexandria was sacked by a Crusader army. The Order of St. John participated. Alexandria was the hub of trade in the Levant, particularly till far into the 12th century. Egypt had the transit trade with India and Arabia. In 1367, Pope Urbanus V (1362-1370) returned from Avignon to Rome, against the will of the Cardinals and the council of Charles V of France, but returned to Avignon again. In 1370, Pope Gregory XI (Avignon, 1370-1378), the last French Pope, appointed Juan Fernandez de Heredia (1376-1386) as Master of the Order.

From 1378-1417 followed the Great Western Schism. This resulted in 1378 in a Papacy in Rome (Urbanus VI, the Archbishop of Bari, recognised in the German Empire, Flanders, the greater part of Italy, England, Hungary, Denmark, Sweden and Norway); a second Papacy in Avignon (Clemens VII, Cardinal Robert of Geneva, recognised in France, Savoia, Scotland, some German territories, Naples, Sicily, Sardinia, later also in the Spanish Kingdoms) and a third Papacy, established by the Council of Pisa in 1409 (Alexander V, 1409-1410). This Schism ended only in 1417 by the election of Pope Martin V.

Throughout this period, the Order had been co-operating with the Avignon Popes. These Popes were later deemed uncanonical, from the start of the Great Western Schism in 1378. Strictly speaking, everything

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[264] Sutherland, *Achievements I*, p. 256, note 1.

promulgated in that period by these schismatic Popes or by the Order, invoking the authority of these Popes, might be deemed to be canonically illegal. In 1383, Pope Urban VI (Rome, 1378-1389) deposed the appointed Grandmaster de Heredia and appointed Riccardo Caracciolo (1386-1395), the Prior of Capua, as Grandmaster ('the Anti-Master'). The late 14th century therefore marked two un-statutory appointments of a Grandmaster by a Pope. The first one (Heredia) in 1377, by a Pope, who then was the only one and therefore not schismatic, but the second (Caracciolo) in 1383, by a Pope in Rome, while there was another, later deemed schismatic, Pope in Avignon, Clemens VII (1378-1394), elected on 20 September 1378 by the French Cardinals. In 1402, sixteen years later, this split-off was reconciled with the Order by the confirmation of the 'anti-Lieutenant Grandmaster' Caraffa as Prior of Rome of the Order.

Which Pope was the legitimate Pope, the Roman one, or the Avignon one, in view of the Great Western Schism? Heredia was appointed, not elected, as a result of his very close relationship with the Avignon Pope, who thought he could use him in connection with yet another Crusade. As the Order's control was predominantly French, this un-statutory appointment was apparently nevertheless accepted and Caracciolo's un-statutory appointment was apparently rejected by the French majority of the Order. The first appointment perhaps produced a good result, while the second appointment at any rate created confusion. Part of the Order followed Caracciolo.

As the first appointment, by an Avignon Pope, was accepted, a problem did not arise. The appointment did however constitute a breach of the Bull of 15 February 1113 which said that the Order would always be able to elect its own Master, but was not regarded as such. In the case of the second appointment, by a Roman Pope, a problem did arise. But in the view of the advocates of canon law – which in their view governs the Order – the Order should have listened to the Pope in Rome.

At any rate, the Great Western Schism did not disrupt the Order as much as the Church was disrupted by it. Finally, prepared by the Council of Constanz, in 1417 the Great Western Schism ended by the election of Pope Martin V (Cardinal Colonna, 1417-1431). Many had used the schism as a convenient excuse not to pay responsions. [265]

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[265] Koster, *Knight's state*, p. 2, claiming the responsions provided a steady income.

IV.8. The steady advance of the Turks; the Order's increased sovereignty

In the meantime the Turks had advanced. A French army, united with a German, Hungarian and Polish army, was beaten by the Turks under Sultan Bajazid at Nicopolis (1396). [266] However, in 1402, at the Battle of Ankara, the Turks were beaten decisively by the Mongols under Timur Lenk. In 1422, the inexorable western advance of the Turks is carrying on again and under Sultan Murad II, they beleaguered Constantinople. In 1426, Sultan Barsbay again (Mamluk, 1422-1438) ended Crusader rule in Cyprus.

Nevertheless, in 1428, the Rule of Nobility de Nom et d'Armes was fixed. Four generations of nobility were deemed necessary to be admitted. In the German Langue, for a longtime already, stricter requirements had been applied. As the Order became more powerful and wealthy and Rhodes had become more or less a commercial colony for the merchants of Narbonne and Montpellier, such as Venice and Genoa possessed in the other Aegean islands, [267] it became more attractive to join the Order. Therefore it was obviously felt necessary to make it a closed shop, which was successfully done. Particularly in the 14th and following centuries, the feudal three classes system came under increasing pressure and the 'bourgeois' was on the rise, as was the 'noblesse de robe'. [268]

Just after a new Hospital was built on Rhodes, the Egyptians attacked Rhodes in 1444. In 1448, the General Capitulum at Rome decided that the administration of the Order was completely independent from the Church, in all legal and financial matters, with the power to levy taxes and strike coins. This was confirmed by Pope Nicholas V, including the active and passive right of legation, the right of treaty making powers and the right of freedom of action.

Notwithstanding urgent calls by Cardinal Nicholas of Cusa traveling as Papal Legate through Germany and the Netherlands, preaching a Crusade against the Turks and the Bull Latentur Coeli [269] of Pope Eugenius IV, the Turks took Constantinople on 29 May 1453 under Sultan Mehmed II Fatih (1451-1481, the Conqueror). This marked the final end of the (Eastern) Roman Empire. In 1462, the 'Servitudo Marina', a compulsory sea service

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[266] This Crusade was organised by Hungary. Nicopolis is on the Danube.

[267] Sire, *Knights of Malta*, p. 37.

[268] In the 17th century, nobility of robe or office would be excluded from membership in the Order of St. John.

[269] Ratifying a formula of unity between the Roman Catholic Church and the Greek Church, read on 5 July 1439 by Cardinal Cesarini and by Archbishop Bessarion of Nicea. Rejected by Emperor John VIII, then promulgated by the last Emperor Constantine XI, then solemnly rejected by the Orthodox Church in 1472.

for the Rhodian population, was abolished and Pope Pius II (1458-1464) again confirmed the independent position of the Order.

IV.9. The role of Venice; Italian versus French colonialism

Venice had built up a strong trade position in Ottoman dominions. The Venetian War of 1423-1430 was basically a war about Salonika which Venice had accepted from Byzantium, to prevent Ottoman expansion across Macedonia to the Adriatic. Salonika was conquered in 1430, but Venice was allowed to become the leading commercial power in Ottoman dominions. The Venetian War of 1463-1479 was basically a war to take away Venice's important ports along the Aegean coast of the Morea. In 1479, Venice concluded a peace and surrendered its Albanian and Morean bases. In return for restoration of its commercial privileges, Venice agreed to pay an annual tribute. Mehmed II then used his naval force to attack Rhodes and sent a large force that landed at Otranto in 1480. Venice then gained control of Cyprus in 1489 and built a base there, used for raids against Ottoman shipping. Then followed the Venetian War of 1499-1503 which Venice lost, but in which it was able to retain control over Cyprus. Venice ultimately lost Crete in 1669.

IV.10. Continued Turkish expansion

The Ottoman fleet had become a major Mediterranean naval power. The Knights were pawns in this game, but in 1480, Grandmaster Pierre d'Aubusson (1476-1503) successfully defended Rhodes against Mehmed II. The expedition was led by a Greek renegade called Mischa Palaeologos and there were three other renegades involved, among whom a German engineer.[270] The Grandmaster received the 'Cardinal's hat'. He was created a lay Cardinal by Pope Innocentius VIII (1482-1492). Up till 1918, it was not required to be a priest to be created cardinal. A man noted for his doctrine, piety, prudence in affairs, could be created Cardinal. In the Renaissance, many Cardinals were created, purely as a noble dignity, with the rank of 'Prince of the Church', being the equal of Kings and Heads of State, but without having any relation with doctrine or piety. Pope Julius II (1503-1513) created various debouched as Cardinal. Until 1876, Popes were in the habit of creating their 'nephews' as Cardinal. Up till the 19th century, members of reigning families were traditionally created Honorary Cardinal. Since 1962, all Cardinals created have to be or have to become Bishop first.

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[270] Sutherland, *Achievements II*, p. 8.

Otranto was then destroyed by the Ottomans, in the framework of their invasion into Southern Italy under Sultan Mehmed II. The Moslems were moving up North and planning to occupy Rome. In 1481, Sultan Mehmed II, the Conqueror, suddenly died. His successor Sultan Bayazid I consolidated the Ottoman empire. Some claim, that if Rhodes would have been lost in 1480, the Turks probably would have conquered Italy twelve months later. At any rate, a lot of money poured into Rhodes from Western Europe after 1480.

In 1492, the Moors were ousted from Granada, their last stronghold in Spain. Not only the Moors, but also the Jews, who were encouraged by the Ottomans to emigrate to Istanbul, were forced to leave Spain. The power of the Ottoman and other Islamic nations had grown rapidly and threatened the Christian monarchies and had closed the land routes to the East. The Ottomans [271] were continuously expanding. They were Turkmenian tribes pushed west by the Mongols in the 13th century. The weakness of the Byzantine Empire and the decline of the Anatolian Seldjuks enabled their expansion. The Ottomans reached the peak of their power in the period from 1481 to 1566. The Knights were driven from Rhodes in 1522. The First Siege of Malta took place in 1551. The Second (Great) Siege of Malta took place in 1565. The Ottomans then declined in the period from 1566 to 1807. Further decline of the Ottoman Empire took place from 1807 till 1923. On 29 October 1923, the Turkish Republic was declared, under Kemal as first President.

IV.11. The Ghazi's and the Janissary; the Desvirme

In the first period, the Ottomans were the leaders of the 'Ghazi's'. These were Turkish warriors devoted to Islam and religious wars, like the Knights of St. John, the Templars or the Teutonic Order. They lived from the booty of their raids, like the Order. Again we see religious fanaticism harnessed to territorial expansion, raids and personal profit. They fought the shrinking Christian Byzantine States. They provided mercenaries to competing Byzantine factions in Thrace and Constantinople. Because of Byzantine decadence, they obtained possibilities of conquest in Europe. In 1361, Adrianopolis, the second Byzantine city, now called Edirne, was conquered. They then captured Macedonia in 1371, Bulgaria in 1386 and Serbia in 1389. In 1396, at Nicopolis, they defeated the Crusade organised by Hungary against them.

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[271] From Osman, father of the dynasty, probably 1300-1326.

From around 1430, Sultan Murad (1423-1430) began to build the new infantry organisation called the 'Janissary', [272] particularly composed of Christian slaves and Christian converts to Islam. The Janissary became the most important element of the Ottoman army. He also developed the 'Desvirme' system, in which framework Christian youths were drafted from the Balkan for conversion to Islam and life service to the Sultan. These Desvirme developed into the dominating party in the Ottoman Empire. The salaried Janissary corps remained the primary source of strength of the Desvirme. The Desvirme became dominant under Mehmed II and continuously wanted to make additional conquests. [273] Constantinople was one of their first objectives.

IV.12. The influence of Byzantine civilisation and Roman law on the Turkish empire

Finally, in 1453, Constantinople was conquered. It was expressly spared from devastation, but there were three days of looting. The Sultans then inherited the political, economic and social institutions of Constantinople and the administrative apparatus left by the Byzantines. The Osmans amalgamated this with their own system. Particularly important in this respect, is the reign of Sultan Osman el Ghasi (1259-1326) and even more so, the reign of his son Sultan Orkhan (1281-1359). They were also influenced by the Serbian and Bulgarian Empires. They then got the idea of recreating the Byzantine Empire, next to their Islamic and Turkish dominions and also started thinking of expanding farther West.

Many Christians, Muslims and Jews were stimulated to come to Constantinople. Greeks and Armenians did not easily accept their rule. Jews were loyal to them, having suffered constant persecution under the Greek Orthodox Church. Thousands of Jews, who had been expelled from Spain in 1492, settled in Constantinople, Edirne and Salonika. Constantinople's industry and trade were restored. Tax concessions were granted. The city was renovated. The Ottoman Empire did not require conversion to Islam. Nevertheless, many Christians converted to secure full status. There was even a time of Christian predominance at Court.

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[272] 'New Force'. They originated from a slave army, the 'kapikoelari' or 'slaves of the Gate'.

[273] Compare the position of the 'Koulaghi' in Tripoli, mentioned by Lo Celso & Busietta, *Il triangolo*, p. 26: 'used to living almost exclusively of privateering, they had always been against any peace talk.'

IV.13. Further Turkish advances into the Western direction

Herzegovina was captured in 1483. The Ottomans then controlled the major ports of Northern European trade with the Black Sea and the Mediterranean. Then followed the Venetian War of 1499-1503. Later, under Selim I (1512-1520), Mecca and Medina were conquered in 1517. Selim doubled the size of the empire – the Empire was about one million square miles then – adding the lands of the old Islamic Caliphate, with the exception of Iran, while Mesopotamia was taken by Suleyman the Magnificent. Istanbul then became more Islamic, due to an influx of people from the Arab world.

Under Suleyman I, the chief battle fields were Hungary and the Mediterranean. France was an ally ever since François I, King of France, had allied with the Turks against Austria-Hungary and the Holy Roman Empire. A land war was waged with the Habsburgs, mainly in Hungary. Belgrade was taken in 1521. Vienna was besieged in 1529. Hungary was annexed in 1541.

IV.14. Economic background

France received commercial favours from the Ottomans in 1536, under the 'Capitulations Treaty'. This established French predominance in the Levant. Organised military conflict had shifted to the sea, but the Venetian navy had declined. This is why Charles V wanted to seek control over the Mediterranean. He enlisted Andrea Doria of Genoa and thus obtained the support of the strong Genoese fleet. Suleyman drove the Knights from Rhodes, in 1522, by way of a response, not because he was primarily concerned with the Knights, although they hurt trade between Istanbul, Egypt and consequently, the rest of the Maghreb area. [274]

In 1538, Doria was routed at the Battle of Prevezza, off the Albanian coast. Venice then had to surrender the Morea and Dalmatia to the Ottomans. The Ottomans acquired naval supremacy in the Aegean. This lasted until the Battle of Lepanto in 1571. In this period, Malta was besieged twice, in 1551 and 1565. After 1541, Suleyman could not realise his ambitions in Europe mainly because of problems in the East**.**

In 1498, the Portugese had also discovered the direct sea route from Europe to India, around the Cape of Africa. The Mamluk/Ottoman economy lost its function of intermediary in the trade between India and the Mediterranean. The Desvirme triumphed over the Turkish nobility in the mid 16th century. The Janissaries became the most important element in the

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[274] Arnold Cassala, *The great siege of Malta (1565) and the Istanbul State archives*, Malta 1995, p. 17.

Ottoman Army. Nepotism, corruption and weak Sultans lead to a paralysis of administration, anarchy and misrule. Coupled to this, the closure of the traditional international trade routes through the Middle East in the 17th century by the Dutch and the British and inflation and imbalances of trade between East and West and simultaneous population growth, with ensuing famines, ruined the Ottoman economy.

In the 17th century, the Ottoman army was reformed. In 1683, Vienna was besieged again. This led to a European coalition, combining the efforts of the Habsburgs to reconquer Hungary, Serbia and the Balkans and those of Venice, wanting to regain its naval bases along the Adriatic and in the Morea and to resume its power in the Levant. Also Russia wanted to reach to the Aegaean, through the Bosporus, the Sea of Marmara and the Dardanelles. As enemies of the coalition, France and Sweden wanted to maintain Ottoman integrity. Britain and The Netherlands had obtained important commercial advantages and wanted to prevent anyone from obtaining control over the Ottoman empire and thus becoming the dominant power in Europe. Various wars [275] followed, but by 1812, the Ottoman Empire had lost important possessions and was rapidly declining. Important for us is also the destruction of the Ottoman fleet in 1770, at the Battle of Cesme by a Russian fleet. [276]

IV.15. The rise of the Habsburgs

The year 1500 saw the birth of Charles V (1500-1558) and the beginning of the wars between France and the House of Habsburg over Italy. In 1510, the Spanish stormed and took the Western Tripoli. [277] Then another Sultan, Sultan Selim I, the Stern, planned to become Ruler of the entire civilised world. The Ottomans beat the Safavids at the Battle of Chaldiran and conquered Mesopotamia and Kurdistan. At Merj Dabiq, the Mamluks were also defeated by the Ottomans. Egypt was governed from Istanbul again. Syria and Egypt were provinces of the Ottoman realm. Jerusalem and Cairo were conquered. The Holy Land was in the hands of the Ottomans. It remained part of the Ottoman Empire for four centuries.

In 1517, the Reformation, fuelled by humanism, heavy taxes and consequent dissatisfaction among peasantry, particularly in Mid and

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[275] 1683-1699, war with the Holy League; 1714-1718, war with Venice and Austria; 1736-1739, 1768-1774 and 1787-1792, wars with Russia and Austria; 1806-1812, war with Russia.

[276] A Greek harbour on the Aegean Sea. We find various large paintings of this important battle in the 'Chesmensky' room in the Peterhof, a summer residence of Peter the Great and (inter alia) Katharina II, near St. Petersburg.

[277] The 'Western Tripoli' or 'Tarabulus al-gharb', presently the capital of Libya.

Southern Germany and preceded by Hussitism, [278] began to gain full strenghth. Luther's ex-communication was accepted by the Diet of Worms, but the Bailiwick of Brandenburg became Protestant. At that time, the Corso delivered about 47.000 ducats a year.

IV.16. The Fall of Rhodes

While a peace treaty was concluded between Venice and Suleyman II, the Magnificent, also called the Lawgiver (1520-1566), Belgrade fell. In 1522 followed the Six Months Siege of Rhodes by Suleyman II. [279] On 11 January 1523, the Order retreated from Rhodes under Grandmaster Philippe de Villiers de l'Isle Adam (1521-1534), in fifty vessels. The surrender took place at the request of the Greek inhabitants of Rhodes. [280] The Knights were later also not greatly beloved in Malta, where they consistently excluded the original Maltese nobility who stayed in Nobile, or Mdina, on the grounds of racist notions. [281] The Order was allowed to take all arms, treasures and archives with it and was followed by 4.000 of the 20.000 inhabitants.

From Rhodes, which fortifications were mainly built by slave labour, the Knights had carried on an active system of buccaneering and pillaging and looting the coastlines of Syria, Greece and Turkey, without making much distinction between whom they attacked. [282] This seriously hindered trade between the West and the Ottoman Empire. The red thread throughout the Rhodes and also the Malta period is the need to finance their State by the proceeds of buccaneering, next to the flow of responsions from Western Europe. The outflow of these latter funds was jealously looked at by several parties. On the one hand by the payors, [283] but on the other hand also by the local Sovereigns and local clergy. In spite of inflation, the height of these responsions was seldom increased.

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[278] 15th century, Bohemia and Moravia. The Hussites, like the Albigenses, connected with the Orthodox.

[279] Burke, *Book of Orders,* refers to 400 Turkish sails and 140.000 men, 600 Knights and 4.500 soldiers.

[280] Sire, *Knights of Malta*, p. 39.

[281] Somebody who 'descended from Jews, Saracens or other Mahometans', could never join, according to a statute under de La Vallette: Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 17, item 37. Van Beresteyn, *Geschiedenis*, p. 9.

[282] Sutherland, *Achievements II*, p. 167: 'the whole mediterranean came to swarm with privateers manned by knights, who were scarcely more scrupulous as to the nature of the war they waged than the pirates whom they sought to extirpate'.

[283] Sweden, Denmark and Norway had not paid responsions in 1347 since 1291, the Fall of Acre.

The Knights fought Muslim pirates. They raided Muslim and other shores. They captured and sold Muslim and other ships as prizes and the captives for ransom, or used them as galley slaves. Galley slaves had to perform about the most brutal form of slave labour, together with local Rhodian debtors and pressed men. [284] It is significant in this context that Knights privately owned galleys, next to galleys owned by the Order. The monies did not necessarily always land in the Order's coffers. To put it mildly, not all the Order's 'naval' operations were of a strictly military nature. Under Grandmaster Verdala (1581-1595), the Order was not at war with anyone, yet this Grandmaster and Cardinal, Prince of the Church, regularly sent out his own private galleys. Trade between Egypt and Turkey and Venice and Turkey, as well as pilgrimage to the Islamic Holy places of Mecca and Medina, was seriously hindered by the Knights and their associates. [285] Venice congratulated Suleyman the Magnificent on his conquest. It expressed the hope for the suppression of piracy. [286]

On the other hand, the Knights might still be useful in view of the expansionist Turkish strategy and hindering the Turks in their attempts to control the Mediterranean waters. Gibbon said 'they neglected to live but they were prepared to die in the service of Christ'. [287] At any rate, in many encounters, they proved worthy of their reputation as fighters, particularly in the Siege of Rhodes. Although they lost Rhodes, this defeat increased their reputation. This was due inter alia to the propaganda by Guillaume Caorsin, Vice Chancellor of the Order. [288] Forgotten would be the oath sworn by the departing Grandmaster and the Knights to never again fight the Turks. [289] The departure from Rhodes marked the end of the only completely independent territory that the Order ever possessed.

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[284] 'Schiavi, buona voglie e forzati'.
[285] Sire, *Knights of Malta*, refers on p. 57 to a 'stranglehold'.
[286] Victor Mallia-Milanes, 'Charles V's Donation of Malta to the Order of St. John' in *Peregrinationes II* (Academia Internazionale Melitense).
[287] Gibbon, *Decline and fall*, p. 229.
[288] Charles V allegedly said (translated) that 'Nothing was so well lost as Rhodes'.
[289] Butler, 'The Maltese people and the Order of St. John in the sixteenth century', *Annales de l'Ordre Souverain Militaire de Malte, xxiii (1965)*, p. 147.

V. THIRD PHASE (1530-1798): DEVELOPING INTO AN ECONOMIC HUB ON MALTA AND BECOMING PARTLY ECUMENICAL

V.1. Valois versus Habsburgs

In 1524, the Pope concluded a treaty with King François I against Holy Roman Emperor Charles V of Habsburg. A trip of a Hospitaller visiting commission to Malta took place. In the Battle of Pavia (24 February, 1525), a French army was routed by Charles V. This destined Italy to remain under Habsburg domination until the invasions of Napoleon Bonaparte. François was taken prisoner, concluded peace and resigned claims to Italy. Also in this year, Master Albrecht of the Teutonic Order renounced the Roman Catholic religion and became a hereditary Duke of the King of Poland. The territory of the Teutonic Order was secularised and it became a chivalric order of the Holy Roman Emperor.

In 1527, Rome was plundered by the troops of Charles V. Negotiations between the Emperor and the Order about Malta then took place at Viterbo. The Order offered Charles 100,000 ducats for Malta or Brindisi. [290] To give an idea, this was equal to 10 % of the annual surplus in import duties originating from the trade with the then still Habsburg Netherlands about that time. [291] The Turks were before the walls of Vienna in 1529, but the Habsburgs occupied Middle Hungary. The Turkish pressure continued.

V.2. The end of a seven year wandering period

On 23 March 1530, the Order and Charles V, as King of Naples, finally concluded their agreement with regard to Malta. Malta, Gozo, Comino and the Western Tripoli (North Africa) were perpetually enfeoffed to the Order against inter alia the annual presentation of a Maltese falcon to the Vice-Roy of Sicily. Grandmaster Philippe de Villiers de L'Isle Adam then set foot on Malta and the socalled 'Seven years wandering period', started after the loss of Rhodes, finally ended. Looking at it from the point of view of idealistic notions, one would be inclined to think the Knights would have been welcome everywhere, but this was not the case. The Knights were deemed loyal to the Pope and could exercise considerable influence. To maintain their prerogatives – their rights and privileges were under constant pressure – the Holy War against the Infidels had at least to appear to be continued and a Hospital had to continue to be made available. They needed a place to set-

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[290] Mallia-Milanes, *Hospitaller Malta*, p. 2.
[291] Alain Peyrefitte, *Du miracle en économie* (Paris, 1995).

up their usual structure of Conventual Church, Magistral Palace, Auberges and Hospital. The Order's relevancy to contemporary Christianity was regularly questioned, but on the other hand, they might still be useful from a naval and military point of view. Therefore, Charles V, as King of Naples and by way of fief, after a long delay and after long, protracted and difficult negotiations, decided to put Malta (half way between Sicily and the Maghreb) [292] at their disposal, seeing the strategic importance of the island. Malta was indeed strategically situated to block a Turkish advance into the Western Mediterranean and could also serve as a base to re-conquer Rhodes from. It was also an excellent base to raid shipping routes from. Its weaknesses were its defence and its dependence on food supplies from Sicily.

Together with Malta, the Knights were enfeoffed with the Western Tripoli. This enfeoffment is seen as a clever move of Charles V by all writers. However, Tripoli was lost in 1551 to a Muslim fleet which had already succesfully raided Gozo. According to Koster, this was a positive outcome for the Knights, because they were now able to concentrate solely on the defence of Malta. [293]

Malta was enfeoffed, which complicated the situation. In this feudal relationship, homage was due to the Emperor, or rather to the King of Sicily and loyalty was due to this Liege. The Bishop of Malta, who had to be appointed from three candidates put forward by the Order (from among its Members), was to be appointed with approval from the King of Naples. [294] Intricate relationships of the Order with the Pope, its Liege, the Bishop and the Inquisition, subject to the Pope, [295] would be the future. [296]

V.3. Some background on Malta

The origin of the name Malta seems to be hiding place. Even St. Paul seems to have been washed ashore there after a shipwreck and have spent the winter there (59-60). The main island Malta is almost 27 kilometers long and 15 kilometers wide, about four and a half times smaller than Rhodes. The island Gozo is about half this size. The island Comino is very small. Malta has a surface of about 120 square miles with, at that time, about 17.000

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[292] Maghreb = North in Arabic.
[293] Koster, *Prelates*, p. 17-18.
[294] A jus patronatus, according to the text of the deed by which Charles V granted the foedum of the isles of Malta to the original Order.
[295] Various Popes were inquisitors on Malta prior to their appointment to a higher position.
[296] Refer also to Lo Celso & Busietta, *Il triangolo*, p. 15-16.

inhabitants, of which about 12.000 on Malta itself and 5.000 on Gozo. [297] The islands belonged to the Byzantine Empire in 397, upon the division of the Roman Empire, until 870, when Arab invaders from Tunesia occupied them. 'From now on, for many centuries, Malta would be involved in the struggle between Christianity and Islam as its strategic position right in the centre of the Mediterranean, relatively near to both Sicily and Tunis, made its possession important.' [298] Malta was conquered by the Norman Kingdom of Sicily under Roger the Norman in 1091. Roger had conquered Sicily in 1090 and then occupied Malta to prevent it from being used as a Muslim base. From then on, Malta belonged to the rulers of Sicily. A re-conquest had to take place under Roger II in 1127.

The war between France and Spain over the Italian possessions had delayed the grant which (only much later) would also include the right to coin money. This right is always regarded as an important attribute of sovereignty. Malta was a dependency of the Aragonese Crown of Sicily. In 1754, the Spanish Bourbon Charles VII tried to get it back which resulted in the 'Eleven month embargo of Malta'. Sardinia and France intervened and Charles VII had to back down. Later, around 1797, there were rumours that Queen Caroline of Naples was not unwilling to cede Malta to Czar Paul I of Russia. [299]

V.4. The local reaction to the arrival of the Knights

In 1428, King Alfonso V of Aragon, had sworn that Malta would never be transferred to another Sovereignty. Through the construction of the fief, this was perhaps formally, but not materially complied with. Mdina (or Notabile) was the seat of the Bishop and the baronage of Malta, composed by several families of Aragonese and Sicilian lineage. Upon arrival in Mdina, it was sworn by the Grandmaster to uphold the ancient privileges and usages, but gradually these were abrogated, while immediately the top of the local government, the 'Università', was replaced by the Hospitaller's own theocracy. However, the Università was not abolished. On the contrary, the Order worked with it. The Maltese were not happy with the arrival of the Order. Their monastic vows were regarded as mere form and they were remarkable for their haughty bearing and worldly aspirations. [300] This more

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[297] Total population rose to 65.000 in 1635 and to about 400.000 now. About the same number or more, emigrated to Australia, Canada, Great Britain and the USA.

[298] Koster, *Prelates*, p. 15 and p. 269, *Appendix 1. Further background to Malta*.

[299] In 1734, Charles II Borbone, King of Naples and Sicily, inherited the rights to the Maltese archipelago.

[300] Themistocles Zammit, *Malta: The Maltese islands and their history* (Malta 1971).

or less stayed this way, although the Order also brought great economic and cultural advantages to the Maltese. As Mallia-Milanes said: 'Behind the changes which early modern Malta progressively experienced from 1530 to 1798 lay the powerful dynamism and resources of the Hospitaller institution of the Order of St. John.' [301] Koster wonders how the Knights were able to control the local population. [302] He points out that the Knights were great builders. They gradually built an enormous military base, but also many palaces and churches. There was ceaseless building. Malta was made into a centre of trade.

The Knights then encouraged the Maltese in the 'Corso', or the lucrative privateering. The Maltese however were already well known as privateers before the arrival of the Knights on the island. They would participate very much in future joint privateering with the Knights. In a way, everybody then took avantage from sin, as the Churches on the island were mainly built with the revenues from the Corso. There would also be wide employment of slaves for domestic purposes. [303]

Having established their new base, the Knigts went to work fighting the Infidels. In September 1531, Modon, a Turkish fortress island, was sacked by the Order. Meanwhile the Tudors in England embraced Protestantism and in 1533, a peace treaty was concluded between the Ottomans and the Habsburgs. Sultan Selim II, the Magnificent, then employed a corsair, Khayr ad-Din Barbarossa, who laid Algeria and Tunesia open to the Ottomans. A Hospital was built in the Borgo, Malta. This Hospital was also for the indigent population, not only for the Knights and their personnel. In 1536, the Capitulations Treaty between Turkey and France, made France the dominant economic power in the Levant.

V.5. Consequences of the Reformation for members of the Order

It was no coincidence that in 1536 the Spaniard Juan de Homedes (1536-1553) was elected as Grandmaster. The Spanish gained more influence everywhere and therefore also in the Order. The Order hung its hide to the wind. But in the meantime, the Reformation moved on. In 1537, King Henry VIII of England, Protector of the Order in England since 1508, confiscated all assets of the English Tongue. From the 14th century, the Order had been the greatest ecclesiastical land owner in England. [304] The dissolution of English monasteries followed. On 24 April 1540, King Henry VIII dissolved

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[301] Mallia-Milanes, *Hospitaller Malta*, p. IX.
[302] Koster, *Prelates*, p. 19.
[303] Mallia-Milanes, *Hospitaller Malta*, p. 37.
[304] Refer also to Gregory O'Malley, *The Knights Hospitaller of the English Langue, 1460-1565* (2005).

the English Tongue by Act of Parliament and conferred its estates on the Crown. This was a full and complete act of suppression. A re-distribution followed and the effect was committing the landed and mercantile classes to the Reformation settlement and the Tudor dynasty. At sea, the Italian admiral (an Arab word) Andrea Doria, was routed by the Turks in the Battle of Prevezza. The Morea and Dalmatia were surrendered by Venice to the Turks, until the Battle of Lepanto.

V.6. The role of the Jesuit Order; the Roman Inquisition

In 1540, the Jesuit Order ('Societas Jesu') was founded. The importance of this fact can hardly be over-rated. The Jesuits were charged by the Church and by themselves with combating the Reformation, Jansenism and certain other religious particularisms, such as Gallicanism in France. This Order is divided into four classes. The highest class are the professed. From all of them, a blind obedience is required. All power resides in the General. The Chapter only convenes to elect the General for life.

The Jesuit Order soon obtained great political influence. Although Order Brothers, the Jesuits claimed and exercised the unlimited right to preach, hear confession and give absolution. They were highly effective in literature and education, but would be forbidden: in Portugal in 1759, in France in 1764, in Spain in 1767, in Naples and Sicily in 1767 and in Parma in 1768. In 1769, the Ambassadors of France, Spain and Sicily even threatened to block the election of any Pope, who did not abolish the Jesuit Order. In 1773, Pope Clement XIV was then compelled to abolish the Order for all Catholic countries, but the Order was re-established in 1814, by the Restoration Pope Pius VII. It was then expelled from Spain in 1820, 1836 and 1868, from Russia in 1828, from France in 1830, 1880 and 1901, from Italy in 1870, from Germany in 1872, from Mexico in 1873, from Portugal in 1873 and from Brasil in 1874. In 1992, it still had about 25.000 members in 114 countries.

In 1542, Pope Paul III (1534-1549) [305] established the 'Roman Inquistion' as the first of Roman Congregations, through Cardinal Caraffa. A third variety of the Inquisition, to combat Protestantism, together with the Habsburgs. In Poland, Spain, Italy, Bavaria, Austria and the Southern

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[305] Was the last Renaissance Pope and the first Pope of the Counter-Reformation. He called the Council of Trent in 1545. When a Cardinal, kept a mistress by whom he fathered four children. As Pope Paul III, he used his influence to further the interests of his children and their families. Inter alia he appointed two grandchildren, still in their teens, to the Cardinalate.

Netherlands, Protestantism was eradicated. [306] In 1543, Henry VIII promulgated an Act of Supremacy and became Chief of the Church in England. Thus he became the temporal as welll as the spiritual ruler of the country. Thus he acquired the same position in his country as aspired to by Pope Gregorius VII (1073-1085) and other Popes in many, if not in all countries. Lutheranism in Germany also made the 'Prince' the Chief of the Church, thus uniting temporal and spiritual authority in one person. The pendulum had swung back. Under the Germans, a King used to be king and chief priest at the same time. A development which had started under Pope Nicholas II (1058-1061), was turned back. The 'Two Swords' were in one hand now. [307]

V.7. The Counter-Reformation

In 1543, the Bailiwick of Brandenburg split up into Brandenburg-Dottenburg and Sonnenburg and Suleyman I rebuilt the walls of Jerusalem. From 1543-1574, the Ottomans expanded their authority in Northern Africa.

The General Council of Trent (1545-1563) reformed the Church's teaching and prepared the sucessfull Counter-Reformation. Similar to the situation at the Viennna Congress, exertions on behalf of the Order to procure restoration of possessions and privileges as had been usurped by the various potentates, were treated with coldness and neglect. [308]

The Council confined itself mainly to dealing with discipline and doctrinal reform. Cardinal Gasparo Contarini, together with a group of cardinals selected to draw up a report, had inter alia denounced poorly trained priests, the decadence of religious Orders and the accumulation of benefices.

The Counter-reformation was successful, but had a price. 'From the time when the barbarians overran the Western Empire to the time of the revival of letters, the influence of the Church of Rome has been generally favourable to science, to civilisation, and to good government, but, during the last three centuries, to stunt the growth of the human mind has been her chief object. Throughout Christendom, whatever advance has been made in knowledge, in freedom, in wealth, and in the arts of life, has been made in spite of her, and has everywhere been in inverse proportion to her power. The loveliest

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306 In 1908, Pius X dropped the word 'Inquisition'. It then became known as 'The Holy Office'. In 1965, Pope Paul VI renamed it 'the Congregation for the Doctrine of the Faith', led by Cardinal Ratzinger, now Pope Benedict XVI (2005-?).

306 Declared a Saint in 1606 by Pope Paul V. Invented the concept of a 'Militia Sancti Petri'. It was the duty of the faithful to devote themselves to this militia.

307 Lucas 22:38 (Statenvertaling).

308 Sutherland, *Achievements II*, p. 174.

and most fertile provinces of Europe have, under her rule, been sunk in poverty, in political servitude, and in intellectual torpor, while protestestant countries, once proverbial for sterility and barbarism, have been turned by skill and industry into gardens, and can boast of a long list of heroes and statesmen, pilosophers and poets.' [309]

In 1548, Emperor Charles V granted the Grand Prior of the Roman Catholic German Tongue of the Order (based in Heitersheim), the dignity of 'Reichsfürst', with seat and voting right in the 'Reichstag', but in 1549, the Protestant Balley of Brandenburg, formerly part of the Order, made itself independent from the Order.

V.8. The Four Qarters Rule

In 1550, Grandmaster Omedes made the Four Quarters Rule a statutory rule. [310] All grand parents had to be noble. [311] This mainly had to do with trying to prevent a too great influx of Knights in spe to the center on Malta. Did this also have something to do with the 'Small Ice Age', which came into full swing around 1550 and lasted till about 1850? The strongest winters were about 1550. These were the coldest decennia since the last 'Great Ice Age', ten thousand years ago. There was a warmer period from about 800 til about 1200. The Small Ice Age started around 1200. In the Small Ice Age, one had severe, but also very mild winters, serious droughts and also particularly wet years. Two thirds of the winters knew however long frost and snow periods and half of the winters were cold, to very cold.

The origins of the Four Quarters Rule can be found in food crises, trying to prevent a too great influx, trying to prevent upstarts from entering and to maintain the position of those who were already in, the wealth and propaganda of the Order, etc. The main reasons for the great influx however can be distilled from the interesting contribution from the hand of Michel Fontenay. [312] The young nobles and others simply came to the region because that was where things were happening for them. Fighting the 'Turks' in the Mediterranean was not only adventurous, but also lucrative. The Mediterranean then also still was the economically and culturally most interesting region. Think also of a Grand Tour aspect. Muslim expansion and growth of trade had been mainly directed East. The East harboured great civilisations, disposing over enormous wealth. There was hardly any interest

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[309] Thomas Macauly, *The history of England, I* (London 1913), p. 40.
[310] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 12, items 5-8.
[311] The Germans required 16 quarters, the French 8, the Italians 200 years in all four lines.
[312] Michel Fontenay, *Hospitaller Malta*, p. 43-111.

in medieval Europe because it was relatively poor and economically under-developed. Europeans were also regarded as primitive and uncivilised. The Muslims had had contacts with the Vikings, admired for their ruthless bravery, but noted for their barbaric customs, lack of hygiene and sense of honour, scant scientific knowledge and rudeness. According to Islamic geography, this was due to the climate. Only the Mediterranean was fit to give rise to flowering civilisations. Only barbarism could thrive in the cold wet North. [313]

The importance of the Mediterranean changed when the spice routes changed due to the activities of the Portugese, the Dutch and the English. Even according to the Catholic Encyclopedia, in the 16th century, particularly from the Battle of Lepanto on, the history of Malta is reduced to a series of encounters by sea with the Barbary corsairs, with only local interest. The struggle was carried on chiefly by younger Knights who were in haste to accomplish their three 'caravans', in order to merit some vacant commandery.' Again according to the in this respect also reliable Catholic Encyclopedia, 'The vow of obedience was little better observed than that of celibacy. Once in posssession of some commandery situated on the continent, a knight would become indeed independent of the Grandmaster's authority and maintain only the most remote relations with the Order. As to the vow of poverty, the knights were recruited solely from among the nobility, proofs of noble descent being more severely scrutinised than religious dispositions, and naturally, the wealth of the order formed the only motive for these vocations. Its decay began, too, with the confiscation of its posssessions.' This development started in the Reformation and was terminated by the French Revolution, if not long before, as we shall see below.

Grandmaster Homedes emphasised the Order's naval aspect (in which connection the Maltese were used as experienced sailors) and increased the number of galleys. Consequently, he increased the Order's income but also the feelings of resentment of the Turks and others towards the Order. He also automatically increased the number of young nobles wanting to share in these riches. The Four Quarters Rule, confirming a caste system, was driven by the closed shop idea. Nevertheless, in some cases Knightly status was earned and recognised, when merited by a sincere demonstration of virtue, service, noble deeds and valor. See for example the case of Chevalier Paul, who was raised under Grandmaster Lascaris (1636-1657) to the status of Knight of Justice. See also later (1606) for Caravaggio, whose artistic

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[313] Richard van Leeuwen, 'Een groter reiziger dan Marco Polo, de Wereldomzwervingen van Ibn Battoetta (1304-1369)', *Spiegel Historiael 7/8,* July /August 2004, p. 300.

achievements are beyond doubt, while his other achievements might appear somewhat doubtful. Brothers Sergeant-at-Arms were however not falling under any such rules. On the contrary, it was expressly set out they could never become Knights. [314]

Koster rightly remarks that 'During the period of the Knights, Malta became a State which like no other bore the stamp of nobility, as the chief grades of the Order were open to noblemen only. As the members of the Order were celibates and as members of the Maltese noble families were much to their chagrin excluded from its membership, new members had to be continuously provided by the cream of the Catholic families from Europe. This way of recruiting new members was rather beneficial for the Order's finances as the new Knights often arrived with a generous advance from their inheritance. Furthermore, commanderies were kept in many countries, whose wealthy estates provided the Order with a steady source of income.' [315] One may ask what the stamp of nobility meant in practice for the local poulation and also here the situation was double again. Increased prosperity, but nothing to say. The very oligarchic Order controlled privateering, trade, cotton exports, building, public utilities, education, hospitals, charities, everything. The celibacy involved in practice, was a mere formality. But the beauty of the system no doubt was the closed shop concept and the continuous coming and going of young men, who had to pay sizeable passage fees, [316] but might be able to reap a fortune from the Corso. On the Muslim side, many Christians (almost traditionally) were involved in the same profession. [317]

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[314] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 15, item 33.

[315] Koster, *Prelates*, p. 18.

[316] A Brother Knight had to pay 200 crowns, a Serving Brother 150 crowns: Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title V*, p. 33, item 15. Vertot, *History II*, *Dissertation*, p. 121, refers to 260 crowns for a Knight of Justice.

[317] Like the Dutch Simon den Danser, born in Dordrecht, The Netherlands, who became a pirate in Marseille, mercilessly pilfered everyone and everything, settled in a palace in Algiers, taught the locals there the use of round ships, escaped from Algiers with his wealth, received a permit from the King of France to stay in Marseille, was foolish enough to return to Algiers to try to make a lucrative deal and was then treacherously caught, beheaded and thrown into a ditch in around 1616. L.C. Vrijman, *Kaapvaart en Zeeroverij* (Amsterdam, ca 1935), p. 184-199. See also Sutherland, *Achievements I*, p. 91, about the apostate Templar Melier and J. Richard, 'An account of the Battle of Hattin referring to the Frankish mercenaries in Oriental Moslem States', *Speculum*, 27 (1952) and Sutherland, *Achievements I*, p. 107-111 and p. 121, about Raymond, Count of Tripoli, supposedly heavily involved in treason, particularly in connection with the Battle of the Horns of Hattin.

The system had to be perpetuated, otherwise the benefices and privileges granted at home in Western Europe, would be suppressed and the estates confiscated. There was a need for and a persistent endeavour of the Order to justify its relevance to Christian Europe. The protection and nursing of pilgrims in the Holy Land and subsequently the continuing fight against the Infidels, provided many opportunities and advantages. The threats of the mutual enemy – which were more than once caused by the Orders's own actions – also stimulated coherence. As Mallia-Milanes said it: 'The island's geographical proximity to 'enemy territory', rendering possible the continuation of the statutory holy war; its spacious harbours; and its conveniently safe distance from the Catholic mainland, safeguarding the Order's autonomy and neutrality without involving it into too many international complications-, etc.'. [318]

V.9. The consequences of further religious struggles in Germany and England

As mentioned, the Turks had captured the Western Tripoli in 1551. Suleyman the Magnificent then laid the First Turkish Siege of Malta with a force of around 40.000. The entire population of Gozo, 6.000 inhabitants, was taken into slavery by the Turk Dragut and never heard of again. In 1553, the Turks combined with France and ravaged Corsica. In 1555, Irak and Eastern-Anatolia became Ottoman territory.

In 1555, the Peace of Augsburg was promulgated by the Diet of the Holy Roman Empire. This formed a legal basis for Lutheranism in Germany. Emperor Charles V was unwilling to recognize the religious divisions in Western Christendom, but had to proclaim the Diet. He refused to attend the proceedings and empowered his brother Ferdinand. The Diet forbade war on religious grounds. This was a step into the right direction, but the principle only was intended to be applied locally, in Germany. In each territory only one denomination was recognized. The religion of the Prince became obligatory for his subjects ('Cuius regio, illius et religio'). Protestants and Catholics in the free and imperial cities remained free to exercise their religion. This freedom was extended to Protestant Knights and to towns that for some time had been practicing their religion in the lands of ecclesiastical Princes of the Empire.

This provoked Catholic opposition. Ferdinand decided this matter on his own authority in a separate article. Ecclesiastical lands had been taken from prelates who were not immediate vassals ('Reichsunmittelbarkeit') of the Emperor. These were to remain with the Lutherans if continuous possession

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[318] Mallia-Milanes, *Hospitaller Malta*, p. 8.

could be proved from the time of the Treaty of Passau (2 August 1552). Ferdinand incorporated another clause on his own authority, with a note that agreement had not been reached on it, that any ecclesiastical Prince who became Protestant, had to renounce his office, lands, and revenues. But the Peace of Augsburg saved the Empire from serious internal conflicts for more than 50 years.

In 1557, Queen Mary Tudor of England revived the English Priories and Brethren by Letters-Patent. Her successor Queen Elisabeth Tudor I again eliminated the English Tongue. [319] This Tongue remained non existent until the late 19th century, when it was reconstituted by private parties. As a matter of fact, it was newly founded then, but some hold that it never died out, but lingered on until the late 19th century, like (according to others) the Russian Grand Priories, to be discussed below. [320]

V.10. The Great Siege

From 8 May till 6 September 1565, Suleyman the Magnificent laid the Second or Great Siege of Malta. He failed again. Grandmaster Jean Parisot de La Vallette (1557-1568), who led the beleagured, had wanted to move to Corsica since 1560. The fact of heroically winning this siege, a fight for survival together with the local population against all odds – the Turks came with 40.000 men on 130 galleys and therefore were about three times a strong as the beleaguered, but lost about three quarters of their men – made the Knights of Malta the 'acknowledged paragons of Christian Chivalry for as long as that ideal held sway in Europe'. [321]

If Malta would have fallen, the Order would have been finished and Malta would have been used as a Turkish base against Sicily, in the words of the Ottomans, the 'soft underbelly of Europe'. Malta was important for the defense of Sicily and the rest of Italy. A titular and honorary 'Cardinal's Hat' offered by the Pope, was wisely declined by de La Vallette.

A lot was written about the Great Siege. Consequently, after the Great Siege, lots of funds were flowing into Malta from Europe, particularly from France, Spain and Portugal and also from Rome but from Rome only 15.000 Crowns. Funds also came in from Commanderies and even from private Knights themselves. Significant in view of the vows of poverty, the Knights

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[319] 'Completely and finally suppressed', according to Sutherland, *Achievements II*, p. 164. See for this question also the literature mentioned by Smith/Storace, *Order of St. John of Jerusalem*, on p. 53-55.

[320] Infra p. 156, Chapter VI. FOURTH PHASE (1798-1803): BECOMING MORE ECUMENICAL IN RUSSIA UNDER GRANDMASTER PAUL I.

[321] Sire, *Knights of Malta*, p. 72.

were also encouraged to build private houses. These were exempted from the 'Spoglio' (or booty) which they were supposed to bequeath to the Order. Malta then developed into *the* hub for trade between Turkey and France. Through the Capitulations Treaty (1536), the French had gained control of the lucrative trade with Turkey. Also a great deal of traffic went via Malta, instead of through the Straits of Messina. About half the Knights were French usually. Malta became a free port. The fortifications and other buildings had been and were built by slave labour and by the local Maltese. [322] 'As a result of the ceaseless building-activities of the Knights which led to the erection of palaces, fortifications and churches, Malta was changed from 'a barren rock' into a treasure house of fine baroque art and architecture.' [323] Mallia-Milanes informs us about the labour conditions for the Maltese which were good. [324] Building, cotton trade and privateering were corner stones of the local economy.

In 1571, Cyprus was taken by the Turks from Venice. Famagusta was beleaguered and had to surrender. Famagusta was not as lucky as Valletta. It had been heroically defended under Marcantonio Bragadino, at the head of 8.000 men, who have supposedly killed 75.000 Ottomans. The Surrender was violated and Bragadino was flayed alive.

V.11. The Battle of Lepanto

In the same year followed the Battle of Lepanto which crippled the Turkish navy for some time. This was the result of a League (May 1571) between Pope Pius V, Venice, Spain, Tuscany and Savoia, formed after the loss of Cyprus, with the aim to crush the Turkish threat. The Battle of Lepanto, under Don Juan of Austria, natural son of Charles V, was the last major battle under oar. About 213 Christian vessels were pitted against about 274 Turkish vessels. Christian losses were about 8.000, Turkish losses about 30.000.

About the significance of Lepanto and the Great Siege, Mallia-Milanes says that in the broad Mediterranean context in general, they were not significant. According to various adepts of the 'Maltese myth', this was a decisive battle, [325] in which the Knights received the (doubtful) honour to be placed into the thick of the battle. Involved were 114 Venetian galleys under Sebastiano Venier, 81 Spanish galleys under Gian Andrea Doria, 12 Papal

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[322] Francesco Laparelli, Italian architect, sent by the Pope and his local assistant, Girolamo Cassar, Maltese architect, who designed and built St. John the Baptist's Cathedral, 1578.

[323] Charles A. Price, *Malta and the Maltese. A study in nineteeth century migration* (Melbourne 1954).

[324] Mallia-Milanes, *Hospitaller Malta*, p. 21.

[325] Mallia-Milanes, ibidem, p. 10-11.

galleys under Marcantonio Colonna, 3 galleys of the Duke of Savoia under Andrea Provana and 3 Maltese galleys. On board about 20.000 soldiers, half of whom were Italian. The Turkish fleet was under the command of Ali Pashja and counted 208 galleys and 66 light vessels. The Knights of Malta were placed in the rear-guard. The left wing of the Turks unfortunately fled to security through the Christian rear-guard, among whom the Knights of Malta and destroyed them in doing so. The Knights were virtually overrun. [326] However, Spain did not want to continue to fight for the glory of Venice. Venice had to conclude peace. It gave up Cyprus and paid an indemnity, but received back some commercial privileges in the Ionean Sea. The Ottoman fleet was quickly rebuilt and regained naval mastery in the Eastern Mediterranean through the rest of the 16th and most of the 17th century, until it was decisively destroyed in the Battle of Cesme (1770), by a *Russian* fleet. Tunis was taken by the Turks from the Spanish in 1574, Fez from the Portugese in 1578 and Crete from Venice in 1669.

V.12. The Inquisition on Malta

In 1574, the Pope appointed a Grand Inquisitor and Papal Ambassador to Malta. The Bishop of Malta was no longer the head of the Maltese Tribunal of the Inquisition. There were then three rivals in little Malta, each competing with the other, i.e. the Grandmaster, the Inquisitor and the Bishop. This naturally caused great trouble. [327] Then such concepts developed and thrived as: asking the Bishop for a 'first tonsure', to escape military service, ecclesiastical immunity or 'privilegium fori', special powers of arrest exercised by the Inquisitor, beneficiaries, famigliare, etc. [328]

At any rate the Knights were able to continue raiding, because also after the Battle of Lepanto, conflict continued. This attracted more 'postulants', with libertine behaviour, indifferent to maintaining the old quasi-monastic traditions and who also brought new ideas. The appointment during the reign of Grandmaster la Cassière (1572-1581) of an Inquisitor, who always had a term on Malta of only two years and was considered as Papal spy – he constantly tried to weaken the Grandmaster's authority – has to be seen in this light and in the light of the Counter-Reformation.

Not only there were then three elements of conflicting jurisdiction on Malta, but later (1592) even a fourth element, the Jesuits, was brought in, to

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[326] Luigi Salvatorelli, *Sommario della storia d'Italia* (Torino 1969), p. 327; Maat, *Lepanto, la Lega Santa contro i Turchi* and the ample literature quoted there.

[327] Koster, *Prelates*, p. 23, quoting from Laferla; Koster, *Knight's state*, p. 4, on Mgr. Pietro Duzzina's visitation.

[328] For an insight into these developments, inter alia consult Koster, *Prelates*, p. 20-26 and Ciappara, *Roman Inquisition*, passim and Koster, *Knight's state*, passim.

correct the morals of the Knights. Illuminating in this connection is also Bradford, who says that drinking, whoring, gambling and duelling were the leisure activities of young nobles and that 'a chaste Knight was as rare as a black swan'. [329] Only much later, the Jesuits were forced to leave Malta in April 1768 (except two), after a rebellion of the Knights against the Grandmaster because of them. De La Vallette had still been able to prevent the appointment of an Inquisitor. He had also refused to accept a Cardinal's Hat from the Pope after the Great Siege. This underlined his ideas about the independence of the Order.

But one can see that the Church claimed more and more control over the Order. [330] In 1586, Grandmaster Verdala (1581-1595) accepted the Cardinal's Hat from Pope Sixtus V (1585-1590). In 1589, Pope Sixtus V claimed only he could take action against the Grandmaster at that time Verdala. In 1607, under Grandmaster Alof de Wignacourt (1601-1622), the Grandmaster became permanently elevated to the rank of 'Prince of the Holy German Empire', another chimera. In 1630, under Grandmaster de Paule (1623-1636), the Grandmaster was permanently elevated to the rank of Cardinal, but without a See and only as titularis. In 1725, Grandmaster Vilhena (1722-1736) received the Papal honour of the 'Stoc and Pilier'. This formal game ended in 1741, when Grandmaster de Pinto (1741-1773), an absolute but enlightened despot, had himself called 'Most Eminent Highness' and used the 'Closed Crown of Sovereignty'.

V.13. The Prince Grandmaster's sovereign position

Latest under Grandmaster Raphael Cotoner (1660-1663), the Grandmaster had developed into one of the Western ruling Princes and the Order into something well outside its original scope [331] and had its formal organisaton and purposes long become an anachronism. The reasons, for which the Knights had originally been formed, had passed from this earth. 'The personal extravagance too of most of the Knights, whose handsome, at times princely income, which they effortlessly earned from their posssessions of European estates, etc.'. [332] The role of the Papacy had become perfunctory already a long time and the whole concept had already for a long time become wholly secular and temporal. In 1581, Grandmaster de la Cassière (1572-1581) had been made prisoner by his own Knights, whose principal

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[329] Bradford, S*hield and the sword*, p. 183-184; Koster, *Prelates*, p. 25; Sutherland, *Achievements*, Preface, even refers to 'degeneracy'.

[330] Koster, *Prelates*, more particularly *Chapter 1. Rise and decline of a religio-military order*, p. 15-33; Koster, *Knight's state*, p. 2, Grandmaster '*de facto* Head of State'.

[331] J. Attard, *The knights of Malta* (Malta 1995), p. 111.

[332] Mallia-Milanes, *Hospitaller Malta*, p. 11.

grievance was the expulsion of 'lewd women', not from the island, but from the city and suburbs of Valetta [333] and 'By the 18th century, in the Hospitaller's scale of values, emphasis seems to have shifted gradually from naval feats and military conquests to social manners, good taste and idle talk. The change was extensive and definitive.' [334]

V.14. Honorary titles

On 2 December 1583, a Bull of Pope Gregory XIII allowed the honorary attribution of all dignities of the suppresed English Langue. Other honorary titles were Grand Prior of Hungary, Grand Prior of Dacia [335] and Bailiff of Brandenburg. This is important in view of the question of Papal control over the Order and the fact that it is claimed sometimes that honorary titles were not able to be awarded, as Czar Paul I did award these titles in the late 18th century and as was also done by Czar Nicholas II in the early 20th century and was done before by the Order, when still solely Catholic, i.e. before the recognition of the Protestant Balley of Brandenburg. [336]

V.15. Strengthening of the Prince Grandmaster's position

In 1589, a 'Constitution' of Pope Gregory XIII saw the light. The Holy See alone claimed the right to take action against the person of the Grandmaster. This happened under the reign of Grandmaster Verdala (1582-1595), who also accepted a Cardinal's Hat from Pope Sixtus V in 1586, in spite of the Sacred Council's protests. It is obvious that the more powerful and richer the Order became, the more power and riches were acquired by the Grandmaster and the more he was honoured and control over the Order was coveted. It is difficult what to make of the meaning of this Papal claim.

It could be a statement by the Pope manipulated by the Grandmaster to increase the latter's control over the Order. But surely this claim could not mean the Order itself could not legally act against its own Grandmaster anymore. But through Sixtus V, Verdala was able to claim a dictatorial position, which was strenghtened by other Popes. Verdala used his own galleys, manned with the Order's sailors and did not send out the Order's

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333 *Encyclopedia Catholica*; Sutherland, *Achievements II*, p. 248.
334 Mallia-Milanes, *Hospitaller Malta*, p. 38.
335 Not to be confused with the classical Dacia. Dacia was the Order's name for Denmark. Dacia is the Latin for what is basically Romania now. Romanians are proud of their Roman heritage.
336 Infra p. 143, *V.21. Templars revived in Germany; the Bally of Brandenburg paying responsions.*

galleys. [337] Verdala then ended up loosing all grip on his Knights. [338] In his time, Malta's links with Spain relaxed and the French Knights recovered their usual influence.

In 1596, a Board of Admiralty of the Order, controlling Christian corsairs operating upon a warrant from the Viceroy of Sicily, was instituted. In 1607, Grandmaster Alof de Wignacourt was made Prince of The Holy German Empire and addressed as 'Serene Highness'.

In 1614, the Turks landed an army on Malta from sixty galleys, but were defeated again. A consequence of Grandmaster Alof de Wignacourt's increased activities?

In 1630, the Grandmaster was granted the rank of 'Eminence' by Pope Urban VIII (1623-1644), the same rank as a Cardinal.

In 1631, the last Chapter-General for 145 years took place, summoned by Grandmaster de Paule. Under de Paule, Corinth was raided by the Order. After his election, a Grandmaster was also put in possession of the sovereignty of 'the isles of Malta, Gozo and other adjacent ones, with all and every their jurisdictions, etc.,' [339] by the Complete Council. This seems to be the confirmation of the development of Grandmaster into an absolute Prince, except – since 1574 – where matters of faith and religion were concerned.

V.16. The Thirty Years War

As a consequence of the Counter-Reformation, the Thirty Years War in Germany raged on (1618-1648). In the Mark Brandenburg every second inhabitant perished. Pope Urban VIII reigned in the same period. So did Cardinal de Richelieu of France. His policy was pro-French and hostile to the Roman Catholic cause in Germany. The Pope feared Habsburg domination in Italy. He allied with their enemy Richelieu. This alliance turned the Thirty Years War into a conflict of dynastic interests. This war did not result in the triumph of Protestantism, but in the ruin of Germany, the old enemy of the Roman Popes. At about the same time (1623-1638), the Ottoman-Persian war was going on.

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[337] Lo Celso & Busietta, *Il triangolo*, p. 25, about the legality of 'private' privateering since 1531, by virtue of an edict of Charles V called 'the Pragmatic'.

[338] Koster, *Knight's state*, p. 2 referring to 'cohesion' and to 'coherent unity' (sic).

[339] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title VIII*, p. 162, item 1.

V.17. The Venetian Wars

Fear for the Turks instigated a constant building activity on Malta. In 1637, there was a tax revolt, [340] caused by increased taxation to help finance the Floriana fortifications. It was initiated in 1636 by clergy of the rural parishes and led by the Cathedral Chapter and the Bishop. The Ottoman Persian War ended in 1638 and Irak became Ottoman.

From 1644-1723, the Venetian Wars of Turkey with Venice went on. There had been several Venetian Wars before. These were the last Venetian Wars. The cause was the will of Turkey to end Venice's colonial presence in Crete, but the occasion to start the war was given to the Turks by the Order's capturing of a Turkish ship, carrying relatives of the Sultan. Among the captured pilgrims to Mecca, a son of Sultan Ibrahim was taken and sent to a Dominican convent. He became a priest under the name 'Padre Ottomano'. The navy of the Order played a role in these wars.

V.18. The Peace of Westphalia

In 1645, Hereditary Knighthood was granted to Louis d'Arpajon by Grandmaster de Lascaris (1636-1657). In 1648, the Peace of Westphalia finally ended the religious wars between Protestants and Catholics. The role of religion in European politics receded. A new political system was created in Europe. This system lasted till the Vienna Congress (1815). The Protestant powers were recognised. It was also recognised that the State is independent of the Church. About three hundred entities received recognition of their right to enter into alliances with foreign powers. The Holy Roman Empire disintegrated and the decline of power of the Catholic Church accelerated.

The Peace of Westphalia constituted the birth of an international system based on a plurality of independent States, recognising no superior authority. Through the Peace of Westphalia, the Order received back certain occupied German properties and also gained a colony, the Isle of St. Christoph in the West-Indies and held it till 1665. This was granted to it by Louis XIV. He had ordered the Order to stop cruising in the Greek archipelago. The Protestant German Knights were formally released from the Order for 2.500 gold florins.

From 1657-1660 reigned Grandmaster Martin de Redin, elected and maintained in spite of opposition by Pope Alexander VII (1689-1691). [341]

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[340] Koster, *Knight's state*, p. 5, referring to a revolt in 1673 'instigated by the secular clergy and the Bishop'. See also Koster, ibidem, p. 8, on regular clergy on Malta.

[341] Sutherland, *Achievements II*, p. 265-266, for the simoniacal aspects surrounding his subsequent acknowledgment by the Pope.

In 1675, there were still about between twenty and thirty Maltese corsairs operating from Malta. At about the same time, a school of anatomy and surgery was founded in Malta. After the 1683 Second Turkish Siege of Vienna failed, the downward trend of the Ottoman Empire started.

V.19. Relations with Russia; opening up of the Ottoman Empire

1692 was the start of the relations/negotiations of the Order with Russia. [342] A common hostility against Islam and the desire to take advantage of the nautical skills of the Knights and the interests of the Order in Poland, were the main reasons. Imperial Russian officers started training on Maltese vessels. The aim of Russian Imperial expansion may have been to go through the Black Sea into the Ionian Sea and thus to try to control the Near-East. In 1694, the Order conquered Chios, a Genoese fief off the Turkish coast.

In 1698, the Russian General Boris Sheremeteff, cousin of Czar Peter the Great, visited Malta under Grandmaster Perellos (1697-1720), the first Grandmaster to have a personal guard of 150 men. He was invested with the habit of devotion and received a golden chain supporting a diamond cross.

In 1699 followed the Peace of Karlowitz. Austria, Poland and Venice received parts of Ottoman territory on the Balkan. 1717-1730 was Tulip time. The Ottoman Empire was opening up to Western- European culture. The Peace of Passarowitz (1718) gave still more Ottoman terrritory to the Habsburgs.

Around 1723, a 'Tacit Truce' between the Order and Turkey, or rather between Venice, the Order and the Ottoman Empire, respectively the Order and Naples and the North African towns of Tripoli, Tunis and Algiers, came into being, starting from Grandmaster Vilhena (1722-1736). [343] There had been various precedents, i.e. around 1408, a treaty with the Sultan of Egypt, under Grandmaster de Naillac (1396-1421) and around 1440-1450 with the Turks, under Grandmaster de Lastic (1437-1454). [344] On the one hand, this gave the Order rest, on the other hand this reduced its Corso income and attraction, which was mainly based on buccaneering and raiding and reduced its manpower. In 1740, about ten to twenty Maltese Corsairs were still operating from Malta. Lo Celso & Busietta point out the connections with the new reign of Naples, under Charles III, whose intentions 'weren't anymore those of continuing forever a stressful and vain fight but of entering

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[342] A. Mifsud, *Knights Hospitallers of the Venerable Tongue of England in Malta* (Malta 1914), p. 230-283.
[343] Sutherland, *Achievements II*, p. 281.
[344] Sutherland, *Achievements I*, p. 324.

into a relation made of friendly tolerance with the regencies of northern Africa.' At the same time Grandmaster Pinto wanted to 're-launch the Order of St. John at an international level: obtaining this meant free access and tranquil navigation towards Malta for all the nations.' [345]

V.20. Reign of Grandmaster Pinto

Grandmaster Manuel Pinto da Fonseca reigned from 1741-1773, the longest reign of a Grandmaster. He was received as a Brother at the age of two. [346] He was called Most Eminent Highness and the Closed Crown of Sovereignty was used as of 1741. The archives of the Order from before 1291 were transferred to Malta. That they were still in France, is an indication of the overriding French influence in the Order.

Under Pinto, the Order considered itself completely Sovereign, i.e. independent even of the Pope, at least in worldly matters. This was the apex of a development which is usually described as follows. First, the word Sovereign was used, then the 'Coronet' of a Count, then the 'Ducal Crown' and finally the Closed Crown of Sovereignty. However, this Sovereignty had a weak legal basis, respectively was under constant attack, as the Pope as Protector, still claimed to be the highest Chief of the Order and the island of Malta had been granted by Charles V as King of Naples as a fief. Under Grandmaster Pinto, this had become completely forgotten, respectively was completely abandoned, [347] in many jurisdictional battles. [348] Sutherland holds that under Pinto, the Order lapsed more and more under the supremacy of France. [349] Pinto was also the first Grandmaster to put his own head on the coinage. This coinage was widely accepted. The right to strike coin is one thing, but the wide acceptance of the coins struck is something else.

In 1749, Oran was raided by the Order. In 1754, the Spanish Bourbon, King Charles VII, tried to get Malta back. An eleven month embargo of Malta followed. Sardinia and France intervened and Charles had to back down. Around 1797 there were rumours that Queen Caroline of Naples was not unwilling to cede Malta to Paul I of Russia. In the period 1760-1775,

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[345] Lo Celso & Busietta, *Il triangolo*, p. 22-40, for the peace treaty negotiations Malta, Naples, Tripoli, Tunis, Algiers.

[346] Vertot, *History II, The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 12, items 13-15, seem to forbid this. See also Vertot, *History II*, *Dissertation*, p.122, referring to dispensations for young children, each paying at least one thousand crowns, as a convenient way to generate cash.

[347] Ciappara, *Roman Inquisition*, passim.

[348] Ciappara, ibidem, p. 64, for the Solaro affair concerning the appointment of an Ambassador of the Order to the Papal Court by Pinto in 1748, against the wishes of the Pope.

[349] Sutherland, *Achievements II*, p. 285.

there were six popular uprisings in Malta, plus a slave rebellion which was quelled in good time, the Order having around 4.000 slaves on Malta at the time. [350]

V.21. Templars revived in Germany; the Balley of Brandenburg paying responsions

In 1760, the Templars were revived in Germany and in 1762, Friedrich II, King of Prussia, founded the autonomous and Protestant Balley of Brandenburg, under the Protection of the King of Prussia. In the period 1763-1764, the Balley of Brandenburg was acknowledged as a branch of the Order by Grandmaster Pinto. The Balley was allowed to pay responsions to the Order. This was a historical decision and precedent. It marked the acknowledgment, not the beginning, of the ecumenical development of the Order. Through this decision, the Order also became not solely Catholic anymore. The decision was taken without asking any prior approval from, or subsequent protests by the Pope. According to Sherbowitz & Toumanoff, this was contrary to canon law and did not commit the Order. [351]

V.22. Ecumenism

It will be clear to everyone with even the slightest knowledge of history, that the Christians, not unlike other religions, never achieved unity, except perhaps that unity which is given in Christ. On the one hand, since the beginnings of Christianity, there was a tendency towards sectarianism and division. On the other hand, there was the tendency towards catholicity and unity. There have been many theological differences, or 'schisms'. There have been liturgical differences. There have been many power struggles between Church centres. There have been disciplinary and piety problems. There have been many social and cultural conflicts. All these differences usually involved great fanaticism and bloodshed.

We mention without being able to go into them here the Gnostics, Quartodecimanism, Montanism, the Novatians, the Donatists, the Nestorians, the Monophysites, the Oriental Orthodox and particularly the Filioque dispute, which in 1054 resulted in the Great East - West Schism, which had been in the making for already six centuries, after the Councils of Nicea in 325 and Chalcedon in 451. Various attempts to heal this schism had been undertaken, but were unsuccesful until 1969. We mention the Cathars in France in the 13th century. We mention the Reformation in the West in the

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[350] Sutherland, ibidem, p. 284.
[351] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 23-24.

16th century, the Religious Wars in France in the 16th century, the Counter-Reformation, the Eighty Years War in The Netherlands in the 16th and 17th centuries and the Thirty Years War in Germany in the 17th century. We mention the ubiquitous religious disputes in the 18th century throughout Europe.

'Ecumenical' is the promoting or tending toward worldwide Christian unity or co-operation. 'Ecumenism' are the ecumenical principles and practices, especially as shown among religious groups as Christian denominations. [352] In spite of many attempts, the dream of ecumenism was never realised. In the 19th century however, progress was finally made, particularly in the UK and the USA. Efforts were intensified in the 20th century. This culminated in the founding of the 'World Council of Churches' at Amsterdam in 1948, with over 300 Protestant, Anglican and Othodox Churches being involved. Roman Catholicism always sought universal jurisdiction, based on its claim of universal truth, but Roman Catholic ecumenism was finally stimulated by the Second Vatican Council (1962-1964), under Popes John XXIII (1958-1963) and Paul VI (1963-1978), by the creation of a 'Secretariat for Promoting Christian Unity' and the 'Decree on Ecumenism' of 1964 and by many bilateral theological dialogues, inter alia on baptism, the Eucharist, episcopacy and papacy, authority in the Church and mixed marriages.

The ban of 1054 under the East-West Schism, was solemnly lifted on 7 December 1965. Many socalled 'United Churches' were formed. Also a 'Week of Prayer for Christian Unity', annually from 18th January to 25th January, was instituted. This does not take away from the fact that the Church is still struggling with religious relativism and religious fallibilism and a real discussion between religions can only take place on the basis of mutual abandonment of truth criteria. [353]

Overlooking this, we may conclude that Grandmaster Pinto was a forerunner when he acknowledged the Protestant Balley of Brandenburg as part of the Order. Furthermore, that the Knights, when in 1798, the majority in Russia elected Czar Paul I as Grandmaster of the Order and Paul I himself, when in 1799 he invited all valiant noble Christian men to join the Order, [354] were also ahead of their time. [355] In the light of ecumenism, the resistance of allegedly Pius VI (1775-1799) and certainly of Pius VII (1800-

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[352] Merriam-Websters Collegiate Dictionary.

[353] Herman Philipse, 'Vaticaan moet zijn aanspraak op waarheid opgeven' (NRC, 27 December 2000).

[354] Decree of Paul I of January 1799, quoted in French in Sherbowitz-Toumanoff, *Order of Malta and the Russian Empire,* p. 8, note 8.

[355] Infra p. 156, Chapter VI: *FOURTH PHASE (1798-1803): BECOMING MORE ECUMENICAL IN RUSSIA UNDER GRANDMASTER PAUL I.*

1823) against Paul I, seems unecumenical and wrong.

V.23. Ecumenism and developments in Poland

From 1766-1769 Katharina II, Czarina of Russia, had Russian naval officers trained at Malta. From 1768-1774 followed the 'Russo-Turkish War' or 'Ottoman-Russian War'. In 1768, the Jesuits were expelled from Malta. In 1769, the University of Malta was founded. In 1770, the Russian fleet destroyed the Ottoman fleet in the Battle of Cesme.

After the First Polish Partition (1772-1773), the Grand Priory of Poland was formed on 14 December 1774, under the terms of a disputed bequest of the late Prince Ostrogski, who had died in 1673. Six ordinary Commanderies were formed. The six Commanders thereof were those who had previously been able to obtain the corresponding portions of the Ostrog estate. Dispensation from celibacy was granted. Eight Hereditary or Family Commanders were appointed. This was all approved by the Pope.

Married and unprofessed men obtained full membership of the Order. The Order was not purely (formally and materially) religious and Catholic anymore, if it ever was so. Already not since the recognition of the Protestant Balley of Brandenburg, but the Order went even farther with this decision, as did the Pope go farther, by not protesting against it, nay by approving it.

In 1774, Hereditary rights were granted to Count George Adam de Bruel-Plater. [356]

V.24. Reign of Grandmaster Rohan

Grandmaster Emmanuel de Rohan Polduc (1775-1797) was a Freemason. He created the 'Code Rohan' [357] and the 'Diritto Municipale'. De Rohan virtually was a monarch, like Grandmaster de Pinto, and was called 'The Prince of Malta'. [358] Under his reign, the Balley of Brandenburg started paying responsions to the Order. These responsions were eagerly accepted. Under Rohan, also a unique increase in responsions was voted for, enabled by the rising ground rents in France and elsewhere. The responsions had not been raised since 1631. But in 1598, the Monte de Pieta, a kind of Maltese

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[356] Cassagnac, *l'Ordre* Souverain, p. 77-78. Algrant, *The Russian connection*,

[357] Codice del sacro Militare Ordine Gerosolimitano: riordinato per comandamento del sacro Generale Capitolo celebrato nell'anno MDCCLXXVI, sotto gli auspici di il Gran Maestro Fra Emanuele de Rohan.

[358] Pope Nicholas V (1447-1455) seems to have called the Grandmaster Jean de Lastic (1437-1454) a ´Sovereign Prince.

public bank, lent monies at 4 % annually, later 3,5 %. [359] An indication that the responsions had become a token fee, already for a long time and that income mainly came from the Corso and the rest of the Knightly economy on Malta. But Pinto had spent quite a lot on grandiose building and other items deemed necesary by him. The Corso not delivering enough anymore, an increase in responsions was felt necessary and also deemed possible in view of the ground rents in the home lands, which had sharply risen.

During the ensuing Chapter General not only the responsions were doubled, but also the formal religious character was affirmed. This in spite of a reform party among French Knights. They wanted to prevent an increase in responsions and to limit voting to Knights, thereby excluding Chaplains and Sergeants from (indirect) voting [360] on the increase. Also, the position of Grandmaster should become stripped of absolute powers. They failed. A change of the religious character would have meant that the foundation of the whole system would have fallen away. The quasi-religious character of the Order had allowed and was the formal reason for creating and maintaining the entire intricate system. If this reason would be allowed to fall away, tax exemptions and other privileges would certainly also fall away. The system had succesfully become self-perpetuating already for a long time. Stripping the Grandmaster of his powers was illusory. This would have meant a revolution.

Malta thrived under Rohan. Malta was the natural trading post between Turkey and France. Rohan had opened up the Order and like Pinto before him, had created a Maltese 'Magistral' nobility. To avoid a reproach of having Arab blood, the Maltese involved had invented the trick of having their wives deliver child in Sicily. This land of ages had a mixed population. Frequently, Knights had attachments to local Maltese families and mistresses. But this nobility was not recruited from the old Mdina nobility. Later, the doors were also opened to this nobility.

In 1775, there was again dissatisfaction of the population with the Knights. The 'Rising of the Priests' was a minor revolt, led by some clerics. As a result, the Holy See severely restricted ecclesiastical immunity and asylum.

Also in 1775, Frederick II ventilated a (rejected) plan to merge the Balley of Brandenburg with the Order and allowed payment of responsions. At the time, the Commander of Brandenburg was established at Sonnenburg. He was First Prelate of the State and swore allegiance to the King. He received 40.000 thalers annually.

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[359] Mallia-Milanes, *Hospitaller Malta*, p. 31.
[360] Infra p. 300, *Chapter X: THE ORGANISATION OF THE ORIGINAL ORDER.*

On 2 February 1775, the Order concluded the Treaty with Poland with regard to the formation of the Polish Grand Priory. The formation of the Polish Grand Priory is a prime example of the exercise of the jus patronatus and the bringing in by Polish great families of their estates into the Order. [361] This treaty was ratified by the Order on 15 April 1776. On 16 July 1776, Pope Pius VI approved in the Bull Exponi Nobis that part of the Treaty in which it was agreed that the Grand Prior and the Commanders of this Polish Grand Priory did not have to make vows and were allowed to be married.

In 1776, hereditary rights were granted to the Princes Pierre and Dimitri Volkonski. [362]

In 1780, Grandmaster Rohan accepted the Calabrian Father Labini, who was not an Hospitaller, as Bishop into the Order, at the instigation of the Pope, the Curia and the Court of Naples. Labini combined the title of Bishop of Malta with that of Archbishop of Rhodes, 'in partibus infidelium'.

In October 1781, the Edict of Toleration was inaugurated by the Holy Roman Emperor Joseph II. De Rohan had to accord the right to Joseph II to determine which responsions were paid by the German Priories to the Order on Malta. This Edict is indicative of the further loss of power by the Papacy, as the Protestant religion was given more room by this Edict.

In 1781, the Order incorporated the Bavarian Tongue into the suppressd Tongue of England. An Anglo-Bavarian Polish Langue was formed including the honours of the Langue of England eliminated by Anglicanism. King George II of England consented to the creation of the Anglo-Bavarian Langue. It existed from 1785 to 1808. In 1785, the Polish Grand Priory was transferred to the Anglo-Bavarian Langue. Again dispensation of celibacy was granted, in 1788 to the Grand Prior of Bavaria and to some Bavarian commanders. We see an ever increasing tendency towards ecumenism in the Order. We see again that married persons became full Member of the Order.

V.25. The situation on Malta: a long drawn-out war for supremacy between the Grandmaster, the Inquisition and the Bishop.

In 1783, there were 362 Knights on Malta. The Order declared itself to be neutral. In this period, we also find the complaint of the Knight Loras, a Freemason, like Rohan, about 'arbitrary jurisdiction' of Rome. This not only concerned jurisdiction in religious matters, but also alleged jurisdiction in other matters of the Order, which was not accepted and resented. As a matter of fact, the whole 18th century history of the Order, is one long drawn- out war for supremacy between the Order, the Grandmaster rather, on the one

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[361] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 12-17.
[362] Cassagnac, *l'Ordre Souverain*, p. 77-78. Algrant, *The Russian connection*, p. 11, 14.

hand and the Inquisition on the other hand. Inter alia Ciappara pointed out the great importance of relations between the Order and the Inquisition. [363] In the course of this 'war', it became clear that the Grandmaster's position was – and he was successful in this – that to exercise the Principality's rights, he needed consent of no-one. The Grandmaster did not tolerate any competing jurisdiction of Inquisition or Bishop. The right to try members of the Order belonged to the Order since Pope Martin V (1417-1434), [364] with the exception of flagrant injustice or violation of the Order's Statutes.

V.26. The French Revolution

Between 1789-1807, Sultan Selim III opened Ottoman embassies in Europe. In 1789, the Estates General were summoned in France. Grandmaster Rohan became concerned and with good reason. Followed the abolishment of all privileges, the confiscation of all 'ecclesiastical' property, the abolishment of tithes and of hereditary nobility. [365] Bailiff de Litta, who was involved in the organisation of the Russian Baltic fleet, during that time joined the Russians in St. Petersburg and fought together with them against Sweden.

In 1790, the 'droit de lignage' was abolished in France. This right had enabled the noble family to legally appoint the eldest son as one and only heir, thus maintaining the family estate. On 10 March 1791, Pope Pius VI formally denounced the Civil Constitution of the Clergy of France and the Revolution. 'C'est la faute à Voltaire, c'est la faute à Rousseau!' According to Hafkemeyer, the French Revolution caused a loss to the Order of about 3.000 Knights. [366] This might be an exaggeration, but on the other hand is an indication of how wide-spread the continental Knights were. The Pope probably had no other option than to condemn the Revolution. The property of the Church in France was attacked and its servants were mocked and persecuted. It will come as no surprise that the vast majority of the Knights were against the Revolution. In June 1791, King Louis XVI was captured in Varennes. His flight had been financed by a Knight. Grandmaster Rohan suffered a stroke.

The Treaty of Jassy, Moldavia (Iasi, Romania) of 9 January 1792 confirmed Russian dominance in the Black Sea. Katharina II, (1762-1796,

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[363] Ciappara, *Roman Inquisition*, passim.

[364] Elected during the Council of Constance, ending the Great Schism and asserting Papal supremacy in all ecclesiastical matters and also succeeding having ecclesiastics rule lands and cities belonging to the Church.

[365] Respectively 4 August 1789, abolition of the feudal regime and all tax and other privileges; 2 November 1789, all ecclesiastical goods confiscated and 19 June 1790, abolition of hereditary nobility.

[366] Hafkemeyer, *Rechtsstatus*, p. 72.

the Great), wanted a partition of the Ottoman Empire between Russia and Austria. She also wanted a revival of the Byzantine Empire in Istanbul. Austria had withdrawn from the war (Peace of Sistova, August 1791) because sufficient support from Balkan Christians was lacking. The Treaty of Jassy confirmed the Treaty of Küçük Kaynarca (1774) and advanced the Russian frontier to the Dniester River, including the fortress of Ochakov. It restored Bessarabia, Moldavia, and Walachia to the Ottoman Empire.

In August 1792, King Louis XVI was imprisoned in the Temple, a property of the Order. On 19 September 1792 followed the confiscation and sale of the entire property of all Order Priories in France, by unanimous Decree of the National Convention. This meant a loss of 3/5 of income (?) and 3/4 of assets of the Order (?). The Order was declared extinct within the French properties and its possessions were annexed to the national domains. Before that, the Order property had already been made subject to all taxes imposed on other property. [367]

The red thread through the Order's economy on Malta, but also on Rhodes, was the need to carry out privateering or legalised piracy. The income from the Commanderies had supplemented this privateering income. The shift from oars, as the main means of propulsion, to sail, meant the victory of fighting strenght over maneuver. By the middle of the 17th century fighting sailing ships had become the decisive weapon. In view of the heavy investments required and the Order's dwindling means, because the changing political situation reduced the opportunities for the Corso and responsions were only trickling in still, it was inevitable that the Order went down, economically and politically. Furthermore, the whole concept of maritime warfare had drastically changed in the 17th century. From a war across the sea, a war of raids into the enemy's country, it became a war on the sea, a war to control the sea, i.e. to control overseas trade. Such a war needed real navies and systematised fleets, as opposed to collections of fighting and plundering ships, such as the Order's.
On 21 January 1793, King Louis XVI was guillotined.

V.27. Actions of Bailiff Alexander Litta

In 1794, Bailiff Count Alexander Litta was sent by the Order to Katharina II of Russia – who had been made a Dame of the Order by Rohan in 1790 – to try to preserve the Grand Priory of Poland. During the second partition of Poland (1796-1801), Czar Paul I of Russia reigned over millions of

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[367] Sutherland, *Achievements*, p. 290-294.

Orthodox and millions of Catholic subjects. [368] Under Pinto and Rohan, a Russian party had flourished among the Knights and a Russian naval hospital was built in Malta. [369] Pinto had received Admiral Sergius Babinkoff of Katharina the Great and had agreed that Imperial Russian officers trained on board of Maltese war vessels. In 1795, Count de Litta was styled the Minister of the Grandmaster. He reorganised the Russian fleet and was made a Russian Admiral after the war of Russia with Sweden, in the Baltic.

In 1796, Napoleon invaded Lombardy and Papal territory. The foundation of the Cispadanian Republic followed. In November 1796, Paul I (1754-1801), son of Peter III and Katharina II, presumably murdered on 11 March 1801 by his own Russian nobles, succeeded to the Russian Throne. The Papal Nuntius Lorenzo Litta attended his Coronation.

V.28. The First Treaty (4/15 January 1797)

On 1 January 1797, Paul I (1796-1801) became Patron of the Polish Grand Priory, paid its arrears and increased its income. Ten normal Commanderies were endowed with a revenue of 30.000 florins. Three Commanderies for Chaplains were endowed with 96.000 florins. Total responsions were increased to 53.000 florins. With approval from the Order, the Catholic Grand Priory of Russia was created out of Knights from the Grand Priory of Poland, merged and styled into the Catholic Grand Priory of Russia. Dispensation of celibacy was again granted and approved by the Pope. [370] One third (10) of the Knights (35) in this Catholic Grand Priory, were non-Roman Catholics.

On 4/15 Jan. 1797, Paul I approved and confirmed and ratified in his own name and that of his successors, a first treaty with the Order. [371] This was a treaty between two Sovereign States, concerning the establishment of the Order in his Dominions, forever, also confirming the establishment of Family or Hereditary Commanderies in Russia. The Order was represented by Bailiff Count Alexander Littta, Ambassador Extraordinary of the Order. Russia was represented by Count Alexander Kourakin.

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[368] 'Sbornik Imperatorskago Rousskago Istoritchestkago Obtchestva, II', St. Petersburg, 1868, p. 164-185, contains the correspondence in French between Count de Litta and de Rohan from November, 1796 to February, 1797.

[369] Smith/Storace, *Order of St. John of Jerusalem,* p. 91-96.

[370] Inter alia to Alexander Litta, who married in 1798 with a widow to a Russian Minister to Naples.

[371] National Library Malta, Arch. 2196, p. 87-105; Boisgelin, *Ancient and modern Malta,* Volume 3, Book 3, Appendix no XVII. The Julian calendar was applied in Russia till the Russian Revolution and ran behind the Gregorian calendar.

The Treaty was carefully prepared. The existing Polish Hereditary Commanders were confirmed. 'Fitting subjects' would be appointed. Those Knights who would not be able to go to Malta, 'in order to take part in the Crusades, should be recompensed for the campaigns undertaken after their reception, be these on the Black Sea or at the borders against the Infidel'.

The Order would be established in Russia forever. Substantial annual amounts were promised to the Grand Prior, the Commanders and the Treasury of the Order of Malta, as well as a generous salary for the Minister and Receiver of the Order residing in Russia and an annual sum for the maintenance of the chapel and archives, for the pay of the Officers belonging to the Grand Priory and the Minister and for the expenses of the Catholic Grand Priory of Russia.

Article XVI mentions the Family Commanders or Commanders of jus patronat. The 'effects' of those who are Commanders or Professed Knights shall upon their death belong to the Order, but not in the case of Family Commanders. Also articles XXIII and XXIV refer to the Family Commanders. All already instituted Family Commanderies in Poland were ratified, while 'from this moment and for ever, permission and (His) imperial sanction for all future Commanderies of family or jus patronat', was granted. This was done for all the Roman Catholic nobility of his empire and even for those who from particular circumstances could not submit themselves entirely to the statutable duties of the Order of Malta, to enable them to nevertheless participate in the distinctions, honours and prerogatives of the Order. This subject to further agreement with the Order.

Article XXV says inter alia that the Venerable Chapter shall review and direct all affairs of the Grand Priory. Article XXIX says that all professed Knights are obliged to attend the Chapters and shall have deliberative votes in the Chapters. According to article XXX, Family Commanders would always be invited in the Chapters, but would have a consulting vote except in matters relative to the family commanderies where they would have a deliberative vote (it is difficult to differentiate between a consulting and a deliberative vote). The Minister and the Grand Prior were the real decision makers, according to article XXVII. If votes would be equal, the Grand Prior would have a casting vote. Where a decision would be out of the common order of things, it would have to be submitted to the Order in Malta, before being executed. The whole Treaty is a financial construction aimed at creating a bastion of Commanderies around Czar Paul I to protect him against the tide of the French Revolution. There is nothing in the Treaty about hospital work at all.

On 19 February 1797, the Peace of Tolentino was concluded between the Pope and France. The Church renounced its rights to Avignon, Bologna, Ferrara, Ancona and the entire Romagna. Together they formed the Cisalpine Republic.

From 1 April 1797, the Papal Nuntius Lorenzo Litta received an annual salary from Paul I of 36.000 florins. He opened a Papal Legation in St. Petersburg, staffed with eight persons. On 13 July 1797, Rohan died and was succeeded on 16 July 1797 as Grandmaster by Von Hompesch (1797-1798), formerly the Grand Prior of Brandenburg and Head of the merged Anglo-Bavarian Langue.

V.29. Czar Paul I Protector of the Order (Second Treaty, 29 November/10 December 1797)

On 7 August 1797, the Treaty of 4/15 January 1797 was ratified by Grandmaster von Hompesch and the Chapter. Bailiff Count Alexander Litta was appointed Ambassador Extraordinary of the Order for the purpose of presenting the ratification of the Treaty by the Order in St. Petersburg. At the same time Litta was instructed to ask Paul I to become the Protector of the Order and to accept the conferred title of Protector of the Order. Von Hompesch named Paul I as August Protector of the Order. [372] This accord had been negotioted by Count Alexander de Litta. The title Protector was reserved originally to the successors of Charles V, i.e. the Roman Emperor.

According to Foster, the 'Order appointed, on an individual basis, Monarchs as Protectors, but this 'Protectorship' of the Order was haphazard. For example, the Order bestowed that title on two Kings of England (Henry VII and Henry VIII). The title was not passed down, but bestowed individually. As well as the Emperor Paul I being a Protector of the Order, so too and at the same time, was the Western Emperor. A Protector was a powerful patron. The Order did not, nor could not subsist in the Protector. The bestowal of the title of Protector to Emperor Paul I, was a gift of the Order, and not part of the Convention establishing the Catholic Grand Priory of Russia 4 th/15 th January 1797.' [373].

On 29 November/10 December 1797, without any objections from the Pope, Paul I accepted to become Protector of the Order and was invested with the Habit of the Order and the Grand Cross, the ancient cross of the celebrated de La Vallette. Condé was appointed Grand Prior of the Catholic Russian Grand Priory by Paul I, using his prerogative as Founder of this Grand Priory, with later dispensation of celibacy.

On 15 February 1798, Rome was occupied by France. Pius VI and the Curia were expelled from Rome. The Pope was also deposed as the head of the temporal government of Rome. A Proclamation of the Roman Republic

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[372] Smith/Storace, *Order of St. John of Jerusalem*, p. 20.
[373] Michael Foster, 'The Order of St. John of Jerusalem, Knights Hospitaller under the Constitution of King Peter II of Yugoslavia'.

was promulgated. Pius VI fell ill and Napoleon instructed that no successor to the office should be elected. The Papacy was suppressed, which meant a collapse of the Church's central administration.

If the meaning of Protection would be that the Supreme Chief of the Order is the one who is the Protector, then the Pope was the Chief. According to the speech held by Bailiff de Litta, [374] it was the universal desire of the whole Order, that Czar Paul I would deign to become the Chief of this organisation. There can obviously not be two Chiefs at the same time, although it was advocated by some that the Pope would be the spiritual Chief and the Czar the temporal Chief. The Order's main Protector then became Paul I and the Pope had lost all legal control over the Order he ever had. The Pope had recognised the Order but never owned it. On the contrary, the Order could always elect its own chief. The Pope never had any substantial or decisive factual control over the Order. Some say that the title of Protector was rather meaningless. [375] Charles V, i.e the Holy Roman Emperor and the King of Naples had the same title and the Emperor of Austria, as Holy Roman Emperor, had the same title. But the conferment of the title on Czar Paul I, even if not part of the Convention, under the circumstances had a totally different meaning and weight. Paul I also had decisive financial control over wat was left of the original Order. Allegiance had been shifted.

V.30. Paul I to found the Orthodox Russian Grand Priory (Third Treaty, 1 June 1798)

However, there would be no peace and quiet, because in March 1798, Admiral Brueys of France appeared off Malta, with seventeen ship. On 31 March 1798, Pius VI had asked Paul I to act as his mediator. On 12 April 1798, the French Directoir had issued a Decree to occupy Malta. At that time, there were 300 Knights present in Malta, among whom 200 French Knights.

On 28 April 1798, Nuntius Lorenzo Litta was appointed Grand Almoner of the Catholic Russian Grand Priory. On 1 June 1798, full and unanimous approval was granted by Grandmaster von Hompesch and the Sacred Council of the Order to Czar Paul I, according to a prior proposal by Bailiff Litta and Czar Paul I, to found a second, Orthodox Russian Grand Priory.

This approval may be seen as ratification. The approval and the subsequent formation of the Orthodox Russian Grand Priory can be

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[374] Speech of Bailiff de Litta to Czar Paul I, of 29 November/10 December 1797 in Hardman, *History of Malta*, p. 362-363.

[375] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 19, referring to Pierredon, I, 22, 43 and n. 1.

considered as a Third Treaty between the Order and Russia. [376] This approval resulted from previous negotiations of the Order with Russia and was given as a matter of course, in spite of its ecumenical importance, but in line with the Order's constitution and with the steady development of the Order into the ecumenical direction. The formation of the Orthodox Russian Grand Priory had also been recommended by the Commission set up by the Order to investigate the question. [377]

It is sometimes argued this approval never reached Russia in view of the subsequent French occupation of Malta. [378] First of all, this is not certain. Secondly, this was all prepared and agreed in advance. The expressed intentions of those involved were at any rate very clear. [379] Also, this information may have also been conveyed. Finally, a treaty is not the only way a State can commit itself, i.e. enter into a legal obligation. If a State intends its promise to be legally binding, a unilateral promise is binding in international law on the State making the promise. [380] There can therefore be little doubt that the later formation by Czar Paul I of the Orthodox Russian Grand Priory on 29 November 1798, was valid and Bailiff Litta had not exceeded his powers or instructions. Already around 1800, the idea of a duty to perform ratification, was obsolete. Also, the subject matter of a treaty has no or little bearing on the question whether ratification is required. In urgent cases, ratification is and can be dispensed with. Or was the approval the ratification? At any rate the performance of a treaty – which was done by Czar Paul I by forming the Orthodox Russian Grand Priory on the basis of the earlier agreement and the approval thereof – can constitute a tacit ratification.

V.31. Napoleon attacks Malta

On 7/9 June 1798, Napoleon arrived at Malta with a fleet of 600 ship. Among these, the Santa Zaccaria and two other ships of the Order, under the command of the renegade Knight of Justice Giuliano of St. Tropez. [381] On 10 June 1798, Bonaparte attacked Malta and Gozo. It may be questioned whether or not this attack was legal under international law. Malta had declared itself neutral. But it was argued it had refused to admit more than

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[376] Kooijmans, *Internationaal publiekrecht* p. 12.

[377] 'Report to the Sacred Council, Order of St. John of Jerusalem in Malta, concerning the Treaty to establish Orthodox Commanderies', National Library, Malta. Arch 2196, 3rd paragraph, p. 77- 85.

[378] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire,* p. 21.

[379] See in this connection also Article 12 (1) of the 1969 Vienna Convention on the law of treaties.

[380] Akehurst/Malanczuk, *Modern introduction*, p. 130.

[381] Lo Celso & Busietta, *Il triangolo*, p. 17.

four French warships at the time in its port. But according to the Peace Treaty of Utrecht, [382] this was Malta's right, respectively its duty. [383] However, in 1793, Malta had refused to recognise the French Republic and had opened its bases to the British fleet. [384]

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[382] 1713-1714, ending the Spanish Succession War of 1701-1714.

[383] Francois, *Handboek volkenrecht II*, p. 520, where the number of vessels to be admitted simultaneously in a neutral harbour, is mentioned to be no more than three, under the (XIIIth) Treaty established at the Second Hague Peace Conference, concerning the rights and obligations of neutral powers in case of war at sea (Sea Neutrality Treaty), Stb. 1910, no. 73.

[384] Algrant, *The Russian connection*, p. 2.

VI. FOURTH PHASE (1798-1803): BECOMING MORE ECUMENICAL IN RUSSIA UNDER GRANDMASTER PAUL I

VI.1. Malta surrendered by the Order

On 11 June 1798, Malta surrendered without substantial resistance and on 12 June 1798, Napoleon entered Valletta. Von Hompesch left Malta on 17 June 1798. 16 Knights followed him to Triest, while 35 Knights followed Napoleon. The rest went to St. Petersburg. The great bulk of the Knights was in St. Petersburg according to Porter, Cassagnac and Smith/Storace. [385] Scicluna says that many of the Knights fled to Russia. In 1797, the Catholic Russian Grand Priory had 16 members, 6 of whom were non-Russian. In 1798, it had 117 members, of whom 97 non-Russian and in 1799, it had 184 members, of whom 166 non-Russian. The Count of Provence, later King Louis XVIII of France, had strongly urged Knights to become members. [386]

Napoleon declared the Order dissolved. This meant the end of a period of 267 years of the Order on Malta.

VI.2. The Armistice and the Convention

The text of the Armistice translated from the French follows below:

> 'ARMISTICE
>
> Article I – A suspension of arms for twenty-four hours (to commence from six o'clock this evening, the 11th June [1798], until six o'clock tomorrow evening) is agreed to between the army of the French Republic, commanded by General Bonaparte, represented by Brigadier-General Junot, Aide-de-Camp of the General, on the one side, and His Most Eminent Highness [The Grandmaster] and the Order of St John on the other.
>
> Article II – During these twenty-four hours Deputies shall be sent on board the *Orient* to draw up the capitulation.
>
> (sgd.) Hompesch Junot'

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[385] Whitworth Porter, *Malta and its knights* (London 1871), p. 329; Cassagnac, *l'Ordre Souverain*, p. 35; Smith/Storace, *Order of St. John of Jerusalem*, p. 122.

[386] Pierredon, Histoire politique 1956, p. 243-248; Hannibal Scicluna, *The Church of St. John in Valletta* (Rome 1955), p. 31; Algrant, *The Russian Connection*, p. 4.

It will be noted this armistice was signed by von Hompesch and that he empowered deputies to draw up a capitulation. This capitulation was signed on 12 June 1798. The text of the capitulation which was euphemistically called a 'Convention', to save the honour of the surrendering Knights, follows below. [387]

> 'In fulfilment of the second Article of the truce, the Sovereign Head of the Order, Grandmaster Ferdinand von Hompesch, appointed a deputation for the purpose of working out the terms of the capitulation, which Napoleon, '*par ménagement pour l'honneur chevaleresque*', styled a Convention.
>
> **'CONVENTION**
>
> Article I – The Knights of the Order of St John of Jerusalem shall give up the city and forts of Malta to the French army, at the same time renouncing in favour of the French Republic all rights of property and sovereignty over that Island, together with those of Gozo and Comino.
>
> Article II – The French Republic shall employ all its credit at the Congress of Rastatt, to procure a principality for the Grandmaster equivalent to the one he gives up; and the said Republic engages to pay him in the meantime an annual pension of three hundred thousands French *livres*, besides two annats of the pension by way of indemnification for his personals. He shall also be treated with the usual military honours during the whole of his stay in Malta.
>
> Article III – The French Knights of the Order of St John of Jerusalem actually resident in Malta, if acknowledged as such by the commander-in-chief, shall be permitted to return to their own country, and their residence in Malta shall be considered in the same light as if they inhabited France. The French Republic will likewise use its influence with the Cisalpine, Ligurian, Roman, and Helvetian republics that this third Article may remain in force for the knights of those several nations.
>
> Article IV – The French Republic shall make over an annual pension of seven hundred French *livres* to each Knight now resident in Malta; and one thousand *livres* to those whose ages exceed sixty years. It shall also endeavour to induce the Cisalpine, Ligurian, Roman, and Helvetian republics to grant the same pension to the Knights of their respective countries.

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[387] Both texts from A. Galea, *Sir Alexander John Ball and Malta, the beginning of an era* (Malta, 1990), p. 13-16; Boisgelin, *Ancient and Modern Malta*.

Article V – The French Republic shall employ its credit with the different powers that the Knights of each nation may be allowed to exercise their right over the property of the Order of Malta situate in their dominions.

Article VI – The Knights shall not be deprived of their private property either in Malta or in Gozo.

Article VII – The inhabitants of the islands of Malta and Gozo shall be allowed, the same as before, the free exercise of the Catholic, Apostolic, and Roman Religion; their privileges and property shall likewise remain inviolate; and they shall not be subject to any extraordinary taxes.

Article VIII – All civil acts passed during the government of the Order shall still remain valid.
Done and concluded on board the *Orient* off Malta, on the 24th Prairial, the 6th year of the French Republic.

(sgd.)
Bonaparte
The Commander Bosredon de Ransijat
The Bailiff de Turin Frisari, without
prejudice to the right of domination
which belongs to my Sovereign, the
King of the Two Sicilies
Baron D. Mario Testaferrata
Doctor Gio Nicola Muscat
Doctor Benoit Schembri
Counsellor F.T. Bonanno
Chev. Filipe Amat, the Spanish Chargé d'Affaires.'

Whether this was a valid surrender, is sometimes questioned, although the text of the Amistice seems clear. [388] According to Article II, von Hompesch as Grandmaster gave a power of attorney without any restrictions in it, to draw up the capitulation. That was done. What is the position, if a competent representative, i.e. a Head of State, Head of Government or former Minister or representative, given full powers to bind the State, appears to have committed the State internationally, by accepting the obligations of a treaty, when it is subsequently alleged that the representative or the Government he represented has failed to fulfil the requirements of the Constitutional Law of the State concerned for the signing or ratifying of the treaty? It would place all States in an unsatisfactory position if they had to satisfy themselves that a formal act of acceptance of a treaty by another State had complied with the requirements of that State's internal law, particularly when the question

[388] Lo Celso & Busietta, *Il triangolo*, p. 17; Hafkemeyer, *Rechtsstatus*, p. 73.

whether such requirements have been satisfied will often involve difficult problems of constitutional interpretation. [389]

We also might apply the following private law analogy. The general rule is that if a person performed a legal act for and on behalf of an ecclesiastical community, whereby its statutes were not observed, or the person was not authorised to act as agent, the religious community can invoke the lack of authority to represent, unless these clauses are so unusual that the opposite party could reasonably not have expected them. [390] This is different where the religious community created the semblance of authority to represent [391] (von Hompesch as Grandmaster gave a power of attorney to draw up the capitulation without any restrictions in it) or the act involved was later properly confirmed. [392]

VI.3. Effect of the Order's dissolution by Napoleon

Napoleon dissolved the original Order, abolished nobility and drastically curtailed the influence of the Church. The jurisdiction of the Bishop was limited to purely ecclesiastical affairs. Civil marriage was introduced. Napoleon was entitled thereto under the public [393] international law of the time. [394]

What legal effect are we to attribute to this dissolution? From a canonical point of view, the rule, at least nowadays, seems to be that institutions 'erected' by the Holy See, can be suppresed only by the Holy See. This does not necessarily have to be accepted by temporal law. But the original Order had never been erected by the Pope. It started as a private initiative and was then recognised by King Baldwin II [395] and then became 'protected' (as of 1113) by and received tax privileges from the Popes. But then again, it never was a regular Order of the Church. It had also chosen a new Protector, in the person of Czar Paul I. It was thereby perhaps not even an Order of the Church anymore. It had made itself independent from the Church.

The Order on Malta voluntarily surrendered and gave up its sovereignty over Malta. This can also be interpreted as a voluntary dissolution by the original Order itself. It also was a condition of the fief granted by Charles V, that if the Order ever 'transferred, or alienated' Malta ('transferre, seu

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[389] Greig, *International law*, p. 369.
[390] Article 3:61.3 Burgerlijk wetboek.
[391] Article 3:61.2 Burgerlijk wetboek.
[392] Article 3:69 Burgerlijk wetboek.
[393] Sutherland, *Achievements*, p. 309.
[394] François, *Handboek Volkenrecht II*, p. 442.
[395] Under Baldwin II, the Royal chancery was dominated by Italo-Normans. Later, the Angevins took over. Mayer, *Kreuzzüge*, p. 262, note 43.

alienare') , for whatsoever reason, without permission, Malta would automatically revert to the King of Sicily. [396] Therefore all later territorial aspirations were legally not relevant anymore, at least not in sofar as they were concerning Malta. There was at any rate after the original Order left Malta in 1798, no State succession possible by the Order reconstituted or formed by Czar Paul I. Under international public law, this would require this Order being a State again, which stage it never reached again. After the Surrender of Malta, the original Order became therefore non-existent as a State. Therefore it could also not keep or a new Order could not succeed to, any of the previously existing rights and obligations of the original Order, as it existed before the Surrender of Malta. The new Order was not the 'successor' State, but this was first (maybe) France and then at any rate the Kingdom of the Two Sicilies and then England. Treaties concluded by a 'predecessor' State also generally do not pass to the successor State, where an existing State acquires territory. The debts incurred by a predecessor State are usually taken over by the successor State. The debts of the Order and of Grandmaster von Hompesch were later not honoured by the French and English successor States. [397]

It is sometimes doubted whether the Order indeed was a State before the Surrender of Malta. The criterion for the identity and continuity of a State is the independence from other States. The Order had continuously and peacefully exercised the full sovereignty over the Maltese archipelago. [398] It had entered into international engagements, which is an attribute of State sovereignty. It was equal in law to any other sovereign State. On the other hand, it was continuously engaged in the 17th and 18th centuries, in big jurisdictional problems with the Church, the Inquisition, the Bishop of Malta and the King of Sicily.

If the Order was a State, then it is a general rule of public international law that temporary loss of independence as a consequence of an occupation does not affect the identity and continuity of a State. But here we have the voluntary surrender of Malta, the explicit clause in the grant of the fief and a

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396 'Ulterius si contegerit ipsam Religionem recuperare Insulam Rhodum, & ea ratione, aut alia ex causa ipsam Religionem ab hujusmodi Insulis, & locis infeudatis discedere, & alibi mansionem, & sedem eorum stabilire, non liceat ipsis hujusmodi infeudata in aliam quamvis personam quovis titulo sine expresso mandato ipsius dicti Domini & feudalis transferre, seu alienare; sed potius si sine licentia & consensu alienare praesumpserit, ad nos, nostrosque successores pleno jure revertantur', in Vertot, *History of the Knights of Malta II, p. 157-161*.

397 Archivio delle Corti: Processo A 99, Anno 1827; Brian Blouet, *The story of Malta* (London 1967), p. 159-160.

398 Islands of Palmas-case, 1928, *Reports of International Arbitral Awards, Vol. II*, p. 838 and The Minquiers and Ecrehos-case, Judgment of November 17th, 1953, *ICJ Reports*, 1953, p.67.

subsequent permanent transfer or loss of territory. A territory which – by the way – had not been legitimately enfeoffed by Charles V. Normally, a State does not automatically cease to exist when it is temporarily deprived of its territory or of an effective government. But Hompesch himself signed an armistice and Hompesch himself empowered his representatives to negotiate the terms of the Surrender. This was done without any reservations being made on behalf of the original Order. Therefore the original Order cannot be regarded as still having had a valid claim to the territory of Malta anymore. This was correctly seen later, i.e. when Malta was formally transferred (or handed over) in 1814, by virtue of the Treaty of Paris, by Naples, the liege lord, to Great Britain (in accordance, by the way, with the desires of the Maltese population).

At the time, no rule of international law prevented a State from going to war and consequently a treaty, procured by the threat of force or by force, was valid. Let alone, whether or not Napoleon had a valid cause to attack (allegedly neutral) Malta. Conquest alone, without a treaty, could also confer valid title. If a defeated party entered into a peace treaty or a capitulation, the conquest was perfectly legal, because the war had come to an end. So, even if it has to be assumed that the original Order had allies and these allies carried on the Order's struggle against Napoleon, this makes no difference for the validity of the Convention of Surrender.

The State of the Order and the Order itself, both went down definitively. Hafkemeyer on the one hand seems to accept the Order lost its statehood because of 'debellatio' (the end of a war as consequence of the total destruction of an enemy State; a debellatio results in a full dissolution and incorporation of the conquered State into the own State territory), on the other hand seems to claim that Napoleon's occupation of the islands and the subseqent surrender, were illegal, respectively forced. [399]

But it may well be argued, that if Napoleon dissolved the original Order and the original Order did not already do this itself, he was entitled to do so. Napoleon also could dissolve this organisation under French public law, the law now applicable to Malta, for example as an organisation having lost its purpose. French law was overriding all local law. It may also be argued that the original Order as an association was automatically dissolved, by loosing its purpose. Either way, the original Order would still stay dissolved and should only be liquidated still.

The consequence would then also be, that the original Order as such was not continued by Czar Paul I, but Paul I started a new Order. This perhaps also explains why one saw about four Orders in the next century. [400] This

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[399] Hafkemeyer, *Rechtsstatus*, p. 72. Van Beresteyn, *Geschiedenis*, p. 7, takes it for granted.
[400] Pierredon, *Histoire politique*, p. 388.

also explains why uncertainty about the Order's status arose in Spain and Germany and elsewhere.

The question is whether a dissolution is always final. For the sake of a discussion on the principles, leaving aside which law would be applicable, we take as starting point and analogy contemporary Dutch private law. Van Olffen, Slagter and Nethe have discussed this complicated question in depth. [401] It may be held on the basis of the history of the law, [402] the text of the present law, [403] the requirements of legal certainty and the system of the law, the dissolution is final, irrespective of the way it came about and the entity is deemed only to continue in so far as necessary for its liquidation. [404]

The recent case law takes differing views. Slagter's views that a dissolution resolution is revocable, in spite of registration in the trade register and even if people trusted on the registration and the entity in liquidation performed a legal act, was rejected by a Cantonal Judge on the basis of of third party interests and legal certainty. [405] In another case, the Cantonal Judge allowed revocation of the dissolution because third party interests could reasonably not be damaged, while shareholder interests would seriously be damaged by maintaining the dissolution. [406]

The older Dutch literature holds the view that dissolution is final. The recent literature is divided into two camps. Those that advocate the possibility of revocation are not in agreement whether retro-active effect can be atributed to the revocation (effect ex nunc or ex tunc), while Nethe – provided the lawgiver, in the framework of flexibilisation of the private company law, would be open for the possibility that legal persons are continued as before – seems to plead for a careful change of the law and mentions at least five 'humps' the lawgiver would in that case have to take and finally holds, in view of third party interests, that the decision to revoke a dissolution cannot be left to the entity itself, but should be left to the independent judge. [407]

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[401] M. van Olffen, 'Intrekking ontbindingsbesluit', *WPNR 6409 (2000),* p. 491-492); W.J. Slagter, 'Is een ontbindingsbesluit onherroepelijk', *WPNR 6450 (2001)*, p. 603-605 and M.Y. Nethe, 'Ontbindingsbesluit onherroepelijk I', *WPNR 6602 (2004)*, p. 997-999 and 'Ontbindingsbesluit onherroepelijk II', *WPNR 6603 (2004)*, p. 1024-1025.

[402] MvT on Ontwerp Nelissen (1910).

[403] Article 2: 23c, par. 1 Burgerlijk wetboek.

[404] M.Y. Nethe, 'Ontbindingsbesluit onherroepelijk II', *WPNR 6603 (2004)*, p. 1024.

[405] Ktr. Breda, 2 October 2002, zaaknr. 229677 OV Verz 02-784, n.g.

[406] Ktr. Alphen a/d Rijn, 16 May 2002, zaaknr. 228993/01.80818, n.g.

[407] M.Y. Nethe, 'Ontbindingsbesluit onherroepelijk II', *WPNR 6603 (2004)*, p. 1024-1025.

VI.4. Paul I generally acepted as Grandmaster

Paul I was generally accepted as valid Grandmaster of the (an) Order of St. John by practically all Priories and by all Sovereign States involved, while the Papacy did not protest, or was estopped from protesting. Perhaps it must also be argued as a consequence thereof that all Priories involved, may therefore be deemed to have accepted the treaties made by Russia with the original Order.

At any rate we have to conclude that the Order headed by Paul I was generally internationally recognised. This recognition was a recognition without conditions or reservations and was done explicitly and impliedly (for example by Nelson, on behalf of Great Britain, see infra) and thereby seems to have had a permanent character. If this is so, then this recognition was a recognition de iure. This recognition de iure has retro-active effect, as it is generally accepted that recognition de iure has a declaratory character. A 'de facto' recognition has a preliminary character and is generally not followed by full diplomatic relations. Both a de iure recognised and a de facto recognised government can invoke immunity before a national Court in a foreign State.

VI.5. The recognition of Paul I seen from a strict legal point of view

But we feel this recognition was wrong, seen from a strict legal point of view. The original Order had the reversion clause in its fief, had surrendered and was dissolved and the Knights had left Malta. Nevertheless, the original Order internationally was still deemed to be a State, or at least as an international person, headed by Paul I, although it had lost its territory and was dissolved. If the original Order was still extant, then Paul I was at any rate recognised as its legitimate government. Anyway, the Order headed by Paul I cannot be deemed to have become a Russian State Order. It had a separate 'capitulum' in the Vorontsov palace, while all other Russian Orders had a joint capitulum in the Imperial palace. [408]

In July 1798, von Hompesch had instructed Count de Litta to carry on in Russia according to the Statutes. On 26 August 1798/6 September 1798, followed a protest of the Catholic Grand Priory of Russia and the other Knights present in St. Petersburg against the Surrender of Malta. [409] On 10/21 September 1798, Paul I ratified the acts of the Catholic Grand Priory of Russia, declared St. Petersburg as Headquarters of the Order and invited all Langues, Priories and Knights. On 17 October 1798, Pope Pius VI wrote

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[408] Infra p. 180, *VI.17. Actions of Czar Alexander I.*
[409] Smith/Storace, *Order of St. John of Jerusalem*, p. 22.

Nuntius de Litta inter alia that some Knights in Russia might be deputed to have the authority of Grandmaster. On 23 October 1798, a Manifesto was issued by the Knights in St. Petersburg, declaring von Hompesch deposed, freeing the Knights from their vow of obedience and invoking the Protection of Czar Paul I. The Priory of Germany immediately seconded the above action. The reasons given were that von Hompesch had not summoned the Council and had ceded Malta without compensation. As he was deposed, all Knights were declared absolved from their vows of obedience to him.

VI.6. Pope Pius VI approves Paul I's election

On 27 August/17 October/25 October 1798, Pope Pius VI, in secret correspondence with Nuntius Lorenzo Litta [410] and informed about the plan to elect Paul I as Grandmaster, gave his fatherly and apostolic blessing, although Paul I was married, Orthodox and had not made vows. Pope Pius VI also agreed to the admittance of non-Catholics, more particularly Orthodox or Armenian-Orthodox Russian Knights.

On 27 October 1798, Paul I was then proclaimed Grandmaster by the Catholic Grand Priory of Russia, including Poland, by Bohemia, Bavaria, and Germany and by the Knights in St. Petersburg. [411] 249 Knights were then said to be present in St. Petersburg. A great number of French Knights who had emigrated to Russia, elected Czar Paul I, some after having been admitted in the Catholic Russian Grand Priory, others on the advice of King Louis XVIII of France, who was exiled in Russia at the time and also recommended to elect/recognise Czar Paul I as Grandmaster. On 5 November 1798, Pope Pius VI wrote Bailiff Alexander de Litta confirming his co-operation with Paul I in restoring the Order and inviting other Langues and Priories to join in this spirit. [412] On 13/24 November 1798, a Proclamation of Acceptance was issued by Paul I. The standard of the original Order was hoisted on the Admiralty at St. Petersburg.

VI.7. Actions of Paul I as Grandmaster

Grandmaster Czar Paul I promised to maintain the Order as well as the free exercise of religion. He fixed the headquarters of the Order in his capital and promised to advance the growth of the Order. He reconstructed and liberalised the Statutes by adding a number of regulations to meet the requirements of a new age. Using his prerogative as Founder of the

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[410] Rouet de Journel, *Nonciature de Litta*, 1797-1799 (Vatican 1943), containing the major documents on Pius VI's views.
[411] Boisgelin, *Ancient and modern Malta*, Volume 3, Book 3, Appendix No XVIII.
[412] Hardman, *History of Malta*, p. 384.

Russian Catholic Grand Priory, Paul I appointed several Knights. According to Carpentier Alting, these were the chiefs of Russian Freemasonry, who solemnly promised Paul I they would not hold a lodge without his consent. [413] He also awarded several Grand Crosses and added ten Commanderies to the Catholic Russian Grand Priory. Bailiff Litta was appointed as Lt. Grandmaster by Paul I. An originally solely Catholic Order (up till the recognition of the Protestant Balley of Brandenburg) slowly had become fully ecumenical and closely allied to the Orthodox Russian Empire, which was what apparently practically all had expressly desired and anyway saved the Order from extinction then, if it was not already dead or dissolved. [414] We let follow the (translated) text of this declaration: [415]

> 'We, by the Grace of God, Paul I, Emperor and Autocrat of All the Russias, etc. in consideration of the wish expressed to Us by the Bailiffs, Grand Crosses, Commanders, Knights of the Illustrious Order of St. John of Jerusalem, of the Grand Priory of Russia, and other members assembled together in Our capital, in the name of all the well-intentioned part of their Confraternity, We accept the title of Grandmaster of this Order, and renew on this occasion, the solemn promise We have already made in quality of Protector, not only to preserve all the institutions and privileges of this Illustrious Order for ever unchanged in regard of the free exercise of its Religion, with everything relating to the Knights of the Roman Catholic Faith, and the jurisdiction of the Order, the seat of which We have fixed in our Imperial Residence; but also We declare that We unceasingly employ for the future all Our care and attention for the augmentation of the Order, for its re-establishment in the respectable situation which is due to the salutary end of its institution for assuring its solidity, and confirming its utility.'
>
> 'We likewise declare, that in taking this upon Us, the supreme government of the Order of St. John of Jerusalem, and considering it Our duty to make use of every possible means to obtain the restoration of the property of which it has been so unjustly deprived, We do not pretend in

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[413] A.S. Carpentier Alting, *Woordenboek voor Vrijmetselaren* (Amsterdam 1884), p. 344.

[414] F. von Schiller, 'Vorrede zu Niethammer's Bearbeitung der Geschichte des Malteserordens von Vertot (Jena, April 1792)' in *Historische Schriften* (Phaidon Verlag, Essen), p. 249: 'Er selbst aber steht noch, als eine ehrwürdige Ruine,..' and on p. 252: 'Er entsteht, er bildet sich, er blüht und verblüht, kurz, er eröffnet und beschliesst sein ganzes politisches Leben vor unsern Augen.'; Sutherland, *Achievements*, p. 286, citing Sonnini, *Travels in Egypt*: 'It was one of those ancient institutions which had once served to render the brotherhood illustrious, but now only attested its selfishness and decay.' Smith/Storace, *Order of St. John of Jerusalem*, p. 172: 'Its utility as a European force against the Ottomans had come to an end. The wars between the Cross and the Crescent had become history.'

[415] Boisgelin, *Ancient and modern Malta.*

> any degree as Emperor of all the Russias, to the smallest right or advantage which may threaten or prejudice any of the Powers, Our Allies; on the contrary, We shall always have a peculiar satisfaction in contributing at all times everything in Our power towards strengthening our alliance with the said Powers.'

Paul I's motives were also to create a bastion against the rise of freedom: 'The laws and regulations of this Order inspire a love of virtue, form good morals, strenghten the bond of subordination, and present a powerful remedy against the present mania for innovation and the unbridled licentiousness of thought.' [416] The Order of St. John as a reactionary instrument. This was the dominant thinking in Russia during the reign of Paul I. [417]

On 16 November 1798, Pius VI wrote von Hompesch that he rejected von Hompesch' point of view and would not punish the rebels (as von Hompesch pleaded), or re-establish the Langues. On 29 November/10 December 1798, Paul I was enthroned as Grandmaster of the Order by the Papal Nuntius Lorenzo Litta, brother of Bailiff Alexander Litta. Lorenzo was later raised to the Cardinalate. Alexander de Litta himself was appointed Lt. Grandmaster. The Spanish Ambassador was sent home for not attending the coronation.

It is said the Order was re-organised by Paul I. The Coat of Arms of the Order was changed. The title of Grandmaster was added to the other Imperial Titles. The Maltese Cross was included in the Coat of Arms of the Empire. Hereditary Knighthood was conferred by Letters Patent upon many of the Knights, to ensure perpetual succession for the Order. The Palace of Malta [418] was set aside for the Order. Fons honorum [419] evidently was present. At least in Russia, the proceedings seem to have been ipso facto legal and if Paul I was not validly elected as Grandmaster of the original Order, he had at any rate validly created a new chivalric Order.

VI.8. The foundation of the Orthodox Russian Grand Priory

On 29 November 1798, Paul I founded an Orthodox (or Greek) Russian Grand Priory, with 98 Commanderies. This foundation had previously been approved by von Hompesch and the Sacred Council on 1 June 1798. Hereditary Commanderies were provided for. This was called a new

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[416] Hardman, *History of Malta*, 'Report from the Annual Register of the Order of St. John of Jerusalem 1799', p. 387, quoting Czar Paul I.

[417] F.I. Brunov, *Aperçu des principales transactions du cabinet de Russie sous les règnes de Chatérine II, Paul I et Alexandre I* (St. Petersburg 1838).

[418] Formerly called the 'Vorontsov palace'.

[419] Infra p. 286, Chapter IX. SOME CHIVALRIC DEFINITIONS.

foundation of the Order in favour of the nobility of his Empire. [420] In the Proclamation, Czar Paul I expressly referred to his quality of Grandmaster of the Order, which induced him to pay the strictest attention towards the proper means of restoring the Order to its original lustre, etc., in consequence of which, being desirous to give a fresh proof of his esteem, he wished to make certain his nobles would be partaking in the privileges, honours and distinctions attached to the Order. He then, by 'our imperial authority and by these presents' instituted a new foundation of the Order of St. John in favour of the nobles of his empire. In this context it is important to note that this foundation rested on the Third Treaty between the Order and Russia, of 1 June 1798, approving to form an Orthodox Russian Grand Priory.

Therefore it could be argued this Grand Priory legally in principle could only be abolished by a subsequent valid treaty between the same parties. The First Treaty was the Treaty of 4 January 1797, establishing the Order, forever, in the Russian Empire, the Second Treaty was the Treaty of 29 November 1797, establishing the Czar as August Protector of the Order. The protectorship is implied in the First Treaty of 1797. The Third Treaty was the Treaty between the Order and Russia of 1 June 1798, approving to form an Orthodox Russian Grand Priory.

According to Nuntius Litta, in correspondence with the Pope, the Orthodox Grand Priorate did not need Papal approval, because the only relationship with the Order according to Nuntius Litta, would be the payment of various monies to the Order and the Catholic Russian Grand Priory. He omitted to mention this to Paul I. Nevertheless, the Orthodox Russian Grand Priory has to be deemed (perhaps a quaint) part of the relevant Order at that time, the precedent being the Protestant Bailiwick of Brandenburg. Their reconstitution is now a member of the 'International Alliance of Orders of St. John', formed in 1961.

VI.9. The foundation of the Orthodox Russian Grand Priory a reactionary move

Again, like the Convention or Treaty to establish the Catholic Russian Grand Priory of 4/15 January 1797, the contents of the Proclamation of 29 November 1798 were an attempt to build a bastion of Knights around the Czar. The process is also inverse again, i.e. the Czar endowing a number of people with commanderies (98), fixing the revenues thereof, establishing

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[420] Boisgelin, *Ancient and modern Malta*, Appendix No XIX; Smith/Storace, *Order of St John of Jerusalem*, p. 25.

one fifth thereof as responsions to be paid back to the Treasury [421] and allowing also those who could not wholly comply with the obligations, to found commanderies of 'family' (or jus patronatus), who would then enjoy all the honours, privileges and prerogatives attached to their foundations. [422] This was similar to the original process, i.e. that of people bringing into the Order their own possessions, after a wave of gifts out of idealistic motives. Both ways underline the trust character of the Order, also in Russia, as far as Family Commanderies are concerned.

In December 1798, the Second Coalition was formed between Russia, Britain, Austria, Naples, Turkey, Portugal and the Papal States. On 8 December 1798, Alexander Litta brought Paul I the regalia of the Sovereignty of Malta and Paul I accepted the Crown and the Great Seal. On 10/21 December 1798, Commanders and Chaplains of the Orthodox Russian Grand Priory were appointed by Paul I. On 21 December 1798/1 January 1798, all brave and valiant noble Christian men and all other Priories were invited to join the Order. The foundation of the Orthodox Russian Grand Priory was made made known in this context. The Order led by Czar Paul I became ecumenical. Paul I wanted to promote worldwide Christian unity and co-operation. This development would be turned back later by Tommasi, respectively by Pope Pius VII, as we shall see below. [423]

The Order would consist in Russia of the Catholic Russian Grand Priory and the Orthodox Russian Grand Priory. Each was to assemble in its own Chapter but in certain important cases in one single Chapter which did not happen in 1802 and 1803, see infra.[424] The Orthodox Russian Grand Priory was declared open to the Russian Orthodox, but also to other dignified persons, without distinction of nationality or confession, but it was understood that only nobles could join.

VI.10. Further international backing of Paul I as Grandmaster; Papal solution of silence

In December 1798, Paul I sent a squadron of ships through the Dardanelles. In January 1799, he supposedly secretly converted to Catholicism and the Elector of Bavaria assented to his election. In February 1799, the successor of the Elector of Bavaria assented. On 15/26 February 1799, a Regulation was issued, governing admission of the nobility of the Russian Empire into the Order as drafted by Bailiff Litta. In March 1799, Louis XVIII, [425] the

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[421] Articles IV and V.
[422] Articles XXII and XXIII.
[423] Infra p. 188, *VI.22. A decisive break with the past by Pope Pius VII.*
[424] Infra p. 183, *VI.18. Trying to find a Grandmaster*.
[425] Pierredon, *Histoire politique*, p. 243-248.

King of Naples and the King of Portugal authorised their Knights to approve the election. The German Emperor approved the election. [426] The four Spanish Priories rejected Paul I.

Pope Pius VI never publicly or in correspondence with Czar Paul I disapproved of Paul's election. At any rate he tolerated this election, as well as the foundation of Commanderies for the Orthodox. On 14 April 1799, General Suvarov was in Verona.

On 17 April 1799, Nuntius Litta suddenly received a secret memorandum. This secret memorandum was called a 'Pro Memoria' and was probably written by Archbishop Odeschalci or by the Titular Archbishop of Corinth, Spina. [427] The memorandum was not dated and not signed. It might be dated 20 January 1799, according to the Vatican scholar Augustus Theiner. [428] According to Algrant, it dated from 16 March 1799. [429] It was sent to Nuntius Litta and as mentioned, received by him on 17 April 1799. It disapproved of Paul I's election. As it was not signed, it is doubtful from whom it came and what value can be attributed to it. At any rate, Czar Paul I was never directly made aware by or on behalf of Pope Pius VI that the Pope disapproved of Paul I's election. But apparently, circles around Pius VI had indeed shifted back – after the facts and the express and/or implied acceptance thereof – to Hompesch. On 9 May 1997, Nuntius Litta was asked to leave St. Petersburg at once. On 18/29 May 1799, five Hereditary Knights with the rank of Honorary Commanders were appointed by Paul I. [430]

VI.11. Grandmaster Paul I backed by the Priories

All Priories except the four Spanish Priories, accepted Paul I as Grandmaster, while the Priories of Rome and Venice and the Pope stayed silent. On 26 June 1799, a further 20 Commanderies were added to the already existing 98 in the Orthodox Russian Grand Priory. At that time 17 Grand Priories existed and all those underlined sooner or later gave their approval:

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426 Pierredon, ibidem, p. 250-256.
427 Pierredon, ibidem.
428 Smith/Storace, *Order of St. John of Jerusalem*, p. 28
429 Algrant, *The Russian connection*, p. 5.
430 Members of the family of the Counts Golovkin, one of whom later became a member of the Orthodox Russian Grand Priory as Grand Cross and Hereditary Knight. See further Smith/Storace, *Order of St. John of Jerusalem*, p. 225-227, Annex IX 'Selected list of Knights of St. John appointed by Grandmaster Paul I'.

1. the Russian Catholic Priory (including the Polish Priory)
2. the Russian Orthodox Priory
3. Catalonia
4. Navarre
5. Aragon
6. Castil (3 through 6 the Spanish Priories)
7. Venice
8. Rome
9. Capua
10. Messina
11. Barletta (Barletta and Messina collectively called 'The Two Sicilies')
12. Lombardy
13. Pisa
14. Germany
15. Bohemia
16. Bavaria
17. Portugal [431]

Therefore 17 Priories in total, excluding the dissolved French Langues (Provence, Auvergne and France) [432] and Priories (St. Gilles, Toulouse, Auvergne, France, Aquitaine, Champagne), but all represented in St. Petersburg. The Priories of England, Scotland and Ireland were non extant since Queen Elisabeth Tudor. The German Langue had broken away and become Protestant and was under the Protection of the Prussian Crown. The Castilian Langue and the Aragon Langue were organising themselves under the Spanish Crown or were organised under the Spanish crown. The Northern Italian Commanderies and Priories had been suppressed by Napoleon I. Because the majority was in agreement and the rest was aware of the developments, but stayed silent or already had left the Order, any quorum requirements, if existing or realistic at all, seem irrelevant. It could be added that although the Balley of Brandenburg had been recognised by de Pinto, and paid responsions, it had no right to say anything in this context. Furthermore, it could be argued that those Italian Priories Napoleon had suppressed, were non extant anymore and therefore could not have a vote in the matter.

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[431] Not according to Algrant, *The Russian connection*, p. 6.

[432] The French Grand Priories were abolished in 1792, but a great number of émigré French Knights also recognised Paul I. Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 42.

VI.12. Von Hompesch' abdication in favour of Paul I

On 6 July 1799, von Hompesch issued an Abdication. Without approval from the Pope, whether or not necessary, Hompesch abdicated, voluntarily or under pressure of the Holy Roman Emperor and disbanded his Sacred Council and Convent assembled at Triest. According to Sherbowitz & Toumanoff, von Hompesch was rather brutally compelled to abdicate by Franz II under pressure of political expedience – the necessity of a Russian alliance with Austria – and the abdication was canonically invalid without approval from the Holy See. [433] Hompesch referred in his Abdication to Paul I, 'under whose auspices the Order will be reborn' and despatched the relics of the Hand of St. John [434] and our Lady of Philermo [435] to Russia, where they arrived on 12 October 1799 and were received with great pomp by Paul I. The text of the Abdication (translated from the French) follows below**:**

> 'Sire, Your Majesty will recall that I was the first to place with respectful confidence under the powerful protection of Your Imperial Majesty the Order of St John of Jerusalem, the government of which was conferred on me; Your Majesty will certainly confirm that I was also the first to accept the interest which Your Majesty has shown in favour of the Religion, after the misfortune it had to suffer, and which its unhappy Head had the sadness of not being able to prevent, and for which misfortune he would have been regarded as most fortunate had he only been the victim. The attachment, Sire, to my duties, and to the Religion, impose on me the law to sacrifice everything, to better its state and to remove all obstacles which my person would bring about for its reunification, and for its complete re-establishment. Thereby, I abdicate, as I do of my accord, from the dignity of Grandmaster. My conscience, Sire, and the approval which I expect from the justice of Your Imperial Majesty, shall be my only consolation, and certainly no one more than me shall take an active part for the advantages which will result therefrom for the Order under the glorious auspices of Your Imperial Majesty, which all Europe recognizes as its defender and saviour.' [436]

The text is unambiguous, although not in the eyes of Sherbowitz & Toumanoff [437] and recognises that Czar Paul I is Grandmaster. Hompesch referred to the Order's ('its') 'reunification' and its 're-establishment'. Thus

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[433] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 41.
[434] Unknown what happened with this relic. There also was/is a hand of St. John in Constantinople.
[435] Lost in Yugoslavia?
[436] French text, the *White Book*, p. 49, issued by the Papal Order in 1962 and Hardman, *History of Malta*, p. 398-390.
[437] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 42.

he claimed, respectively admitted, that it was split up and at any rate not the same Order it had been. May we conclude that Hompesch, who probably had been validly elected, had also validly resigned, or abdicated? By analogy to association law, one could say that an organ can only be validly dismissed by the organ which appointed the dismissed organ. Hompesch was validly elected by the Order's competent organs. To abdicate out of his own accord certainly was his right. By his abdication, as well as by his (belated) handing over to Czar Paul I, he anyway seems to have admitted that the majority had validly elected Czar Paul I as Grandmaster. [438] It is also interesting to note that Hompesch said that he was the first to place the Order under the Czar's Protection. In saying this, he implied that it was his right as Grandmaster on behalf of the Order, respectively the Order's right, to change Protection.

VI.13. Further observations with regard to the validity of Paul I's Grandmastership

In view of the Treaty of 4 January 1797 (the First Treaty with Russia) and all events of 1798 and the prior and subsequent approvals, respectively the consistent silence by Pope Pius VI and the recognitions of 'Reigning Sovereigns' (in so far as necessary), the relocation of the Seat of the Order to St. Petersburg [439] as well as the election of Paul I as Grandmaster, seems to be legal, if one holds the original Order was not dissolved. 17 Priories were existing at that time, excluding the French Priories, who were however represented in St. Petersburg. All Priories, except Venice and Rome and the four Spanish Priories, agreed.

Their headquarter States presently allegedly recognise the Anglican 'The Most Venerable Order of the Hospital of Saint John of Jerusalem' and the Protestant 'Der Johanniter Order' (or 'Balley Brandenburg des Ritterlichen Ordens St. Johannes vom Spital von Jerusalem'), together with its Dutch and Swedish Protestant counterparts.

The Anglican Order is headed by a married and non-Catholic Sovereign Head (Queen Elizabeth II). Prince Bernhard of The Netherlands (1911-2004), who was Landcommander of the Johanniter Orde in Nederland, was also married, but not a sovereign at all. Dispensations were granted from celibacy earlier to the Polish Grand Priory and the Bavarian Grand Priory and later to the Catholic Russian Grand Priory. One allowed, respectively expressly agreed, the founding of an Orthodox Russian Grand Priory, with naturally no celibacy. Therefore one cannot at the same time validly invoke

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[438] Article 2:37, par. 5 B Burgerlijk wetboek and also President Rechtbank The Hague, in a decision in summary proceedings of 25 March 1985, KG 1985, 118.

[439] Algrant, *The Russian connection*, p. 1, refers to 'and the seat of the Order was established, for a time, in St. Petersburg'.

the argument that Paul I was married or allegedly had not made vows. Furthermore, various Popes were elected, while being a layman; various married and various widowers were elected as Popes and many Popes were elected, who did not practice celibacy at all, either before or after their election to this high office. [440] Grandmasters had affairs. That non-fulfilment of the vow of celibacy or chastity in the Roman Catholic Church is still rather widespread nowadays among male and female professed, is apparent from recent newspaper articles. [441]

In the Orthodox religion, a married man can be ordained deacon and then priest. Once ordained, deacon and priest cannot marry or remarry. Bishops are celibate and elected from unmarried monks and priests. [442]

A Grandmaster is not a priest and never was. The Master of the Order should be a Brother Knight of the same Order, born in lawful wedlock of noble parents. [443] The Statutes and regulations of the original Order were also 'such decrees as are made for ever, unless repealed by a general chapter' and 'only valid from chapter to chapter'. [444] Czar Paul I also allegedly expressly converted to Catholicism, or at least allegedly was a crypto-Catholic. [445] That he was not professed, obviously did not prevent the large majority to accept him as Grandmaster. This means this majority was in favour of changing the old Statutes on this point also; respectively this confirms that the Order had already immensely changed in 1798, with the Protestant Balley of Brandenburg coming back in the Order. This change did not require Papal approval, because as we have argued above, the Order was not an Order of the Roman Catholic Church, or an Order dependent on the Roman Catholic Church in a legal sense and at any rate not an Order subject, or not anymore, to canon law. The Pope also was only a Protector, but he had, with his own approval, been succeeded in this position by Czar Paul I.

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[440] Pope Sergius III (904-911) had a son, Pope John XI (910?-935), ninth century. Only in 1074, Pope Gregory VII insists that all ordinands pledge themselves to celibacy. In 1123, First Lateran Council, for the first time all clerical marriages are declared invalid. 1475, birth of Cesare Borgia, son of Pope Alexander VI. 1480, birth of Lucrezia Borgia. This Pope had 6 children, all begotten after his election as Pope. 1484, Pope Innocent VIII recognised his bastards.

[441] Appeared in March 2001. Non-fulfilment in about 23 countries, among which Ireland, Italy and the United States.

[442] Compare also Codex Justinianus, 1,3,19,1: 'illas etiam non relinqui castitatis hortatur adfectio, quae ante sacerdotium maritorum legitimum meruere coniugium: neque enim clericis incompetenter adiunctae sunt, quae dignos sacerdotio viros sui conversatione fecerunt.', Spruit. Chorus, *Corpus Iuris Civilis VII*, p. 105.

[443] Vertot, *History II*, *The Old and New Statutes Statutes of the Order of St. John of Jerusalem*, *Title IX*, p. 65, item 3.

[444] Vertot, ibidem, *Title XIX*, p. 115, item 3.

[445] Paul Pierlings SJ, *La Russie et le Saint Siège*, p. 316-323. Paul I is supposed to have formally but secretly converted, in February 1801.

It may also be assumed that in the whole pompous ceremonial, Czar Paul I also made some solemn vows. Paul I is mentioned in the official directory of SMOM as 'Fra Paolo Imperatore di Russia'. Vows of obedience, chastity and poverty had become for a long time already only a matter of form. The religious aspect had also always been secondary. In the past, also Protestant Knights had been created. [446]

At any rate one cannot look at this matter and judge it under allegedly applicable, unclear, obsolete or allegedly immutable rules from the distant past, or from the point of view of canon law only. See for example Chapter 19 of the Teutonic Order's Statutes: 'all things which have to be done, have to be looked at from the point of view of the time and circumstances, sothat action is taken with wisdom and prudence'. [447] The Order changed its role so many times in history and had also changed so much itself, that it is difficult to say what principles retained continuity, if any. One of Hegel's fundamental insights was that reality is not a state of affairs, but a process. It is something ongoing. And even if the Statutes of the original Order basically stayed the same, this does not mean much where the Order itself is not applying its own Statutes. For example, by not calling Chapters General for ages and by Grandmasters ruling as enlightened despots. Let alone that the question also is whether these Statutes, which allegedly always stayed the same, were clear at all. Finally, 'Are not all civilizations, all cultures, innately inimical to innovation until they begin to fall apart by the irresistible force of change?' [448]

But the main point which is important in the framework of the three above arguments of being married, not being a Catholic and not having made the traditional vows, is that these arguments pre-suppose that the Order was a religious Order of the Catholic Church immediately subject to the Pope. Precisely this last assumption has always been successfully refuted, when it counted, by practically all Grandmasters and particularly by de Pinto and de Rohan. [449] That Czar Paul I was not a Knight at the time, [450] is also invoked as a rather weak argument against his election. He had already received the habit of the Order before, together with a Grand Cross.

Whether the approval of the election by the Pope, who did approve through the Papal Nuntius and otherwise, at least by staying silent and making no known reservations to the outside world, was necessary, may also

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[446] Engel, *Knights of Malta*, p. 38-46.
[447] Fabius, *De Duitse orde,* p. 43. Unclear when published and by whom.
[448] Mallia-Milanes, *Hospitaller Malta*, p. 38.
[449] Mallia-Milanes, ibidem, p. 637, for the split between the temporal and the religious aspect of the Order, also applied by de Rohan.
[450] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title IX*, p. 65, item 3.

be questioned. The Order was formed by private parties and later developed into an Order controlled by Knights, who made certain vows of obedience, celibacy, poverty (or common property), which in practice were seldom observed and was confirmed in the year 1113 by the Pope, awarding privileges which he could perhaps not legally and legitimately award at the time. The question is whether this Papal confirmation did constitute the Order as a regular religious Order under Papal jurisdiction. The anwer is no, as has been explained above. Neither did any subsequent Papal action. At any rate, it was felt necessary in 1953 to assert the Papal Order SMOM's material and formal religious character.

One may also add the Order started as an organisation of laymen, then received Papal confirmation, then the Knights became the ruling class in the Order, then a Protestant split-off was recognised in the form of the Balley of Brandenburg (whose responsions, as the responsions from Poland and later, from the two Russian Grand Priories, were eagerly accepted) and then the Order finallly became fully ecumenical by approving the founding of the Orthodox Russian Grand Priory under Paul I and by his invitation to 'all valiant Christian men' to join the Order. Somehow and at some time, it has to be able and was able and surely allowed, to get rid of any alleged formal bond with the Pope. Or are we dealing here with a remnant of the doctrine 'Once a cleric, always a cleric', even if only in name? [451]

From a canonical point of view, the rule appears to be that the 'canonical provision of an office' is the granting of an office by a competent ecclesiastical authority according to canonical norms. [452] The authority competent to modify and suppress offices, is also competent to make provision for them, unless the law establishes otherwise. In this case the Chapter General, or in other words, the Knights themselves, in some way. [453] All were in favour, except some who stayed silent and some who split off. It can also be added that under canon law the Grandmaster does not have to be and could not be ordained a priest and under canon law, lay persons were

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[451] Clariden, *The Code of canon law 1983*, Canon 290 ('-After it has been validly received, sacred ordination never becomes invalid, etc.').

[452] Clariden, *The Code of canon law 1983,* canons 146 and 147 ('146-An ecclesiastical office cannot be validly acquired without canonical provision.' and '147-Provision of an ecclesiastical office occurs by the free conferral of a competent ecclesiastical authority, or by installation by the same authority if presentation preceded it, or by confirmation or admission granted by the same authority if election or postulation preceded it, or, finally, by simple election and acceptance by the one elected if the election does not require confirmation').

[453] Bull Piae Postulatio (French translation by Beljens): 'Lorsque Dieu te rappellera à Lui, Gérard, nul ne pourra être mis à la tête de l'Hôpital dont tu es actuellement le recteur et le proviseur, par traîtrise, ruse ou violence; seul pourra te succéder dans cette charge celui que les frères profès éliront à Jérusalem avec l'aide de Dieu.'

always able to participate in ecclesiastical governance. Many canonists have argued that based on historical precedent, the incapacity of the laity to receive jurisdiction is a matter of ecclesiastical law, of which the Pope could dispense. It cannot be that a 'solution of silence' is applied and that later on one claims to be able to come back on this and to condemn.

The election in 1798 of Paul I as Grandmaster therefore appears to be valid. [454] We summarize by referring to the unanimous election of Paul I on 27th October 1798, the letter of 5th November 1798 from Pope Pius VI, the assent of January 1799 by the Elector of Bavaria, the assent of February 1799 by his successor and the assents of March 1799 by Louis XVIII, by the King of Naples, by the King of Portugal, by the German Emperor, by the Austrian Emperor, [455] to the approval of all Priories except only Rome and Venice, who stayed silent and the Spanish Priories, who refused, but were no part of the Order anymore, at least not as of 1802 and who obviously constituted the minority, and to the Abdication of June 1799 by Grandmaster von Hompesch, out of his own accord, phrased in unambiguous words and who expressly sent the relics to Paul I and not to the Pope or to someone else.

The States mentioned recognised Paul I not only 'de facto', but also 'de iure'. Recognition de iure says nothing or little about the legality or legitimacy of the way one came to power. But it is a clear testimony of the confidence one has in the stability of the new government, the expectation that it will honour its international obligations and of the readiness to enter into diplomatic relations with it, on an equal footing with other governments. Recognition also is an irrevocable act. Once done, it cannot be withdrawn.

With respect to the departure or split-off of the Spanish Priories from the Order, it is important to note that from a canonical point of view, the competent authority of the institute decides on dividing an institute in accord with the norm of the constitution. The statutes of the Order being silent on this point and the Order staying silent on the departure of the Spanish Priories, one may assume that the competent authority of the Order, if it continued, agreed with their departure and that they became independent Knights of St. John, until they put themselves or were put under the Spanish Crown, in 1802. This shows that also under canon law, there legally can be various Orders of St. John. Indeed various Orders of St. John were then extant, in the form of the Order of Paul I (the Russian Order), the Protestant Bailiwick of Brandenburg and the Catholic Spanish Knights.

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[454] Idem Hafkemeyer, *Rechtsstatus*, p. 73 and Pierredon, Malte, Ordre Souverain in *Dictionnaire de l'Académie Diplomatique Internationale*, p. 12. Different Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 124.

[455] Pierredon, *Histoire politique*, p. 260.

Finally, we refer to the well known international law doctrine of estoppel. Estoppel is one of the general principles of law which are in turn one of the seven sources of international public law. Estoppel means one cannot come back to the detriment of others on something one did or said. [456] No reservations, if relevant at all, made known to the outside world, to the Order or to Czar Paul I, have ever officially been made by Pope Pius VI with regard to Paul I's election prior thereto. [457] As the Papacy slept on its pretended rights and anyway opted for a solution of silence, [458] it cannot be deemed to be allowed to subsequently revive them, as Pope Pius VII obviously did later and Pius VI is often alleged to have done. A State is precluded from contesting a state of affairs in which it has acquiesced. Canon law can also not be invoked here. Where States are concerned (the Vatican, if it still was a State then, the Order and Russia, as well as many other States), international law has to be deemed to prevail over canon law. The same opinion is held by Noel Cox. [459]

VI.14. Paul I created a new Order

If one takes the view that the original Order was dissolved by Napoleon, or was automatically dissolved when loosing its purpose, or when giving up Malta, Paul I created a new Order.

Indeed there are those, who claim that because it was all done by Russian Imperial authority, the Order of Paul I was a Russian State Order. On 5 April 1797, the day of his coronation, Paul I confirmed the Imperial Directive for Russian Knightly Orders, by which the Chancellery of the Orders, their archives and treasury were to be kept in the Imperial palace. All Orders (except the Orders of St. George and of St. Vladimir) were merged into a single Russian Knightly Order and were considered as various classes of this Order. They received a common status and administration under the names 'Chancellery of the Order' or 'Capitulum of the Orders'. In 1798 the Emperor himself became Grand-Master Order or of an Order of St John of Jerusalem and its Capitulum was housed in the former Vorontsov Palace on

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[456] Kooijmans, *Internationaal publiekrecht*, p. 14.
[457] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 44.
[458] Sherbowitz & Toumanoff, ibidem, p. 55 quoting Rouet de Journel, *Malte e Russie*, p. 96.
[459] Cox, *Acquisition of sovereignty*, p. 9: 'So far as canon law is concerned, the Order remains sovereign. Sovereignty recognized by the papacy has canonical validity. But it will lack validity in international law, since canon law is not universally accepted as a norm of international law'. About the nature of canon law, Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 18 and 20.

Sadovaya Street. [460] Therefore we may conclude that one did not regard this Order as a Russian State Order. [461]

Then there are those who claim that what was done by the autocrat Czar Paul I, could validly be undone by another autocrat, i.e. Czar Alexander I (1801-1825), under the motto 'What one autocrat has done, another can abolish.' [462] This seems a rather convenient argument and a rather wide power, which cannot be right in view of the doctrine of acquired rights. Although Bodin held that the sovereign is 'legibus solutus', even he still made a distinction between 'lex' and 'jus' and deemed the 'princeps' obliged to respect the property of his subjects. Bodin's doctrine primarily concerned internal sovereignty. Grotius started the doctrine of international law as law of a community of nations, subjects of international law. [463] In that context, Paul I and also Alexander I, were certainly obliged to respect internationl law and treaties made.

However, the new Order was joined by practically all, who were involved in the original, but dissolved Order. Then the whole discussion about the validity of Czar Paul I's election as Grandmaster of this dead and dissolved original Order, becomes irrelevant. Once dissolved, a legal entity cannot be revived. The dissolution cannot be made undone. [464]

The Order under Czar Paul I at any rate was not a full sovereign State, because of lack of State territory and a valid claim thereto. But many players in those times still wanted to regard or indeed still regarded the Russian Order as an international legal person, or at least Czar Paul I as a valid Grandmaster. They did not regard the original Order as dissolved by the Surrender or by Napoleon's subsequent dissolution of the Order, or as automatically dissolved. This also was in their interest, inter alia because the old tax privileges and other acquired rights would then not automatically fall away. They may even have regarded the dissolved Order as being a full sovereign State still.

If the original Order was indeed dissolved and if Paul I indeed created a new Order, then this new Order, as successor might be the owner of all assets of the original Order. The majority of the Knights joined the new

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[460] 'For Faith and Loyalty. The history of the Capitulum of Russian Imperial and Royal Orders', an exhibition organized by: The State Hermitage, Moscow Kremlin Museums, The Russian State Archive of Ancient Acts, the State Museum-Preserve "Gatchina", from December, 9, 2004-April, 3, 2005 at The State Hermitage Museum, Saint-Petersburg, <www.hermitagemuseum.org/html_En/04/2004/hm4_1_92.html>;

[461] Panov and Zamyslovsky, *A brief historical account of the Russian Orders and their statutes* (St. Petersburg 1891).

[462] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 103.

[463] Scholten, *Verzamelde geschriften*, p. 508 and p. 514.

[464] See also *VI.3. Effects of the Order's dissolution by Napoleon* and the note on Slagter's opinion there.

Order and the proceeds of a liquidation would have gone to them. By joining the new Order, they also may have brought into it assets of the old Order.

In view of all circumstances, the author deems that the original Order, was dissolved, but the international community did not see it this way yet and Paul I was deemed to be the valid Grandmaster of the original Order which had however lost its full sovereignty, but was not converted into a Russian State Order.

VI.15. Family commanderies

On 21 July 1799, Hereditary Grand Duke Alexander was made Grand Prior of the Russian Orthodox Grand Priory. On 21 July/1 August 1799, the Regulation governing the establishment of family or jus patronatus Commanderies in Russia, became effective. [465]

Article III said: 'The founder of a family commandery may extend the hereditary rights to all branches or lines of his family, designating the order in which they will succeed. The founder may, in the act of establishing the Commandery name besides his regular heirs, two other families. These must possess such proofs of nobility as are shown by the family of the founder.' We refer here further first of all to Smith/Storace [466] and to Foster, [467] but secondly also to Sherbowitz & Toumanoff. [468]
The latter distinguish between jus patronatus commanderies and hereditary commanderies and give a rather restricted meaning to jus patronatus commanderies. Without going into this matter deeply here, having studied both argumentations, in our view the argumentation put forward by Harrison Smith and Foster is more convincing than the argumentation of Sherbowitz & Toumanoff. [469] Materially, there is no real difference between a Jus Patronatus and a Hereditary Commandery, while the requirements to become a Jus Patronatus Commander, indeed required (by Article V of the Regulation), could relatively easily be fulfilled.

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[465] Polnoe Sobranie Zakonov Rossiiskoi Imperii (PSZ), 1799, No 19.044 (p. 733).
[466] Smith/Storace (members of the Tonna Barthet Order), *Order of St. John of Jerusalem*, p. 73-82.
[467] Michael Foster, protagonist of the 'Sovereign Order of the Orthodox Knights Hospitaller of Saint John of Jerusalem', headquartered since 1977 in New York again, *Hospitallers from 1798*. See also Foster, *The Survival of the Russian tradition.*
[468] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire,* p. 34-40.
[469] Ibidem, p. 49-51 and p. 119-122.

VI.16. The death of Pope Pius VI and of Paul I

On 29 August Pope Pius VI died in Valence, France. On 13 October 1799, the Supreme Council decided that the dignity of Protector would for the time being not be used, as Czar Paul I was also Grandmaster now. On 31 October 1799, Nelson wrote Czar Paul I a letter, adressing him as Grandmaster, confirming that Captain Ball would hold Malta for him as Grandmaster and asking him to make Ball a Commander of the Order. Nelson originally hoisted the flag of His Sicilian Majesty. This letter may show Nelson felt that the original Order was still carrying on, with Czar Paul I as validly elected Grandmaster. [470]

At the end of 1799, the two Russian Grand Priories together counted 648 members, of whom 30 % non-Russian (25 % French, 5 % Italian, German and Irish), with 26 Family Commanderies and 5 Honorary Commanders (the 5 Golovkins) and some Hereditary Commanderies not being Family Commanderies (inter alia Count Rumiantsov). [471] Sherbowitz & Toumanoff recognise that the Golovkins were Hereditary Knights. [472]

On 14 March 1800, Pope Pius VII was elected at Venice under the Protection of Paul I. Pius VII later reinstituted the Inquisition and the Index, as well as the Jesuits. [473] On 4 September 1800, Nelson occupied Malta for Great Britain. In this year, Paul I appointed eleven Honorary Commanders.

VI.17. Actions of Czar Alexander I

Paul I allegedly became mentally unstable about one year before his death. At the moment, his reign is being reassessed favourably. On 16/23 March 1801, after the assassination of Paul I on 22 March, his successor Czar Alexander I (1777-1825) declared he took the Order under his Imperial Protection and would do his utmost to maintain it in its rights, honours, privileges and properties. In this context, Alexander I appointed Field Marshal Bailiff Count Nicholas de Soltykoff to continue exercising the functions and authority of Grandmaster of the Order (as Lieutenant Grandmaster) and to call a meeting of the Supreme Council to advise it of his intention that St. Petersburg would remain the headquarters of the Order

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[470] Hardman, *History of Malta,* p. 233-234. Nelson originally hoisted the flag of His Sicilian Majesty.
[471] Algrant, *The Russian connection*, p. 6.
[472] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 37, note 103.
[473] A. Van de Sande, *De restauratiepolitiek der Roomse pausen* (Diss., Nijmegen 1977).

until the circumstances would permit to give it a new Grandmaster, in accordance with its statutes and old forms. [474]

Alexander I did not aspire to the Grandmastership, did not maintain the Russian claim to Malta and desired the election of a new Grandmaster. A provisional Sacred Council would continue to govern the Order. The two Russian Grand Priories would stay in the enjoyment of all their property, privileges and administration. But Alexander I at any rate remained (in his own eyes at least) the 'August Protector' of the Order and the 'Hereditary Grand Prior' of the Orthodox Russian Grand Priory, until his death.

It can be questioned whether Aleander I had the right to assume the position of 'August Protector'. This was a decision that could only validly have been taken by the Order itself. This unilateral decision by Alexander I heralded his subsequent manipulative behaviour. Where Alexander I renounced the Grandmastership, it was up to the Order (either the Russian Order started by Paul I or the original Order, if it survived) to elect a new Grandmaster. We refer to the Bull of Pope Paschal II, dated 15th February 1113 and the Statutes of the original Order, as amended under Grandmaster Paul I**.**

References, as made by Alexander I, who may or may not have felt the original Order was still alive – he referred to convoking a Chapter General to get a Grandmaster elected who would be worthy to preside over this Chapter and to *re-establish* the Order in its ancient existence – to 'statutes and old forms' are dubious. The wording in the 'Ukase' is (translated) 'selon ses Statuts et ses formes antiques'. What is meant here with 'ses Statuts'? Are these the Statutes from before the Surrender of Malta or the Statutes as amended by Paul I? Does the adjective 'antiques' also relate to the 'Statuts' or only to the 'formes antiques'? Smith/Storace provide another translation, i.e. 'conformement aux formes et Statuts anciens', which is clear. [475]

At any rate, Alexander I thus came back unilaterally on the amendment of the statutes carried out by Grandmaster Paul I in agreement with the majority of the Knights. But Alexander I also assumed quite a lot of power and probably got mixed up between his powers as Czar, or 'Autocrat of all the Russias' and his (assumed) position as August Protector and his (rightful) position of Hereditary Grand Prior of the Orthodox Russian Grand Priory. He was not a Grandmaster. His position was also limited by the Treaties concluded, if still valid (he probably felt that the original Order was still alive) and by the Order's (amended) statutes. But the position and the

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[474] Manifesto of 16/28 March 1801 (PSZ. 1801, No 19.794), p. 591-592. *White Book,* p. 50, gives a French version hereof.

[475] Smith/Storace, Order of St. John of Jerusalem, p. 184.

rights and obligations of a Protector were also always rather vague and obscure.

Furthermore, a Protector, let alone a Grand Prior, could not unilaterally take the decision not to elect a Grandmaster and to suffice with re-appointing a Lt. Grandmaster. Soltykoff continued the position. [476] This is contrary to the requirement of old, to always within three days after the decease of a Grandmaster, elect a new Grandmaster. It required at least approval by or consultation with the Sacred Council and with the Chapters General involved, which Chapters did not take place. Algrant holds that 'The Statutes of the Order required the convening of a 'Conventual College' to elect a Grandmaster, not a Chapter General'. [477] But this 'Conventual College' formally had to be elected by the Chapter General. The original Order formally applied an intricate system of indirect election of a Grandmaster.

It is also submitted that the unilateral decision made by Alexander I, as August Protector, or as 'Autocrat', a terminology often used by Sherbowitz & Toumanoff in this context, to instal a provisional Sacred Council, was illegal and void. He installed a puppet provisional Sacred Council, which was highly manipulable. He wanted this. The provisionality of this Council lasted until 5 November 1802. One may also ask what Council was exactly meant, the 'Venerable Council', or the more extensive 'Consiglio Compito', or the even bigger 'Sagro Consiglio'? We assume on the basis of the terminology used, this was the Sagro Consiglio, but in that case the membership of the provisional Sacred Council was smaller than it formally should have been. [478]

Finally, as August Protector and Hereditary Grand Prior of the Orthodox Russian Grand Priory, Alexander I was not authorised to give up any claim of the Order to Malta. Apparenly he also ultimately did not do this, as can be seen from the Treaty of Amiens, mentioned below. [479] This Treaty expressly calls for the return of Malta to the Order, the creation of a Maltese Langue there and the election of a Grandmaster there. But it neglected Naple's old feudal right of 'dominium'.

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[476] Boisgelin, *Ancient and modern Malta*, Appendix XX.
[477] Algrant, *The Russian connection*, p. 7.
[478] See also infra p. 300, Chapter X, THE ORGANISATION OF THE ORIGINAL ORDER.
[479] Infra p. 186, *VI.19. The Treaty of Amiens.*

VI.18. Trying to find a Grandmaster

On 26 April 1801, the Cross of Malta was removed from the Coat of Arms of the Russian Empire. On 7 May 1801, Hompesch wrote to various Knights for reinstatement. On 20 July/1 August 1801, the provisional Sacred Council of the Order in Russia, proposed to circumvent the difficulties and delays of a Chapter General by proposing that the Pope for once appointed a Grandmaster from a list of professed candidates, to be nominated by each Priory, the final list to be prepared by the Sacred Council, without derogating from the rights and privileges of the Sovereign Order. [480] Only the Spanish Priories did not co-operate.

It may be argued this decree went against the Ukase of 16/26 March 1801. It also went against the Statutes of the Russian Order, respectively the Statutes and customs of the original Order, on a vital point. The Pope is suddenly brought back in, as supreme chief of the 'Romish Church' and 'as superior of all religious Orders'. Therefore it might be regarded as null and void. This was also the opinion of Cardinal Ercole Consalvi, Secretary of State of the Vatican . [481]

If we look at the Latin text, we see that it is said in the second paragraph thereof:

> 'Capitulo generali interveniunt Magnus Magister; Episcopus Melitensis; Prior Ecclesiae; Balujivi Conventuales; Balujivi Capitulares; Procuratores Fratrum Equitum ex singulis Linguis; Procuratores Commendatorium ex singulis Prioratibus; etc.'

The third paragraph then commences with: '*His auditis*'. This does appear to be the correct formula, [482] but the persons who, according to this text, supposedly were present and heard, were not present and heard at all. On the contrary, it is always argued by circles connected to the Papal Order that because of wartime (Second Coalition War 1798-1802) and of the geographical distances separating the various Grand Priories, it was difficult to hold a Chapter General and to elect a Grandmaster. Apart from the fact that these geographical distances and wars were in the past the same, it can be remarked that it is said here that a Chapter General was held and persons are mentioned as being present or represented and heard, who were most probably not present or represented during the meeting at all, or heard in

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[480] Decree of the Sacred Council of 20 July 1801. *White Book*, p. 54, gives a Latin version. See for an English text, Boisgelin, *Ancient and modern Malta*, Appendix No XXI.

[481] J. Crétineau-Joloy (ed.), Mémoires *du Cardinal Ercole Consalvi* (Paris 1864).

[482] *White Book*, p. 56, Document III B, the Italian translation of the decree of 20 July 1801, uses the same wording.

another way. There was 'no holding a general chapter' without the Capitular Bailiffs (Grand Crosses) present. [483] Vertot also informs us in detail about the intricate way a Grandmaster was theoretically elected. [484] Sixteen Electors indirectly chosen by the Languages, including three for the suppressed Language of England, finally elected the future Grandmaster on the third day after the previous Grandmaster's decease.

The situation obviously was one of a coup by Alexander I, respectively by Soltykoff and Maisonneuve. [485] It will also be seen that the system proposed, was a mixed system, not just calling for an appointment, but a mix between an election and an appointment of someone by the Pope and then only for once, from a list to be drawn up by the provisional Sacred Council, on the basis of the recommendations by the Priories to this Council. For centuries, Grandmasters evidently had been 'elected' without a Chapter General being deemed necessary. [486] To limit the choice to professed members was a great step backwards and contrary to the new Statutes of Paul I. At this time, only eleven Priories still existed. [487]

On 1 October 1801, Preliminary Articles of the Amiens Treaty [488] were signed. On 20 January 1802, the King of Spain, Carlos IV, subjected the 4 Spanish Priories by Royal Decree to his rule, the Order hereby being definitively reduced to 11 Priories from 15. The Spanish Knights accepted Carlos IV as Grandmaster. It can therefore be concluded also from this development, that the Spanish Priories were not interested in the other Order anymore. One might argue that retro-actively their non-recognition of Czar Paul I's election became irrelevant and therefore Czar Paul I's election retro-actively became entirely legal, in sofar as still necessary. [489] According to Sherbowitz & Toumanoff, Paul I was at any rate a de facto Grandmaster. [490]

On 15 March 1802, the provisional Sacred Council decreed that the Venerable Chapter was held under its Chairmanship. The provisional Sacred Council said that the Venerable Chapter found itself obliged to transfer its votes outside Russia. The two Grand Priors were not present (Condé, of the Catholic Russian Grand Priory and Alexander I) and the Lt. Grandmaster

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[483] Vertot, *History II*, *Dissertation, Article III, Of the dignities, priories, bailywicks, and commanderies appropriated to the knights of justice*, p. 128.
[484] Vertot, ibidem, *Article VI, Of the election of a Grandmaster* p. 138-141.
[485] The Vice-Chanceler of the Provisional Sacred Council.
[486] Vertot, *History of the Knights of Malta II, The Old and New Statutes Statutes of the Order of St. John of Jerusalem*, p. 82-87, for the whole procedure ('Of Elections'). Ibidem, *Title VI*, p. 46-53 ('How the general chapter is held').
[487] Venice; Rome; Capua; Barletta; Messina; Germany; Bohemia; Bavaria; the Catholic Russian Grand Priory; the Orthodox Russian Grand Priory and Portugal.
[488] John D. Grainger, *The Amiens treaty. Britain and Bonaparte (2003).*
[489] Different Pierredon I, p. 257.
[490] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 56.

was not present (Soltykoff). The Priories of Rome, Pisa and allegedly Spain left the decision to the Pope while the Priories of Bavaria, Bohemia, Germany, Portugal, Sicily and Venice sent their nominations directly to the Pope. Spain did not send any nominations to anyone.

Apparently, nobody knew how or did not want to properly act. [491] It seems no Chapter General of the two Russian Priories or any Chapter General was in fact convened or did take place. A Sacred Council consisting also of the Piliers of the Langues or their Lieutenants (without a Prince Grandmaster in this case, of course) and the other members thereof, was not composed. In their place, Czar Alexander I had appointed provisional representatives from among his children and the Ministers and High Officers of his Crown. [492] This Council maintained its irregular composition throughout the acts being carried out, although it was deemed necessary to constitute a regular council. It is obvious this Council was not validly or independently constituted and had no authority to do anything on behalf of whatever Order and operated illegally. Furthermore, those Priories who sent nominations directly to the Pope, obviously did not follow the instructions from the provisional Sacred Council. It is obvious why Spain did not send any nominations.

It will be clear that Czar Alexander I had created legal chaos by instituting this provisional Sacred Council and by manipulating it into putting forward the proposal that the Pope for once should appoint a Grandmaster. This was an unnecessary, illegal and null and void action. It was contrary to the Statutes of the Russian/original Order. Alternatively, the Sacred Council side-stepped Alexander's desires to hold an election and took an own initiative which Alexander in his view could or should not reverse, as he had illegally given full power to Soltykoff. See also article XXV of the Proclamation of 29 November 1798 establishing the Russian Orthodox Grand Priory. This article required that all affairs would be decided by majority of votes: 'Article XXV. The Lieutenant, who shall represent us in our quality of Grandmaster of the Order of St. John of Jerusalem, shall preside at these assemblies. He shall be perpetual recorder, by virtue of his office, of all affairs whatsoever which shall be decided by the majority of votes, according to the forms and customs observed in the order, and the regulation prescribed in the present foundation. A register shall be kept of all the deliberations, for our inspection.' [493]

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[491] Varillon, *L'Epopée*, p. 206.
[492] Sherbowitz & Toumanoff, ibidem, p. 66.
[493] Boisgelin, *Ancient and modern Malta,* Article XXV.

VI.19. The Treaty of Amiens

On 7 March 1802, the Treaty of Amiens, was adhered to by six Powers, among whom Russia. It provided for the return of Malta to the Order, on the condition of permanent neutrality, guaranteed by France, Great-Britain, Austria, Spain, Russia and Prussia, [494] the formation of a Chapter General and the election of a Grandmaster there and the establishment of a Maltese Langue, with dispensation from proofs of nobility. The English and French Langues were declared abolished, respectively not to be restored. [495]

Although the creation of a Maltese Langue would mean that the Maltese themselves would finally get a real say in the government of the island, there was much debate on this point. Only on 21 September 1964, Malta and Gozo became independent in the framework of the British Commonwealth, with a ten year Treaty of Defense and Finance. On 1971, a Maltese became Governor General. On 13 September 1974, the islands were declared to be a republic. On 31 March 1979, Great Britain gave up its military presence.

VI.20. Pope Pius VII refuses to acknowledge the late Paul I as valid Grandmaster

Alexander I insisted that it would be acknowledged by the Pope that Paul I had been a valid Grandmaster and all his acts were recognised as valid. Be this as it may, the desired acknowledgement was not forthcoming from Pope Pius VII. Pierredon had no doubt that Paul I was a valid Grandmaster and that all Paul's many nominations to the Order were valid. [496] In itself this is a strange confusion. The original Order was already dead. Insofar as it was not dead, Napoleon had dissolved it. Paul I had started a new Order. This was seen by contemporaries as the original Order continued. Paul I was seen by the majority of Knights and States as valid Grandmaster of the original Order. He was Protector of the original Order and Grand Prior of the Russian Catholic Grand Priory and Grand Prior of the Russian Orthodox Grand Priory. He used certain prerogatives as Grand Prior of the Russian Catholic Grand Priory. [497] But a State (meant is the Vatican here) is precluded under public international law from contesting a state of affairs, in which it has acquiesced. Canon law can also not be invoked here. Where States are concerned (the Papacy, the Order and Russia, as well as many

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[494] Regarded as the first case of permanent neutrality.
[495] Smith/Storace, *Order of St. John of Jerusalem*, p. 34.
[496] Pierredon, *Malte, Ordre Souverain*, p. 12, has no doubt that Paul I was a valid Grandmaster and that his nominations to the Order were valid.
[497] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, inter alia on p. 17.

other States), international law has to be deemed to prevail over canon law, if canon law was applicable at all, which it was not. One might even ask the question whether presently canon law is to be regarded as material law at all. It presently seems to be mainly a body of rules of an organisational and procedural nature. It is also inherently episcopalist or autocratic. [498]

The Order was not an Order of the Church, or at least not anymore, since Czar Paul I had made it wholly ecumenical – if it still existed then – and the Pope was not a, or *the* Protector anymore. We also refer to the retro-active character of Grandmaster Czar Paul I's recognition as Grandmaster under international law. But from the fact that Pius VII did not acknowledge as demanded by Alexander I, one might also infer that Pius VII was of the opinion that the organisation headed by Paul I was not the same as the original Order and therefore also in his opinion there were two Orders. But another approach was also possible. That was the approach that Paul I had illegally occupied the position of Gand Master. This approach had to be followed, otherwise it would have been acknowledged either that he was a valid Grandmaster, or that there were two Orders then. See also article 10 of the Treaty, saying 'the Order shal be governed , both with regard to spirituals and temporals, by the same statutes which were in force when the knights left the isle, as far as the present treaty shall not derogate from them.' [499] The question was which statutes these were, whether these statutes were clear and whether they were really in force, really ever observed, quod non in our opinion.

VI.21. Alexander I wants to break for financial reasons

On 14 April 1802, the Cabinet of Alexander I wanted to break the link with the Order, mainly for financial reasons. Smith holds the 'Czar was anxious to extinguish his fathers's movement to reunite Catholicism.' [500]

On 17 April 1802, Carlos IV put the Spanish Priories under the Spanish Crown. This was the beginning of a development which resulted in the eventual appropriation of almost every chivalric Order in Europe to some Royal throne, the sequestration of its properties and the suppression of its rights. The Russian Catholic and the Russian Orthodox Grand Priories were however never officially suppressed by the Czars. It may even be argued they were not even factually suppressed. But as Czar Paul I had endowed the Polish Grand Priory (later the Catholic Russian Grand Priory) and the Orthodox Russian Grand Priory with large financial means, at the expense of

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[498] P. Erdő, *Theologie des kanonischen Rechts. Ein systematisch-historischer Versuch* (Münster, 1999). Autocratic not to be confused with aristocratic.
[499] Boisgelin, *Ancient and modern Malta*, Appendix XVI.
[500] Smith/Storace, *Order of St. John of Jerusalem*, p. 36.

the Russian State – the process had been partly inverse, i.e. the organisation gave properties in trust to people, not people giving property in trust to the organisation and the organisation had been gifted with these properties by the State – Alexander I wanted to get rid of this burden. He certainly did not want to pay any responsions abroad. This is why he manipulated his puppet provisional Sacred Council to hand over to Tommasi. To avoid falling into his own trap, he had to ultimately break the link. This was finalised in 1810. [501]

VI.22. A decisive break with the past by Pope Pius VII

On 16 September 1802, Pope Pius VII appointed Bartholomeo Ruspoli as Grandmaster, but Ruspoli refused twice. Von Hompesch's Abdication of 6 July 1799 was suddenly recognised by Pope Pius VII. Pius VII recommended not to question whether all rules were complied with, [502] but the Pope's mandate had been exceeded and already consummated. It is obvious according to Smith/Storace that Pius VII tried to beat the Treaty of Amiens. [503] The Pope was very much aware of the possible illegality of Ruspoli's and later Tommasi's appointments. The recognition of von Hompesch' abdication only then, was a master stroke.

On the one hand, the Pope followed the suggestions of the provisional Sacred Council and thus recognised it. On the other hand, his later appointment of Tommasi was not based thereon and therefore came 'out of the blue'. But appointing a Grandmaster in this manner 'based on casual consultation with the Grand Priories just for mere formality conveniently neglected the character of the Order, its consequence being to reverse the statutory order of operation in such a way that in strictly following the text of the decree the person elected instead of being the representative of the entire Order and then confirmed by the Pope, risked to be deemed just the representative among others of one Grand Priory alone chosen by the Pope.' [504] It also placed the head of the Order involved (a new Order) under the immediate dependence of the Pope. This was a decisive break with the past. On 5 November 1802, the provisional Sacred Council in Russia decreed it resigned its functions and handed over to Ruspoli.

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[501] Infra p. 197, *VII.3. Czar Alexander I's Decree of 1810.*

[502] First Bull of appointment, of Ruspoli. Varillon, *L'Épopée*, p. 206, provides the exact wording used by the Pope in this context. C. Zeininger de Borja, in 'Scientia' (Malta 1954, vol. 20), p. 10, says the appointment was contrary to the Code Rohan. See also Smith/Storace, *Order of St. John of Jerusalem*, p. 38, citing H.C. Zeininger de Borja, *L'Ordre de St-Jean et ses affiliés*, Milan 1954, p. 10 and le Poitevin, 'Baron de Hompesch de l'Ordre de Malte', in *Les Contemporains*, p. 13, cited by Smith/Storace.

[503] Smith/Storace, *Order of St. John of Jerusalem*, p. 39.

[504] Pierredon, *Histoire politique*, Volume II, p. 2.

VI.23. The continued position of the Orthodox Russian Grand Priory

The Catholic Russian Grand Priory would be administered by the new Grandmaster Ruspoli, through the Lt. Grandmaster Soltykoff. The Orthodox Russian Grand Priory would receive a Rule approved by the Emperor and in accordance with its Act of Foundation of 29 November 1798. This Act of Foundation was based on the Third Treaty between the Order and Russia, of 1 June 1798, approving the formation of the Russian Orthodox Grand Priory.

The separate rule for the Orthodox Russian Grand Priory may be deemed to be in accordance with this treaty. The Orthodox Russian Grand Priory always was a 'quaint part' of the original Order, but the same can be said for the Protestant Balley of Brandenburg then. Both were governed independently of the original Order and only belonged to it in name, but did pay responsions which were accepted as such.

But it is in our view incorrect to draw the conclusion from the separate rule for the Orthodox Russian Grand Priory, that the Russian Order therefore was a Russian State Order. Alexander I may have seen it as such, but this point of view is not correct. It will be noted that the new Papal Order to be mentioned below, never made a Treaty with Russia to abolish the Orthodox Russian Grand Priory. If it would have done so, it would automatically have recognised the validity of this Grand Priory.

On 17 November 1802, the Russian Cabinet wanted to end the existence of the Sacred Council in Russia and to stop paying responsions to Malta and to donate the funds available to Russian charitable foundations.

VI.24. Tommasi's appointment

On 6/9 February 1803, Pope Pius VII , 'Motu Proprio', [505] – after having tried a Bailiff Caracciolo and a Commander Romagnoso, who, like Ruspoli both declined – finally succesfully appointed Bailiff Giovanni Battista Tommasi di Cortona, based in Messina, as Grandmaster, who accepted and thus created a new, purely Papal Order, with a new constitution, only accessible to Catholics. By issuing this Motu Proprio, the Pope admitted there were cases in which the Statutes could not be applied.

This was a serious rupture. Tommasi's appointment was not appreciated by Alexander I. Tommasi's appointment was also not accepted by the Spanish Priories. Although the provisional Sacred Council in Russia

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[505] Beside the Corpus Iuris Canonici, Papal laws can be distinguished in lex; decretum generale; constitutio apostolica and motu proprio (lat. motus-us). A motu proprio is a law referring to a special personal or an ad hoc situation. Appeal from a Papal decision is not possible.

[506] Pichel, *History*, p. 41.

proposed that the Pope appointed a Grandmaster from a list of candidates nominated by each Priory and although the procedure laid down by this Council had not been observed, Ruspoli was nevertheless appointed by the Pope. But Ruspoli refused and later on, after two others had refused, Tommasi was unilaterally appointed by the Pope. The procedure of appointing a Grandmaster from a list of candidates nominated by each Priory and drawn up by the sacred Council, was therefore not followed. The mandate also had already expired. The appointment was also contrary to the Treaty of Amiens, although the Holy See was not a party.

From the fact that Alexander I congratulated him, some infer that Alexander I recognised the appointment of Tommasi. But on the other hand, Blessings by the Pope of The Ecumenical Order are rejected as being a recognition of this Order.

Congratulations were also received from Naples, Sardinia, Salzburg, Bavaria, Portugal, France, Prussia and Denmark. Not from Great Britain. The congratulation from Czar Alexander I did not take place on behalf of the Russian Order, but even if it did, Alexander I was the Protector of the Russian Order, not its Grandmaster and therefore not authorised to represent this Order. [506]

But even after the appointment of Tommasi by the Pope, Czar Alexander I continued to call himself Protector of the Order and this for as long as he lived. It therefore appears that, when on 6-9th February 1803, Pope Pius VII appointed Tommasi, the Pope carried out a 'coup d'état', but legally he only created yet another, new and now purely Catholic again, religious and totally dependent, therefore not sovereign, Papal Order. The fact that much later, this Order's revival of 1879, became recognised under international law as an international legal person by various Catholic States, for political reasons and as a matter of courtesy, [507] in principle says nothing about the legal validity of its claim to be the legal, uninterrupted continuation or successor of the original Order, as it existed in Malta before the Surrender of Malta, or thereafter in Russia, under Czar Paul I.

VI.25. From 1803 till 1855, four branches can be distinguished

Pierredon [508] holds that in the period 1803 till 1855 four branches can be distinguished. These were 1) the Protestant Prussian Order of St. John and the Northern Countries, with a predecessor dating from 1549; 2) the Orthodox Russian Order, continued or founded in 1798 by Czar Paul I;

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[507] Cox, *Acquisition of sovereignty*, p. 12: 'The notions of sovereignty and statehood are not easily defined or explained. To a large degree this is because they are principally political concepts, rather than merely legal principles. '

[508] Pierredon, *Histoire politique 1956*, p. X-XI.

3) the Catholic French Order or 'Commission des Langues Françaises de l'Ordre Souveraine de Malte', created in 1814 by French members, who wished to be connected to the Papal Order (recognised by King Louis XVIII on 7 July 1814, approved by Pontifical Brief of 10 August 1814, separated from the Papal Order on 10 January 1824, corporately dead till 27 April 1836, when it was reconstituted and renamed 'Conseil des Trois Langues de France') and 4) the English Order, allegedly founded in 1826/1831. But there was also a Spanish branch, constituted by the former four Spanish Priories.

All used similar titles of an overlapping nature. Probabably none performed a traditional role of 'Knights of St. John', except maybe ceremonially. The Langues had always enjoyed a rather independent position, respectively had always rather claimed this independence. The above four branches except Spain, also claimed this independence.

The Papal Order, originally based in Messina and then in Catania, was not deemed representative. It also was of a recent date and even intentionally and bluntly severed any ties which might exist. Therefore it seems that nobody can validly claim to be the only uninterrupted continuation or uninterrupted legitimate successor of the original Order as it existed before the Surrender of Malta. But it is a fact that also the alleged malcontents in Russia stayed rather silent and did nothing much, except more or less continuing in their Priories.

The Papal successor of 1879 of the new Papal Order started by Tommasi, became to be regarded as the only Sovereign one. The fact of four or five similar organisations is of course bewildering at first sight. The new Papal organisation of 1879 clothed itself in the formal traditions of the old organisation, like all did and do. The Russian Order apparently did not utter any sounds of protest. But theoretically it cannot be said therefore to have slept on its alleged rights and thereby have lost them. A null and void decision in principle stays null and void. Nullities can always be invoked, without a fatal period being applicable. They were invoked by various writers. But we know not if they were also invoked by representatives of the Russian Order. At least not until the 20th century, if the Russian Order survived till then. This depends on how preserved documents and the intentions of Paul I and his successors are interpreted. [509] Then organisations

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[509] Algrant, *The Russian connection,* pitting de Cassagnac's *Livre Rouge*, Eric Muraise's *Histoire sincère* and Harrison Smith's series of articles in Scientia (survivalists), against Sherbowitz & Toumanoff's *Order of Malta and the Russian Empire* and Pierredon's *Histoire politique* (anti-survivalists). Confirming and supplementing on this essay, Foster, *The survival of the Russian tradition of St. John.*

claiming to be the Russian Order or the continuation thereof, popped up particularly in the United States, but also later in France. [510]

VI.26. The handing over from an internal and international law point of view

On 13 April 1803, the marionet provisional Sacred Council in Russia abdicated and 'handed over' to Tommasi. This was signed by the Lt. Grandmaster Soltykoff, by a Lt. Grand Chancellor, a Lt. Turcopolier, a Seneschal, a Grand Conservator, a Lt. Pilier of the Langue of Italy and an acting Vice Chancellor. The new Grandmaster accepted the existence of the Orthodox Russian Grand Priory, as the Pope had done this. Also admissions and promotions of Knights in this Priory were accepted by the new Grandmaster. The appointment of Tommasi was accepted by the marionet provisional Sacred Council in Russia.

When the so called provisional Sacred Council accepted the appointment of Tommasi in 1803, this was based on a violation of the internal law of the Russian Order, invalidating its consent. This violation was manifest and concerned a rule of internal law of fundamental importance, i.e. a Chapter General of the Order and an election of Tommasi had not been held and a combined Chapter General of the two Russian Grand Priories had not been held, or only on paper. But the political constellation was such that one did not act.

A treaty ends because of: its having been carried out fully; by the lapse of the time for wich it was entered into; by the realisation of the condition on which its dissolution was made dependent; by the consensus of both parties, embodied in a new treaty or expressed in another way; by renunciation of the rights awarded by the treaty; by the definitive impossibility of carrying out the treaty; by one of the subjects party to a treaty becoming non existent or by legally given notice of termination.

The four Treaties involved were the Treaty of 4/15 January 1797 (First Treaty) between the Order and Paul I/Russia concerning the establishment of the Order forever in Russia and the establishment of Family Commanderies in Russia, ratified on 7 August 1797 by the Order, at which occasion Paul I was asked to become the August Protector of the Order which he accepted on 29 November 1797 (Second Treaty); the Treaty of 1 June 1798 (Third Treaty) between the Order and Paul I/Russia concerning the establishment of the Russian Orthodox Grand Priory in Russia, under a separate regime and

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[510] Infra p. 219, *VII.17. The first US Chapter General* and p. 238, *VII.26. The foundation of the Association of Hereditary Descendants of the Knights of St. John in Paris*

the Treaty of 1 October 1801/27 March 1802 (Treaty of Amiens), concerning the return of Malta. The Order was not a direct party thereto. Neither was the Holy See.

We have mentioned above, that we are of the opinion the original Order had already ended before 1798, by loosing its purpose and chivalric combat character. Napoleon dissolved an already dead and defunct organisation. If he did not dissolve something which was already dead, then he nevertheless dissolved the original Order definitively and Malta, the essential element for the Order's sovereignty was definitively lost because of the 'Surrender' and the subsequent 'Convention' and departure from the islands. Paul I became the elected Grandmaster of something new, a new Order of St. John, an Ecumenical Order, which we called the Russian Order.

This means we are of the opinion that in principle the above sub g (one of the subjects party to a treaty becoming non existent) was applicable. Not one of the abovementioned other ways of ending of a treaty comes into the picture here, except perhaps with regard to the Treaty of Amiens which ended because of one of d through f above (by the consensus of the parties, embodied in a new treaty or expressed in another way; by renunciation of the rights awarded by the treaty; or by the definitive impossibility of carrying out the treaty).

If the original Order must be deemed to have survived, then the First and Second Treaties were observed, at least there never was an official Russian act of abolishment or relinquishment, or the First Treaty was not observed, but in principle without legal effect, because of the manipulated and illegal and null and void handover by a puppet regime to Tommasi, who was illegally appointed.

Remains the point to be made that if the original Order survived, the Treaties between the original Order and Russia were breached by Russia under the regime of Alexander I and also subject to interference by Pope Pius VII, contrary to the principle 'par in parem non habet imperium'. However, Alexander I kept the Russian Grand Priories at least formally in existence. But this existence is also peculiar from the point of view that the original Order did not survive. But then again, the Russian Orthodox Grand Priory could be deemed to have been founded by someone who was Grandmaster of a new Ecumenical Order and the Russian Catholic Grand Priory could be deemed to have been absorbed by this new Ecumenical Order.

VI.27. The validity of the Chapter General at Messina

On 16 May 1803, France and Great Britain were at war again. Tommasi had constituted a Convent in Messina and on 27 June 1803, in war time (Third Coalition War 1803-1805), summoned a Chapter General there, which

ratified his appointment. But only 36 Knights were present. This raises the question whether there was a quorum. Tommasi was not elected on the legal basis of the Statutes. Pius VII proposed to move the Seat of the Order to Rome and wanted to become Grandmaster himself. The Grand Priories of Rome, both Sicilies, Bohemia and Austria were incorporated in the Papal Order. It evidently was felt necessary to hold this General Chapter of the Papal Order, to be able to claim having not only an appointed but also an elected Grandmaster.

It can be questioned whether this Chapter General had the competence or capacity to do so and whether it was validly summoned by Tommasi in Messina and whether it constituted a valid quorum. It really was a farce. Catania was not representative or active or important enough to make any of its decisions carry any weight, as history has shown particularly in connection with its Lt. Grandmaster Busca. Messina was also suppressed or expropriated in 1825.

The ratification of Tommasi's appointment by this Chapter General in Messina cannot be deemed to be valid otherwise than for this new Papal Order. It is also not understandable why suddenly it was deemed possible to convene a Chapter General, while this was deemed impossible in 1801. Chapters General were also usually announced one year in advance. Furthermore, in the next seventy six years, the Papal Order called no Chapters General whatsoever.

We can see the complications if one assumes and holds on to the idea of uninterrupted formal continuation of the original Order. There was no uninterrupted material continution. The only thing which can be said to have continued up till the present day, is the capture of the imagination of the public by a new idea, a new concept of Knights of St. John, sold to them as historical. The Knights, by birth and social reputation, by the mere word of Knight, by an exceptional deed or function, by the alleged or real sacrifice of life for an ideal, combined with the force of the charitable myth and the religious aspect, pomp and circumstance, or by all this taken together, became a figure of our collective imagination. This can be exploited.

VII. FIFTH PHASE (1803-1940): BECOMING EXTINCT OR DORMANT AND RECONSTITUTED AGAIN

VII.1. The Papal Order slowly corporately dying

From 1803-1879, the Papal Order became slowly dormant and then corporately dead. [511] In February 1804, the Convent moved from Messina to Catania. On 12 May 1805, Von Hompesch died in a convent in Montpellier. On 13 June 1805, Tommasi died and Bailiff Guevara Suardo was appointed as Lieutenant of the Papal Order (1805-1814).

On 17 June 1805, 36 Papal Knights present in Catania elected Giuseppe Caracciolo as Grandmaster. According to Algrant, only 22 electors of the 45 electors needed for a constitutionally valid election, were present. Various authors hold that the Convent of Messina was not representative. [512] At the time, there were in Russia 393 Commanders and 32 Knights Grand Cross. Pope Pius VII refused to confirm Caracciolo and also Napoleon did not recognise his election. Caracciolo was however recognised by Czar Alexander I. Caracciolo, another 'Anti-Grandmaster', created many Knights among whom Russian Knights. [513]

By 1806, Napoleon had suppressed all what was left of the original Order in France and in Italy. [514] During the period 1805-1810, the Commanderies of Germany, Italy and Bavaria were swept away, Portugal was ravaged and Sicily sequestrated the Sicilian Commanderies for the Royal Treasure. On 24 March 1806, the two Russian Grand Priories (through the marionet Sacred Council) accepted that customary procedure must be followed pending the confirmation of the Candidate for the Magistry (Caracciolo). On 12 July 1806, the Treaty of the Confederation of the Rhine expropriated the Priory of Germany. In the year 1806, also the Grand Priories of Venice, Lombardy and Germany were expropriated. On 13 July 1806, King Gustaf IV of Sweden offered Gotland to Guevara-Sardo, who declined. In 1807, Pius VII

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[511] Sutherland, *Achievements*, Preface: 'so completely has their name been blotted from the records of the day, that their very place of retreat has become, generally speaking, a matter of uncertainty.'; Smith/Storace, *Order of St. John of Jerusalem*, p. 46: 'it was as good as lifeless'; Sire, *Knights of Malta*, p. 248: 'unrepresentative, wholy Italian government, dependent on Roman control, and ultimately to reduce the Knights of Malta to a papal order of chivalry.' and p. 251: 'if it would not have been allowed to die, in the years from 1814 to 1834 in France, Spain, Portugal and the two Sicilies.'

[512] Among whom Sire, *Knights of Malta*, p. 248; Hafkemeyer, *Rechtsstatus*, p. 75 and Algrant, *The Russian connection*, p. 8.

[513] Confirmed by Catania in the case of the award of the Cross to five Russian persons.

[514] Smith/Storace, *Order of St. John of Jerusalem*, p. 43, for further details.

confirmed Guevara-Sardo to stay on as Lt. Grandmaster of the Papal Order and rejected Caracciolo.

At that time, the only Order of Malta or of St. John, mentioned by Debrett's, was the organisation under the patronage of the Czars of Russia, known as 'The Sovereign Order of St. John of Jerusalem'. The same goes for later issues of Debrett's in 1817, [515] 1819, 1825 and still in later issues. Only in 1861, the existence of a Papal Order of St. John was made known to the world via the 'Almanach de Gotha', probably at the instigation of the 'Rhenish Westphalian Association of the Knights of Malta', started in in 1859 in Germany as the first Roman Catholic private association of Knights of St. John. This shows how dormant the Papal Order had become. In 1810, Messina was supposed to be the only possession of the original Order as it existed before the Surrender of Malta, together with that of Bohemia. [516]

VII.2. Secularisation of ecclesiastical goods

By 1808, the possessions of the Grand Priory of Bavaria, Rome, Barletta and Capua were expropriated and Rome was occupied by French troops. In 1809, the Russian Grand Priories recognised Guevara-Sardo as Lt. Grandmaster. The recognition of Caracciolo was then withdrawn by Alexander I. In 1809, the Teutonic Order was dissolved again, by Napoleon. It had been dissolved before, in 1525. At least it had been secularised by that time. Napoleon declared the Papal States annexed to France. In the meantime, Czar Alexander I promoted Counts George and Alfred Potocki to the rank of Hereditary Commanders.

In 1810, Friedrich Wilhelm III, King of Prussia, put the Balley of Brandenburg under the Prussian Crown. The Edicts involved were of 30 October 1810 and 23 January 1811. The first Edict constituted a complete secularisation of all ecclesiastical goods in Prussia. The second Edict expropriated all goods of the Balley of Brandenburg and ordered its dissolution. The 'Ritter' were allowed to continue wearing their decorations during their lifetime.

From 1810-1853, the Prussian Order was extinct or dormant. Anywhere in Europe, parts of the original Order as it existed before the Surrender of Malta, were suppressed, stayed dormant and then were much later reconstituted or revived, in one way or another. The alleged Russian reconstitution mentioned below [517], seamlessly fits into this course of events. But if they had no corporate life in this period, they must like the Papal

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[515] The year of the Lazareff case. Infra p. 206, *VII.8. The Lazareff case*.
[516] Zeininger de Borja, 'Scientia' (Malta 1954, vol. 20), p. 93.
[517] Infra p. 219, *VII.17. The first Us Chapter General.*

Order be deemed to have died. It will be shown below that the Russian Order showed some signs of life, but it is unclear whether their corporate life did (more or less) continue. But Debrett and also Burke's knew of their existence as an Order or as Grand Priories and even expressly said they carried on under 'the old forms'. From 1810-1917, the Cadets of the Corps des Pages in St. Petersburg also continued wearing the Cross of Malta on the left breast.

VII.3. Czar Alexander I's Decree of 1810

On 26 February 1810, Alexander I issued a Decree concerning economic aspects of the two Russian Grand Priories, but formally left them intact. Payment of income to present recipients continued, but no further allocations were to be made. Responsions were not be paid to Malta anymore. Salaries would continue to be paid and Hereditary Commanderies were maintained. [518] The text (translated from the Russian) reads as follows:

> 'We hope you are informed about the intentions of the Finance Commitee concerning the Order of St. John of Jerusalem. Under the authority given to Us, We will do Our best to let the Order continue its activities and, having recognised the necessity, We would like to settle the questions connected with its funds in accordance with the following rules.'

Followed a freezing of all financial aspects. A stricter attitude was taken on 30 October 1810 by FriedrichWilhelm III, King of Prussia, who suppressed the Balley of Brandenburg. On 20 November 1811 followed a Decree of the Senate of the Russian Empire concerning the Hereditary Commanderies in Russia. [519] The Hereditary Commanders could pay certain funds due from the respective Commanderies to the State and would in that case be regarded as the owners of these Commanderies and the payments received would be used as donations to Russian charitable institutions. Those Hereditary Commanders, who would not elect to buy their Commanderies, would have to continue such payments during their lifetime that would be determined by the regulations in force. Remember that in the case of Family Commanderies (or Commanderies jus patronatus or Hereditary Commanderies, which different terminology basically covers the same subject), people brought in certain property. This property was then deemed to have become the formal

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[518] Ukase 24.134 of 1810, *Polnoe Sobranie Zakonov*, 1810, No 24.134 , Volume 31 (The British Library Ref: SN 142), p. 74.

[519] Resolution of the Council of the Empire, of 10/22 April 1811, confirmed by the Emperor, included in the Decree of the Ruling Senate of the Russian Empire, of 20 Nov./2 Dec. 1811['Concerning the landed property of the family commanderies of the Order of St. John of Jerusalem' (PSZ. 1811, No 254. 882, p. 908)].

ownership of the Order, in which framework they then paid responsions of the profits (howsoever these were calculated), but that was it. Now they received the opportunity to sever the (trust) bond and to become full owners again.

It is obvious that Alexander I wanted to get rid of the economic aspects of the Order in Russia, but Hereditary Commanderies factually were not or not immediately or entirely abolished. Neither were the two Russian Grand Priories abolished, at least not formally. Algrant explains there are three French translations of the Ukaze of 1810 and two of the Ukaze of 1811 and refers to the omittal by Sherbowitz & Toumanoff of the final part of the text of the Ukaze of 1811, referring four times to Hereditary Commanders and Commanderies. [520] Legally they could not be unilaterally abolished. Their establishment in Russia was based on Treaties between two Sovereign States. This unless one would deem that one of these States had become non-existent in the meantime. This is our view, but it was not the Russian view, at least not the view officially expressed.

VII.4. First revival signs

In 1812, Napoleon invaded Russia. Czar Alexander I formally ceded Malta by treaty to Great Britain. On 23 May 1812, Friedrich Wilhelm III, King of Prussia, founded the Royal State Order of Saint John of Prussia, Der Johanniter Orden. Therefore this was a State decoration. After the dissolution of the Balley of Brandenburg in 1811, the Knights of the Balley had been allowed to continue wearing their Order Crosses. As far as this is concerned, the situation was basically the same as in Russia, after the economical measures of 1811 of Czar Alexander I concerning the Russian Orthodox Grand Priory there (although never officially dissolved). The Court Almanac of 1812 listed Czar Alexander I as Protector and also listed Hereditary Commanders of the Russian Grand Priories. The same were also listed in the 1910 through 1914 Court Almanacs.

VII.5. The Vienna Congress

After the Battle of Leipzig and during the Battle of Waterloo (respectively October 1813 and June 1815), the Vienna Congress was held (1814-1815). It restituted nearly all Papal territory (67.759 square kilometers). However, the Congress refused to reconsider the question of the return of Malta to 'the Order' (which one?) and provided no indemnification to anyone. It

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[520] Algrant, *The Russian connection*, p. 11.

confirmed the English possession of Malta. [521] One seemed to finally realise the original Order had been definitively dissolved, respectively there was no question of State succession by any Order of St. John. It is obvious the decisions of the Vienna Congress meant the final blow to all aspirations to ever return to or obtain Malta.

From 1814-1821 reigned as Lieutenant Grandmaster of the Papal Order André di Giovanni-Centelles. On 26 March 1814, the 'Commission des Langues Françaises de l'Ordre Souverain de Malte' was formed, but until 1891, the French Order of St. John was dormant. On 25 April 1814, Lieutenant Guevara Sardo died in Catania and on 30 May 1814, by the Treaty of Paris (Article VII), Malta was formally assigned to Great Britain. [522] On 4 June 1814, a 'Charte Constitutionelle' was adopted by Louis XVIII. Louis XVIII came to Paris on 3 May 1814 and agreed to this Charte on 4 June 1814. The Charte prevented the return of all goods taken during the French Revolution from nobility or from the Church. It was much resisted by the Restauration, but ultimately to no avail. [523] On 7 July 1814, the 'Commission des Langues Françaises de l'Ordre Souverain de Malte' was recognised by King Louis XVIII and on 10 August 1814, it was approved by Pontifical Brief. During 1815-1819, petitions were made to the King of Poland to restore the Catholic Polish Priory. On 8 August 1815, King Willem I of the Netherlands (1772-1843) issued a law restoring the Teutonic Order in The Netherlands as Teutonic Order, Balley of Utrecht. Its decorations could be worn as usual. It remained dependent on the Sovereign.

The absolute rule of the Romanovs in Russia, the Habsburgs in Austria and the Hohenzollern in Prussia, had not suffered any substantial damage from the élan of the French Revolution. Alexander I, Franz I and Friedrich Wilhelm III, instead of giving a societal basis to their power by allying with the aristocracy and seeking support from their subjects, stuck to their 'droit divin'. They solemnly promised to support each other in times of emergency. [524] On 26 September 1815, the 'Holy Alliance' was signed between Russia, Austria and Prussia. It was used by the Austrian Chancellor Metternich as basis for his politics to restore the pre-revolutionary order of things.

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[521] Lo Celso & Busietta, *Il triangolo*, p. 18: 'Malta was assigned to 'The Sovereignty and authority of His Britannic Majesty.'

[522] 'To great and unconquered Britain the love of the Maltese and the Voice of Europe confirms these islands A.D. 1814'; inscription in stone at Palace Square, Valletta.

[523] Compare the much violated Declaration of Brede of 1660, issued by King Charles II (1660-1685), promising freedom of religion and amnesty upon his accession.

[524] A.P.J. van Osta, in Tamse, *Monarchie*, p. 66.

Should the Vienna Congress have determined that the various States which had suppressed national divisions of the original Order and had expropriated possessions should turn back these actions or should give compensation? If so, to whom and how? Malta was not taken from the Knights at all. They had surrendered and did not fight. They handed over voluntarily. Also, the Charter by which Charles V of Habsbourg granted the island as a fief, said that whenever and for whatsoever reason the Knights would transfer or alienate Malta without permission, the fief would automatically return to its rightful owner, the King of Sicily. The 'ius postliminii' [525] was not applicable.

We therefore hold that after the Surrender of Malta, the original Order definitively lost its statehood and that whatever should have been the case or not, the Paris Convention, respectively the Vienna Congress finally settled the matter by saying that Malta would remain under English control, would not be returned to anyone and that no compensation was to be given. One might deem this illegal, particularly in France, were it not for the socalled 'Charte', agreed to by Louis XVIII as a condition for becoming King of France. The Order's main posssessions were in France and it derived most of its responsion income from France.

What is the legal status of the various Orders of St. John which had come into being or were deemed to exist after the Surrender of Malta? We hold that after the Surrender of Malta, but definitely after the Vienna Congres, all Orders of St. John which existed then, have to be regarded merely as associations under private law. This includes the predecessor of the present Papal Order SMOM. [526]

VII.6. The situation from a private law point of view

The Papal Order had in the meantime become unrepresentative, was wholly Italian governed, totally dependent on control from Rome and had become nothing but a Papal Order of chivalry, which the present Papal Order SMOM also essentially is now, in spite of holding up old appearances. The Order's High Offices were monopolised 'in representation' of the other Langues. This was supported by the Holy See, thus further creating a strictly Italian Roman Catholic Papal Order. Royal and Papal control resulted in little or no profit to the alleged government of this Papal Order. The 'Lieutenancy' was regarded by the Pope as the Government of the Papal Order. Thus no-one else could govern the Papal Order.

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[525] François, *Handboek Volkenrecht II*, p. 447.

[526] 'The Sovereign Military Order of Malta', so called since 1942, respectively 1962.

Various groupings of Knights had pressed their claims at the Vienna Congress for the return of Malta, but mutually did not recognise each other. Above, we said it can be argued they all had become mere private law associations, since the Surrender of Malta, the death of Czar Paul I, the renunciation of the Grandmastership by Alexander I, the Treaty of Paris and the Vienna Congress.

Looking at the situation this way, from a Dutch private law point of view and taking into account the Dutch Supreme Court said the umost reticence should be observed in declaring rules of material civil law applicable to the relationship between the various organs and parts of an ecclesiastical community [527] and in the period between 1976 and 1992, the Burgerlijk Wetboek (Civil Code, article 2:18) even stipulated that articles from Book 2 with regard to resolutions and annulment of resolutions, were not applicable to ecclesiastical communities and associations on a spiritual basis, we nevertheless remark the following. [528]

Members in an association should co-operate according to rules and objects fixed by them. Catania had little or no members. Membership is essential for an association. There was little or no co-operation whatsoever. An association as a rule is automatically dissolved in case of lack of members.

Departments of an association with full legal capacity participating in social traffic with a reasonable degree of independence, are regarded as associations with limited legal capacity. It is beyond doubt that every existing Order of St. John at the time and also later had and has this reasonable degree of independence, which is also in conformity with the degree of independence the ancient Langues had. The present 90 national associations of the Papal Order are formally, but also materially, rather independent. They all had and have their own statutes. Therefore these Orders of St. John are to be regarded as independent associations with in principle full legal personality and full legal capacity, but co-operating under the guidance of the umbrella organisation.

The original Order of St. John was primarily formed for specific charitable purposes, but then converted into a religio-military organisation, with as primary purpose to fight the Infidels. This dubious purpose from a Christian point of view, also questioned at the time, became obsolete, at least since about 1723, when the Tacit Truce with the Turks had come about. An association is formed for an indefinite period or for a specific time, or to achieve a specific cause. This cause no longer being valid, one can argue

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[527] Hoge Raad 14 June 1991 (Kruis), NJ 1992, 173 note HJS.

[528] See also W.J. Slagter, *Compendium Ondernemingsrecht* (Deventer 2005), p. 61-86.

that all Orders of St. John had become dissolved automatically, respectively had to be dissolved and liquidated. This is precisely what Napoleon Bonaparte did and then a great number of Governments did in their respective States.

Term and location of the Chapter General of Messina were untimely and inappropriate. This was evidenced by the very meagre turn-out of Knights.

The Chapter General, being the assumed General Assembly (or the Supreme Council) cannot, not by majority vote and not even unanimously, take decisions within the powers of other organs. The same goes for the Provisional Supreme Council's decisions. Statutory powers of a general assembly inter alia are the appointment, suspension and dismissal of administrators. The old indirectly elected electoral college was competent.

Decisions of associations contrary to the law [529] and the statutes [530] are generally null and void. The decision is deemed not to have been taken and members cannot be deemed bound to carry out these decisions. Such a nullity can only be healed by having the right organ take the proper decision.

A null and void decision stays that way, even if nobody noticed the nullity, respectively the non-existence. A member can at all times invoke the nullity, even if the decision is carried out and other members adhere to it. Only in special cases, the Court may reject an appeal to nullity, i.e. in the event honouring the appeal would be in-acceptable in the given circumstances under criteria of reasonableness and equitability. [531] An appeal to nullity is in principle not bound to a time limit.

Furthermore, decisions which are contrary to legal or statutory rules regarding the procedural way a decision should come into being, [532], or which are contrary to reasonableness and equitability, [533] or contrary to an internal regulation lower than the statutes, can be nullified. They are not null and void, but can be nullified by the Court. They stay valid untill nullified and can be remedied by a valid decision. Usually, the period within which a request to nullify should made to the Court, is a year.

The nullity or nullifiability of an appointment can always be invoked against the appointed party, in view of the association's interest. The

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[529] Hof 's-Hertogenbosch 16 June 1993, *NJ* 1994, 249 (payment orders by decision of the general meeting, where the board was authorized to issue these).

[530] Hoge Raad 8 April 1938, *NJ* 1938, 1076 (Van Gulpen en Sweets/Mehler) and Hoge Raad 16 June 1944, *NJ* 1944/1945, 443 (Keymel/Merito).

[531] Hoge Raad 28 June 1991, *NJ* 1992, 787. (In this judgement, the Supreme Court seems to accept this possibility.

[532] Hoge Raad 15 July 1968, *NJ* 1969, 101 (Wijsmuller), Hoge Raad 14 March 1975, *NJ* 1975, 409 (Coöp. Ver. Drogisten N.D.C.) and Hoge Raad 19 December 1952, *NJ* 1953, 464 (Van Herwaarden's Kalkzandsteenfabriek).

[533] Hoge Raad 9 January 1941, *NJ* 1941, 528 (Mante) and Hoge Raad 10 March 1995, *NJ* 1995, 595 (Jansen Pers).

irrevocable decision laying down the nullity or nullifying the decision, is binding for everyone, if the legal person was a party in the proceedings.

VII.7. The situation from an ecclesiastical community point of view

If the four Orders distinguished by Pierredon in the period mentioned by him (Protestant-German and Scandinavian; Orthodox-Russian; Catholic-French and Anglican-mainly English, have to be regarded as 'religious communities', the following can be remarked.

Basically nowadays in most Western countries, all ecclesiastical communities are (still) free to organise themselves as they please. [534] This is based on the fundamental human right of freedom of religion. Interference by Goverments gradually came to an end (although the pendulum might now swing back under the influence of the ever developing European law and of global terrorism). For example, the right of 'placet', the intervention of Governments where correspondence was concerned between national Churches and their foreign Heads and placet on the promulgation of Church rules, which existed in many, even mainly Catholic countries, was gradually abolished.

The consequence of the separation of State and Church and the freedom of ecclesiastical communities, is that Government assistance and judicial assistance by the State Judge cannot be invoked anymore to ensure the maintenance of the Church order. The principles of full freedom of religion and equality before the State of all creeds, entail that the judge may not take sides in disputes arising in the field of one of these creeds about faith and confession, let alone between these creeds about these matters. Particularly, a judge may not make his judgement dependent on theological disputes, about which division is existing. [535]

Ecclesiastical communities, as well as their independent parts and communities, in which they are united, usually have legal personality sui generis. [536] The definition of an ecclesiastical community can be: 1) an organisation, with a certain structure; 2) of participants (not necessarily 'members', but a substrate of natural persons is needed); with 3) as purpose the common worship of God by the participants; 4) on the basis of common religious beliefs and 5) which wants to hold itself out as an independent

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[534] Infra p. 359, *XVI.1. Ecclesiastical communities;* p. 360, *XVI.2. Ecclesiastical communities have legal personality sui generis;* p. 361, *XVI.3. What is an ecclesiastical community under Dutch law?*

[535] For example, see Hoge Raad 15 February 1957, *NJ* 1957, 201.

[536] Laid down in The Netherlands, for example, in Book 2 Burgerlijk Wetboek since 26 July 1976.

religious community and not as a part thereof. [537] Common worship of God may carefully be extended to common religious experience or reflection. Organisations 'on a spiritual basis' do not fall under the notion of religious community. Freemasons, for example, are usually not deemed to be an ecclesiastical community.

Ecclesiastical communities which clothe themselves in the normal private law forms of association or foundation, might not be an ecclesiastical community anymore by doing so. In that case, they subject themselves to the national private law rules for normal associations or foundations. The legal personality sui generis of ecclesiastical bodies, is usually not regulated by the normal private law, but recognised by it, with the right to arrange their own corporate structure, in sofar as not contrary to the law or to public order. This was not so in the 19th century, when several countries feared a too large power of the Church. [538] Church and associations had freedom of existence, but were not recognised as legal persons. This does not mean they are not to be regarded as a category of national private law and as not subject to national private law.

Foreign ecclesiastical communities and their local independent parts probably have legal personality, in the event they are enjoying legal personality as an ecclesiastical community in the country of their establishment or are having legal personality as an international organisation. Apart from ecclesiastical communities, there are other legal persons sui generis, for example old organisations which historically grew as legal persons.

Where the above Orders are concerned, they were not a Sovereign State or a part thereof anymore, but they may have been ecclesiastical communities. If this is so, then it can be remarked they were dormant and had no real substrate of natural persons for a long time and therefore cannot be regarded as live ecclesiastical communities, but have to be regarded as dead ecclesiastical communities which were later re-constituted.

Furthermore, in the event the present Orders of St. John have to be regarded as live independent ecclesiastical communities, then the question is whether any of them can morally and legitimately dispute any other's legitimacy or right to its name, if not confusing, before a State judge. This would be then be the same as the Roman Catholic Church instituting a trial against the Old Catholic Church or an Orthodox Church, or the Quakers against the Church of England, about these matters, before a State judge.

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[537] *Asser-Van Der Grinten-Maeijer 2- II*, p. 253. See also President Rechtbank Groningen in his decision in summary proceedings of 27 June 1990, KG 1990, 312.

[538] *Asser-Van Der Grinten-Maeijer 2- II*, p. 21.

The original Order was already dead, but still it was dissolved by Napoleon. Nevertheless, until the Vienna Congress, the world seems to have believed that the Order headed by Paul I, was still the original Order. This Russian Order then split up into various independent parts, respectively various independent Orders of St. John were then constituted, which might at best be called various material continuations, but at any rate not formal continuations of the original Order.

Where a schism or split of an ecclesiastical community is concerned, it is accepted this is legally possible, as well as that the State has a task in these disputes. [539] A Church split ('kerkscheuring') is present, in case a factual split of the religious body occurred, without a legal act by competent church organs aimed thereat and without having reached mutual agreement. [540] Also in an ecclesiastical community, the majority can take resolutions binding the minority and private law does not oppose a split. The question then will be which part is the oldest part and which part is entitled to what property of the original body.

In the original Order's case, leaving aside it was already dead and also dissolved by Napoleon, it might be argued the majority split itself off and the will to become independent from the other party or parties and to go a different way, was present with all parties and revealed itself in action. In 1826, Busca, the then Lt. Grandmaster of the Papal Order, bluntly severed all relations with the French and Spanish Knights and it is said that in 1826 the English Order was founded by the French Commission. [541] The same can be argued for the action to elect Czar Paul I as Grandmaster, if it is not accepted that he became de jure or de facto Grandmaster of the original Order of St. John. In case this is so, then the majority could be said to be entitled to the property. [542]

Another solution which is probably more fair, is that the property of the original religious community is co-owned, to be divided. [543] What cannot be divided, is the name and therefore all are in principle entitled to the same

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[539] Hoge Raad 15 februari 1957 (Hasselt), NJ 1957, 201; W. Schenk, 'Kerkelijke geschillen en de burgerlijke rechter', NJB 1954, p. 807; A.H. Santing-Wubs, *Kerken in geding. De burgerlijke rechter en kerkelijke geschillen* (Diss., Den Haag 2002).

[540] Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 145 and p. 151. Compare article 2:334a Burgerlijk Wetboek, distinguishing in the sphere of limited liability companies between the 'pure split' (zuivere splitsing) and the 'split-off' (afsplitsing). In the case of the pure split, the legal person ceases to exist while its estate is acquired under general title by two or more other identical legal persons. In the case of a split-off, the legal person does not cease to exist, while its estate or part thereof is being acquired under general title by one or more other identical legal persons.

[541] Infra p. 208, *VII.9. Confused years between 1815 and 1848*.

[542] Hoge Raad 23 July 1946 (Houwerzijl), *NJ* 1947, 1 (DJV).

[543] Hoge Raad 5 November 1976 (Katwijk), *NJ* 1977, 219-221.

name and many did and do carry more or less the same names, but nevertheless distinguishable, because containing added clearly distinctive elements. Czar Paul I was at any rate never attacked in his time with a civil or religious law suit by anyone to refrain from acts of management or administration on behalf of the Order he was leading, which was deemed to be the original Order by the majority. The will of the majority seems to be the guiding principle in the case law to assume validity from a private law point of view of certain decisions of certain ecclesiastical communities. [544]

VII.8. The Lazareff case (1817)

On 12 May 1815, King Ferdinand of the Two Sicilies through his Ambassador signed the Treaty of Vienna, confirming that the fief over Malta had terminated. On 18 June 1815, Napoleon was finally defeated in the Battle of Waterloo, ending 23 years of recurrent warfare between France and the other powers of Europe.

On 9 October 1815, the Papal Order recognised the 'Commission des Langues Françaises de l'Ordre Souverain de Malte'. In 1816, the Grand Priory of Rome was revived. A Prussian ordinance to indemnify the large land owners after the peasant liberation, massively favoured landlordism. Soltykoff died. Untill his death, he regarded himself as Lieutenant Grandmaster of the Order. At the same time there were other Lieutenants Grandmaster in function, in Catania. Alexander I never gave up his titles of August Protector and of Hereditary Grand Prior of the Orthodox Russian Grand Priory.

In l817, Alexander I allegedly (this decision was not signed by Alexander I; it was a decision by a Committee formed by the Chief of Staff) confirmed a decision of the Committee concerning diplomas and decorations coming from the Papal Order in Italy. This Catholic Order was factually suppressed in Russia. [545] The decision prohibited in a specific case – the Cornet Lazareff case – [546] the acceptance and wearing of his decorations of the Papal Order in Russia, because the Order did not exist in Russia anymore. At the same time and also later, up till the Russian Revolution, the Seal of the Cavalier Guards Regiment continued to carry the Arms of its founder Czar Paul I, in his capacity as Grandmaster; the Maltese Cross was reproduced on badges or

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[544] President Rechtbank Breda, 17 May 1972, *NJ* 1972, 412.

[545] Inter alia very clearly on this point, Algrant, *The Russian connection*, p. 12.

[546] Resolution of the Commitee of Ministers, of 20 Jan./1 Feb. 1817 [Concerning the prohibition relating to the wearing of the Order of St. John of Jerusalem to those who are now being awarded it, Ukase No. 26.626, *Polnoe Sobranie Zakonov, Vol. 43* (The British Library Ref: SN 142), p. 29].

insignia of other Russian regiments and remained the insignia of the 'Corps des Pages', a military school for young Russian nobles.

This case was not a private law or a criminal law case, but a case of an administrative law nature. It is said because of this case that in 1817 Czar Alexander I abolished 'the Order' in Russia. What did take place, is that the acceptance of a diploma and the wearing of a decoration coming from the Papal Order in Italy, without previous authorisation, was forbidden by an Army Committee. [547]

The word 'Order' in the decision may have been a mistake. Meant may have been 'Catholic Priory' in the sentence (translated) 'this Order not being extant in Russia anymore.' Lazareff was forbidden to wear the decoration, 'as all those who may now receive the Order'. We note that already at that time, the Order of St. John was regarded as nothing else but a decoration. At any rate those who had received this decoration before, could continue to wear it. Two of Lazareff's brothers had already received the decoration before him and had obtained the same authorisation to wear it which he now sought. But to him it was refused, which is incomprehensible.

Can this case reasonably be invoked as a valid argument, that the Czar therefore had abolished, dissolved or suppressed both Russian Grand Priories in Russia and that they really were not existing and functioning in Russia anymore? At any rate the Orthodox Russian Grand Priory seems to have carried on more or less till 1918. After the October Revolution of 1917, the old system of awards was abolished.

Indeed Czar Alexander I froze their financial situation and turned back the status of the Family Commanderies into full ownership again of those who had brough these Commanderies in. The other Commanderies had been donated by the State to a number of favourites of Czar Grandmaster Paul I. These Commanderies were also subsidised by the State. What happened with these Commanderies is not quite clear, but it seems they were just taken back or deemed to have reverted to the State as a matter of course. A freeze and a slow liquidation of the status of Family Commanderies and a quicker liquidation of the other Commanderies, but no suppression, except the desire not to let the Papal Order create any new Knights in Russia, at least not under Alexander I.

But even on 6 December 1916, Czar Nicholas II conferred the rank of 'Hereditary Commander' in the Orthodox Russian Grand Priory twice. This is at least an indication that at any rate a later Czar did not think that the Russian Order, at least not as a system of decorations, had been abolished in

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[547] Compare the analogy with article 65, paragraph 2 of the Dutch Grondwet (Constitution) of 1814; infra p. 298, *IX.11. The right to accept and wear decorations and the local law.*

Russia or should be abolished. On the contrary, Czars after Alexander I, picked up on the original idea of Paul I again, i.e. to use the concept of an Order of St. John against the feared tendencies to increased democratisation and liberalisation of society. In 1809, Czar Alexander I himself promoted the Counts Potocki to 'Hereditary Commander'.

What transpires is that the Russian Order was dormant or carried on in Russia somehow, like the Papal Orders were dormant or carried on somehow, till about the eighties of the 19th century. Then a new Papal Order was created by Pope Leo XIII's appointment of Ceschi a Sante Croce as Grandmaster, on 28 March 1879, by the Apostolic Letter Solemne Semper.

In 1819, the Order in Russia was entered into Burke's Peerage. The Russian Grand Priories continued to exist with a number of Hereditary Commanders and their descendants. Alexander I was still considered Protector of the Order in some circles in France and Russia.

VII.9. Confused years between 1815 and 1848

In the years 1820-1829, there were several revolutions in Italy, particularly in Sicily. The Lt. Grandmaster of the Papal Order at that time was Antoine Busca. During the years 1821-1829, the years of the Greek Freedom wars, there were attempts to obtain the islands of Sapienzia and Cambresa, both West of the Morea, as springing board to Rhodes. In October 1822, the Verona Convention, or Quadruple Alliance between Russia, Prussia, Austria and Great Britain, was concluded. The Papal Order nor any other Order was represented there and no territory was made available, in spite of efforts of Metternich. On 20 August 1823, Pope Pius VII died.

On 10 January 1824, the Commission des Langues Françaises de l'Ordre Souverain de Malte separated from the Papal Order. Busca, Lieutenant of the Papal Order is said to have dissolved the Commission. This is important, as some claim the Venerable Order was revived in 1831 by the authority of Knights of the Commission. [548] Colloredo, Lieutenant of the Papal Order (1845-1864) formally refused to recognise the legitimacy of the French action in England. He was hit back by King Louis XVIII. On 16 April 1824/5 May 1824, Louis XVIII of France [549] declared in an Ordinance and an Instruction that the Papal Order's Lieutenancy was not recognised by the Government in France, nor their decorations and titles, except for some rare exceptions for Hereditary titles.

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[548] Infra p. 221, *VII.18. The second US Chapter General in New York*. Smith/Storace *Order of St. John of Jerusalem*, p. 53, for literature on this question.

[549] Had been honoured in the Order by Czar Paul I, together with four other members of the Royal House of France.

It can be concluded from these events, that the Papal Order was not recognised in France. The Lazareff case was an isolated case and really did not say anything about the Russian Order's existence in Russia. It also was not a law. A court case can in principle only have effect between the parties involved. But the decision of King Louis XVIII was of a legislative nature and had general effect. An Ordinance as well as an Instruction were expressly issued. King Louis XVIII expressly did not recognise the Papal Order. Furthermore, it can be concluded that Hereditary Knights existed in France and were recognised there, as in Russia.

What happened, was taking place at the instigation of the Papal Order. It had intentiously severed all ties with all revived parts of the original Order as it existed before the Surrender of Malta. Can it then be regarded as valid representative of a whole?

In 1825, the Grand Priory of Messina was expropriated. Czar Nicholas I (1825-1855) restored the Orthodox and Catholic chapels of the Palace of the Order at St. Petersburg (Palais de Malte) and a list of Hereditary Commanders of two Russian Grand Priories was published (presumably Orthodox and Catholic). [550] In 1826, the seat of the Papal Knights is moved from Catania to Ferrara, by Lieutenant Busca. Ferrara was Papal territory. The Papal Order moved its headquarters there, because Francis I, King of the Two Sicilies, had suppressed the Papal Order in his Kingdom. In 1827, during the Battle of Navarino, a Turkish fleet was destroyed by a combined British, French and Russian fleet, deciding the Greek question. In 1830, King Ferdinand II of the Two Sicilies allowed the revival/restoration of the Grand Priory of the Two Sicilies. The Grand Priories of Lombardy and Venice were revived/restored with the help of Austria. In Lombardy, all properties had been sold by Napoleon, so restoration was not possible there, contrary to the Veneto. From 1831-1860, the English Order was not extant or dormant. In 1834, the Papal Order found a home in the former Embassy of the original Order in Rome. There was however no legation with the Vatican until 1930. Revolutions were taking place throughout Italy.

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[550] I.I. Vorontzov-Daskov, *Brief historical account of Russian orders* (1891), holds that before the reign of Nicholas I, all who received decorations in any order in Russia, regardless of rank, were regarded as hereditary nobles. Same concept to be found in the hereditary honours of the Legion d'Honneur: Bruin, *Kroon op het werk*, p. 30.

In the meantime, Alexander Sutherland published his work 'The Achievements of the Knights of Malta' and dedicated it to Czar Nicholas I. [551] The dedication reads:

> 'To his Imperial Majesty Nicholas, Emperor and Autocrat of all the Russias, under whose immediate predecessors the Knights of Malta found refuge, when all the other Monarchs of Christendom denied them an asylum, and under whose Imperial Protection the banner of that ancient and illustrious Order is still unfurled, this work is humbly inscribed by the author.'

This would indicate that Sutherland is a survivalist. On the other hand, we find that he says that 'so completely has their name been blotted from the records of the day that their very place of retreat has become, generally speaking, a matter of uncertainty'. [552] The work of Sutherland was an attempt to revive the memory of the original institution.

From 1834-1845, the Lt. Grandmaster of the Papal Order was Charles Candida. In 1834, the Grand Priory of Portugal was expropriated. It can be said that there was 'no corporate life' whatsoever in the Papal Order, in the period from 1814-1834, a period of 24 years. [553] The Papal Order therefore was materially, but also formally dead since 1814, because it did not fulfil statutory requirements and only was an empty shell. It was reconstituted when the various national Catholic associations which were formed in the wake of the Roman Catholic revival of the late (Romantic) 19th century, urged Pope Leo XIII to appoint a Grandmaster in 1879, the date when it started again as a Papal Order. It can therefore in our view not be validly said this last mentioned Order had an uninterrupted and continuous existence and is the oldest existing Order of chivalry. [554]

But no Order of St. John had such an un-broken and continuous existence. As we shall see, the American Order can also not be qualified as a continuation of the original Order, because it was also constituted only in the the beginning of the 20th century. It also did not enjoy an uninterrupted existence. Let alone that it is not possible to prove that The Ecumenical Order is the same as or the legal successor of the American Order.

In 1837, there were further Italian revolutions, in the Mezzogiorno. In 1839, the Grand Priories of Lombardy and Venice were restored to the Papal Order as one single Grand Priory. Barletta, Capua and Messina were restored as the Grand Priory of Naples and Sicily. In 1840, the Austrian Emperor ratified the restoration of the Teutonic Order in Austria with new

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[551] Sutherland, *Achievements*.
[552] Sutherland, ibidem, Preface.
[553] Sire, *Knights of Malta*, p. 251.
[554] As stated by Bradford, *Shield and the sword*, p. 13, without motivation.

statutes, as an independent spiritual-military institution, but in imperial feudal relationship. The Emperor became its Protector. In 1841, Emperor Ferdinand I of Austria added the restored Grand Priory of Lombardo-Venetia to the Papal Order, composed already by the Grand Priories of Rome, the Two Sicilies and Bohemia-Austria. An English-Austrian squadron conquered Acre and Ibrahim Pasja was compelled to give up the Holy Land to the Ottomans again. In this year also Prince Pierre Ivanovitch Tufiakine was stripped of his dignity of Commander of the Order of Malta in Russia.

Russia became the Protector of the Orthodox Church in the Holy Land. Thousands of Russian pilgrims went to the Holy Land. Hospitals, as well as many Orthodox Churches, were built for them in Jerusalem and Nazareth. [555] France, Germany and Austria also built hospitals and other constructions. [556] In 1843, an independent Orthodox Russian Grand Priory was mentioned by de Magny. [557] In 1844, Loumeyer, National Librarian of Belgium, made a similar statement as Burke's Peerage of earlier dates. [558] From 1845-1864, Lt. Grandmaster of the Papal Order was Philippe de Colloredo Mels.

VII.10. The Revolution Year

Pius IX reigned from 1846-1878. His pontificate was the longest in history. His pontificate was marked by a transition from liberalism to conservatism. In 1848, the Revolution was all over Europe. However, the year 1848 did not materially alter the relationship of Church, State and nation in every country. The broad layer of bourgeoisie, in which free professions, small trade and small businesses were leading, did only conquer part of power in 1848. The percentage of the electorate among the male population in The Netherlands of 23 years and older, was still 12,3% only in 1880, for example. [559]

The revolution started in Palermo. In February, there also was revolution in France, which caused the fall of Louis Philippe. The Second French Republic was called out and Louis Napoleon was elected as President. Revolutions followed in Vienna, Rome, Venice, Milan, Parma and Berlin.

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[555] Belyakova, *The Romanovs*, p. 51and p. 62-63 (the Palestine Society).

[556] A Protestant grouping from Württemberg calling themselves Templars, maintained several villages.

[557] M.C. de Magny, 'Recueil Historique des Ordres de Chevalerie', in *Archives nobiliaires universelles, bulletin du collège archéologique et héraldique de France*, Paris 1843.

[558] J-F.N. Loumeyer, *Histoire, costumes et décorations de tous les ordres de chevalerie et marques d'honneur* (Brussels 1844), p. 225. He refers to the 'true lineage of the Order of St. John'.

[559] Stuurman, *Verzuiling*, p. 125.

Metternich, champion of the Restoration, was chased from Vienna, Prague, Budapest and Paris. In this year Karl Marx and Friedrich Engels published the Communist Manifesto. The März Revolution in Berlin made 277 victims. In 1849, Rome was called out as a republic under Mazzini and Garibaldi. Pius IX and his Government were exiled in Naples. In 1848, the first Italian 'Guerra di Indipendenza' took place. It would be followed by two others, in 1859 and in 1866.

VII.11. Balley of Brandenburg reconstitued

In 1850, the Court Almanac of St. Petersburg listed Count Alexandre d'Armfeldt as Commander of the Order of St. John. In 1852, Louis Napoleon was called out as Emperor of the French (Napoleon III).

On 15 Oct. 1852, Friedrich Wilhelm IV, King of Prussia (1840-1861), also called 'der Romantiker auf dem Thron', lifted the Decree of 1812 and reinstated a Balley of Brandenburg, existing in connection with the Prussian Emperor, headed by H.R.H. Prince Wilhelm Karl of Prussia (Johanniter Orden). There were not only romantics on the throne, because it seems that a new 'Herrenmeister' immediately invoked the old Heimbach Convention (1382), in a letter of 4 June 1853 to the Bailiff Count Colloredo-Mels, of the dormant Papal Order. The latter seems to have responded that the old relationships were re-established. This happened without restoring any estates.

The general historical tendency already was to put various parts of the original Order under a Sovereign head and to confirm the nationalisation of various, previously largely independent parts of the old Order. [560] This nationalisation had an important but isolated precedent 'with a bang' under King Henry VIII of England (ironically also a Protector of the Order). It then gradually developed, inter alia in Prussia, with regard to the Teutonic Order. The Second Treaty of 1797, whereby Czar Paul I was appointed August Protector of the Order, was not the beginning of this movement (culminating in the French Revolution and evidently resulting in a need for the Order to find a strong Protector), but the beginning of the apex. See also e.g. 1802, when Carlos IV, King of Spain, subjected the four Spanish Priories by Royal Decree to his rule. See also 1810, when Friedrich Wilhelm III, King of Prussia, put the Balley of Brandenburg under the Prussian Crown.

Then, in view of the Restoration, the reactionary idea obviously was to tie nobility closer to the Crown, in a kind of symbiosis, like the old symbiosis Order/Pope or State/Church, but going much farther. The Pope had at least granted the original Order to always choose its own Grandmaster.

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[560] Bruin, *Kroon op het werk*, p. 26.

VII.12. Modern warfare, revitalised Roman Catholicism, the situation in Italy, industrialisation, idealism and Kulturkampf

From 1853-1856 followed the Crimean War. Florence Nightingale was nursing wounded soldiers. A restoration of the Roman Catholic hierarchy took place in various countries. In 1854 followed the Declaration of the dogma of the Immaculate Conception. Something moved in the Papal Order, because Pope Pius IX approved Rules of the Papal Order in a 'Breve'. [561] He also recognised the Compassionate Sisters of the Teutonic Order as a religious congregation.

In 1855, the Grand Priories of Spain were expropriated and adhered to the Grandmaster in Rome. In May 1855, the Cavour-Rattazzi government (Regno di Sardinia) issued a law abolishing all religious Orders of the Church which were not active in preaching, educating or assisting the infirm, removed their legal personality and transferred their property into a 'Cassa ecclesiastica'. [562] A rather complete abolishment of certain 'Ordini religiosi d'uomini' and 'Ordini religiosi di donne'. On 17 February 1861 followed a 'Decreto Luogotenenziale', applicable from 1864-1899, which abolished 'le case degli Ordini Monastici'.

In 1856, the 'Almanach de la Cour' listed during the reign of Alexander II, 17 Knights of the Order of St. John of Jerusalem, one of whom was a Commander. The majority of these Knights was Orthodox. The Papal Order did not admit any Orthodox Knights since 1819 (did this have to do with the Lazareff decision of 1817?). In 1858, Debrett's stated that 'the two Russian Grand Priories still preserve the appearance of the old Constitution and form, under the Protection and Patronage of the Emperor, who is the Head of the Chapter. The Grand Priory of Poland, established in 1776, was for a long time connected with the English and Bavarian branches and was composed of 20 Commanderies. At present, it is united with the Russian Priories and the whole is now divided into two Grand Priorates, for the Russian Catholics and the Knights of the Greek confession. The latter now counts 98 Commanders and 32 Knights of the Grand Cross.' The Sovereign Order of St. John in Russia was still the only Order of St. John mentioned in Burke's and in Debrett's. [563] In the year 1858, the Papal Order repudiated the initiative to a revival in England. A war was going on between Austria and Sardinia. Sardinia was aided by Napoleon III.

On 24 June 1859, in the Battle of Solferino, Franco-Piemontese troops won a decisive battle for Italian unity against Austrian troops (11.000 killed

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[561] 'Militarem Ordinem equitum'.

[562] Pellicciari, *Risorgimento da riscrivere*, p. 196-197; 'Atti del Parlamento subalpino. Documenti', XII, p. 1631-1640.

[563] Burke, *Book of orders*, p. 238-239.

and 23.000 wounded). Napoleon III met Henri Dunant. In 1859, the Rhenish Westphalian Association of Knights of Malta started in Germany. This was the first of six 19th century self-styled Catholic National Associations of Knights of St. John. The formation of this association happened in the framework of a Roman Catholic Romantic revival. In those days the Swiss Henri Dunant, after the Battle of Solferino called for the formation of the Red Cross. In this framework, he proposed to form national associations in every country. Their objectives would be to provide help in times of war to wounded combatants and to alleviate suffering in peacetime, without distinction of race or creed. This was hooked on to by the national Catholic and other associations of Knights, which were more or less simultaneously formed and particularly by the new Venerable Order in the UK.

In doing so, they commendably invoked original Hospitaller ideals of the second half of the 11th century and the beginnings of the 12th century. It is said that in the 1180's the Hospital was open to all religions, but refer to what was said by Grandmaster Jacques de Milly (1454-1461): 'We order all secular persons, that are sick and received into our infirmary, to confess themselves and receive the communion; after which the prior and the comptrollers shall admonish them to make their wills..'. [564]

The reason for the following wave of reconstitutions and constitutions until the First World War and still also thereafter, probably also was a generally felt need for purity. The desire for purity and purification took a central place in the self-consciousness of the 19th century fin de siècle. The years between 1870 and 1914 represent a historical crisis period. The permanent revolution of modernisation confronted society with intense political and social changes, felt as threatening. Already in the 18th century, there was a fascination for the Middle Ages and for the chivalric past. But were the Middle Ages a thousand years of irrationality and chaos or a harmonious entwining between Christianity and world? [565] Anyway, many saw in the Middle Ages an ideal which threatened to get lost in their own time, the time of the bourgeoisie, characterised by individualism – not seldom confused with egotism – and a rationalist and mechanistic world view versus an organic view on the world and society. The Dutch jurist Huib Drion also refers to an old romantic tradition in Germany, of a forced clinging to an idealised past of an organic, land tied society, as opposed to the rationalist, atomised, industrialised Western society, as it would have developed in the bourgeois 19th century. He also refers to an anti-democratic

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[564] Vertot, *History of the Knights of Malta II, The Old and New Statutes Statutes of the Order of St. John of Jerusalem*, p. 28.

[565] For example, Goethe vs. Chateaubriand and Horace Walpole.

literary tradition in France, going back to the Restauration. [566] Furthermore, materialistic progress optimism, whereon the power of liberalism as an intellectual and philosophical movement based, landed in a crisis after 1890 in the whole of Europe. [567] A reaction towards purity as a panacee, followed. [568] In 1860, Garibaldi occupied Palermo and Naples. In 1861, the Papal Order was mentioned in the Almanach de Gotha for the first time. Also in 1861, the 'Regno d'Italia' with Victor Emanuel II as King of Italy, was created. Serfdom was abolished in Russia. The Convention of Geneva tried to make war less inhumane. In 1862, the Prussian Landtag refused to fund an army reform intended to strenghten the nobility. King Wilhelm I (1861-1888) [569] appointed Bismarck as Prime Minister. Bismarck violated the Constitution and ruled against Parliament. From 1863–1864, there was a rise in Poland against Russian domination. In 1864, the Geneva Convention on the Red Cross, the first multilateral convention on the Red Cross, was signed.

On 15 September 1864, a convention was signed between Italy and France in which Italy undertook not to attack and not to permit to attack the Pontifical status. On 8 December 1864, the Papal Encyclical 'Quanta Cura' was published. It condemned the principles of the religious neutrality of the State, freedom of opinion, freedom of the press, absolute popular sovereignty and of the judicial supremacy of the State over the Church. The attached 'Syllabus Errorum' contained about 80 principal errors of the time, among which religious freedom, liberalism and modern culture and reclaimed temporal power for the Church.

From 1865-1871, Alessandro Borgia was Lt. Grandmaster of the Papal Order. In July 1866, an Italian Royal Decree abolished all religious corporations. This had included the Papal Order. It allegedly was later repealed.

In 1867, Karl Marx published the first part of 'Das Kapital'. In that year also the Catholic Silesian National Association of Knights of Malta started. Czar Alexander II authorised the eldest sons of Hereditary Commanders to wear the insignia of the Russian Order. [570] The Gotha mentioned Hereditary Commanders (later also in 1885, 1889, 1908, 1914, 1925, 1928, 1934 and 1940). In 1869, the Palazzo Malta and Villa Malta of the Papal Order in

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[566] Refer to H.Drion, 'Intellectuelen en democratie', p. 123-137 and 'De rode draad in de burgerlijke cultuur', p. 143-160, in A.Bloembergen (a.o.), *Van, over en met Huib Drion* (Den Haag 2005).

[567] Stuurman, *Verzuiling*, p. 243.

[568] Arnold Labrie, *Zuiverheid en decadentie. Over de grenzen van de burgerlijke cultuur in West-Europa 1870-1914* (Amsterdam 2001).

[569] Became Emperor Wilhelm I in 1871.

[570] Pierredon, *Histoire politique*, II (1963), p.197.

Rome were granted extra-territorial status. This was confirmed in 1884, 1923 and 1929. English Knights attended a Red Cross conference in Berlin. It appears a common notion of 'Order of St. John', a common ideal, had developed. Later, as we shall see infra, [571] the right to practice this ideal, becomes subject to attempts of monopolisation.

From 1870-1871 followed the Franco-Prussian War and the proclamation of the united German Empire (Germany and Austria) in Versailles. Wilhelm I of Prussia was called out as German Emperor in Versailles. The Communards rose in Paris in 1871. The Third French Republic was called out. The troops of Victor Emanuel II took Rome. The Vatican issued a proclamation of 1870 concerning Papal infallibility. From 1871-1879, Ceschi a Sante Croce was Lt. Grandmaster of the Papal Order.

In 1881, Czar Alexander II's Court authorised Prince Troubetzky to wear his insignia as Hereditary Commander of the Order in Russia at the funeral of the Emperor. Similarly the Crown of the Grandmaster was displayed besides the coffin of the Emperor when Lying-in State and during Religious Functions. A photograph of Czar Alexander II (1818-1881), shows him wearing the Grand Cross of the Russian Order. During the second decade of the 19th century, the Catholic Russian Grand Priory was not present in Russia anymore, but the Orthodox Russian Grand Priory remained active more or less for many years thereafter. It is certain that this Grand Cross was not presented to Alexander II by the Papal Order. [572]

From 1871- 1886, there was the 'Kulturkampf' in Prussia against Catholicism. The Kulturkampf was started by Bismarck against the Catholic Centre Party, with the aim to subject the Roman Catholic Church to State control. Bismarck abolished the Roman Catholic Bureau in the Prussian Ministry of Education and Ecclesiastical Affairs. Priests were not allowed to express political opinions. Religious schools became subject to State inspection. All religious teachers were excluded from State schools. The Jesuit Order was dissolved. Diplomatic relations with the Vatican were severed. The May Laws of 1873 controlled religious training and ecclesiastical appointments. In 1875, civil marriage was made obligatory. Roman Catholics resisted in Parliament. They doubled their representation in 1874. Pope Leo XIII declared the conflict over in 1887. Most of the laws had been repealed or reduced, but State control over education and public records had become assured.

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[571] Infra p. 253, *VIII.11. The American Order attempts to become accepted by the United Nations; the formation of the Alliance of Orders of St. John.*

[572] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 129-130.

On 14 May 1871, the Pope ratified the rules of the Conventual Priests of the Teutonic House in a Bull of that date. On 15 May 1871, Italy abolished the temporal power of the Pope. [573] 1871 was the first year in which accurate rolls of membership of a Papal Order existed. Followed in 1872 the Three Emperor Alliance between Germany (Wilhelm I), Austria (Franz Joseph I) and Russia (Alexander II). During 1872-1876, the Catholic National Association of England was formed. In 1874, the Italian Langue was revived and the Bourbons were restored in Spain. In 1876, the Princess of Wales became a Lady of Justice of the English Knights. From 1877-1878 followed the Russian Turkish War. England occupied Cyprus.

During 1877-1884, the Catholic National Association of Italy was formed (ACISMOM). In 1877, English Knights created the St. John Ambulance Association.

In 1879, Pope Leo XIII reconstituted the Papal Order by appointing as '74th' Grandmaster, Ceschi a Santa Croce (1879-1905). [574] This position had been vacant since 1805. There were very few professed Knights in the Papal Order then, as now and there were a great number of 'Knights of Honour' and of 'Devotion'. Also in this case, the Papal decision involved said that it was no use questioning whether all formalities had been observed. Only in the years thereafter, relations between the reconstituted Papal Order, SMOM, and the Italian Kingdom were agreed.

In 1880, a first meeting of several Hereditary Commanders was allegedly held in New York. This meeting was organised by Colonel William Lamb, alleged descendant of John (or Ivan Lamb), who had been appointed by Paul I as Czarist Officer of State and General in the Imperial Army and 'Commander of Military Valor' for distinguished service in the Russian Army, a Grand Cross and Member of the Sacred Council in Russia. [575]

In 1881, the Roman Catholic French National Association of Knights of Malta started. In 1884, the Italian State 'recognised' the Papal Order's objectives and emblems. In 1885, the Order in Russia was mentioned again in Burke's Peerage. The Almanach de Gotha described Demisoff (Demidoff)

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[573] Legge delle Guarentigie, accepted by Parliament with 105 votes in favor and 20 against, remained in force till 1929; Dutch legacy with the Pope abolished.

[574] Recognised as having the rank of 'Prince', or 'Fürst', by the Austrian Emperor Franz Josef I. He also granted this title to the Grand Priors of Bohemia and Austria. The Papal brief of appointment 'Solemne Semper' holds that the appointment is valid notwithstanding (inter alia) the statutes of the Order involved. See also Inclytum, 1888.

[575] Listed in the 'Almanach de l'Ordre Souverain de St. Jean de Jerusalem' (St. Petersburg 1800).

as Hereditary Commander in the Order. [576] Also in 1884, a Roman Catholic national Association of Spain was formed. On 4 September 1885, King Alfonso XII of Spain revoked the Decree of King Charles IV of 1802 and restored the Spanish Priories to the Papal Order.

VII.14. Some interim conclusions

The interim conclusion is that the original Order founded around 1050, carried on till 1154, respectively 1798 and in the course of its history, Anglican and Protestant split-offs occurred. In 1798, Napoleon dissolved this original Order. Czar Paul I was then validly elected in 1798 as Grandmaster of what States and Priories have seen as the original Order continued. Then in 1803, a 'coup d'état' by Pope Pius VII, facilitated by Czar Alexander I and a marionet provisional Sacred Council, took place and this started a new Papal Order in 1803. The new Order started in 1798 under Czar Paul I, in principle legally remained established in St. Petersburg and carried on somehow in Russia during the rest of the 19th century. This Order was however internationally not recognised by States as an international legal person. No Order of St. John was so recognised since the Treaty of Paris and the Vienna Congress, except (later and then by about 30 % of the total number of States) SMOM. [577] When a new Grandmaster (Tommasi) was appointed by Pope Pius VII in 1803, not elected, the Pope thus created a new Papal Order. This Order slowly died for lack of (adequate) corporate life. The successor of 1879 of this Papal Order (SMOM), created by Pope Leo XIII, was far more active than the Russian Order, which at best was only active in Russia. The facts then certainly had become stronger than law. SMOM grew and became also recognised as an international legal person by a number of states.

VII.15. SMOM as international legal person

SMOM is recognised by presently 94 States as a legal person under public international law, not as a State. Some could hold that this recognition is incorrect and should in principle be withdrawn. Recognition can anyway not

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[576] Pierredon, *Histoire Politique II* (1963), p.197 ; Almanach de Gotha 1885, p. 467 and 1923, p. 556; Almanach de St. Petersbourg, 1913/1914, p. 178. Alexandre Tissot Demidoff, 'interim President Paris Association', through the internet (*the Alexander Palace Discussion Board,* on <hydrogen.pallasweb.com/cgi-bin/yabb/YaBB.cgi>) on 24 May 2004, advised 'descendants, both male and female, of original Hereditary and Non-Hereditary Commanders of the Russian Grand Priory of 1799, that the Paris Association was formally launched in December 2004.' and that he would appreciate contact with direct descendants of a number of Russian families, etc. (sic).

[577] There are about 190 States now.

be undone, because it is an irrevocable legal act. [578] This recognition of SMOM could have been granted as a result of a combination of politics between the Vatican and Catholic States and a matter of courtesy between them, which as some may argue, may have been out of place in view of the original Order's rather doubtful history and shaky legitimacy.

Formally however, SMOM may be a person under international law. [579] But materially in our view it is not. It might even be accused of abusing its position as international person in trying to hold down other legitimate Orders of St. John. It appeared, as we shall see below, prepared to enter into an Alliance with non-Catholic Orders. [580] SMOM and these Orders can only be regarded as new Orders of St. John. But seeing the alleged 'recognition' by their respective national Governments and their size and clout in Germany and in particular in the British Commonwealth, it was evidently deemed convenient to form an Alliance.

VII.16. The further rise of the Venerable Order

In 1887, St. John's Ambulance Brigade was created in Great-Britain. [581] On 14 May 1888, Queen Victoria of Great Britain granted a Royal Charter to the 'English Grand Priory of the Most Venerable Order of Saint John of Jerusalem', with herself as Hereditary Head and Protector. The Prince of Wales was the first Grand Prior. The organisation received a Constitution and By-laws. Mary Tudor's Charter of 1557 was held by some not to have lapsed, as it was allegedly never revoked. The establishment of the principally Anglican Venerable Order (recognised as a legitimate Order of St. John by the Papal Order) is also based on this belief.

VII.17. The first US Chapter General

In 1888, the Grandmaster of the Papal Order was elevated to the rank of Cardinal. In 1889, a Roman Catholic Portugese national association was formed. Hereditary Commanders were authorised in Russia to wear the Order of St. John by Supreme Authorisation of 19 October 1867. [582] In 1890, a General Chapter is taking place in the USA. [583] It was organised by

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[578] Kooijmans, *Internationaal publiekrecht*, p. 22.

[579] Refer also to *VIII.4. The public international law personality of the Holy See and SMOM.*

[580] Infra p. 253, *VIII.11. The American Order attempts to become accepted by the United Nations; the formation of the Alliance of Orders of St. John.*

[581] Now 60.000 members, grouped in 3.000 divisions in 46 countries.

[582] Taube, *L'Empéreur Paul I*, p. 43.

[583] The original Order had in the 17th century some branches on some central American islands: Leen Ward, St. Christopher, St. Kitt and St. Martin.

Confederate Colonel William Lamb. In 1891, General Count Voronzov Dashkov published a 'History of Russian Orders and their Statutes' and stated that prior to the reign of Nicholas I, all who received decorations in any Order in Russia, regardless of rank, were Hereditary nobles. Panov and Zamyslovsky published 'A brief account of the Russian Orders and their Statutes', which claims that the Russian Grand Priories were suppressed. [584] A Roman Catholic national Association of France was formed. In 1897, M.L. de La Brière mentioned the Russian Order in his work 'Malta, Past and Present' [585] and the 'Recueil Historique des Ordres de Chevalerie', by W. Maigne, mentioned an independent Order in Russia ('In Russia, where the Institution has in appearance its old organization, it is by a Chapter equally independent, that admissions are accepted under the high directive of the Emperor'. [586]

It was published in Russia that the family of Chérémeteff, distant cousins of Peter I of Russia, were Hereditary Commanders of the Russian Order. **'**Hereditary Commanders' and 'Hereditary' and other Knights, had been created under Paul I, existed before [587] and apparently did not cease to exist in Russia in the 19th century. Between 1810 and 1916, the Czars created 18 additional Hereditary Commanders. [588] After the original Order, still mainly Catholic, had already granted a number of purely honorary titles of vanished Commanderies, Priories and Langues, in the 19th century these titles became wholly independent from the physical Commandery. Hereditary Commanders could be Family Commanders, therefore with property or just Honorary Commanders, without property. [589] However, one wonders how people, who are not descendants of these Commanders, can validly have become Hereditary Commanders. [590]

All titles granted really became 'honorary' only, really everywhere, also in Russia, as they are presently mainly only honorary. The whole original Order and all its split-offs already slowly had developed into a purely

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584 Different Foster, *Hereditary commanders and royal protectors*.

585 Brière, *L'Ordre de Malte*.

586 Maigne, *Dictionnaire*, p. 112. See also de Cassagnac, *Livre* Rouge, p. 82-83.

587 Algrant, *The Russian connection*, p. 15 and Muraise, *Histoire sincère*, p. 67, referring to 16 Hereditary Grand Crosses created by Grandmasters between 1645-1780. Confirmed by Pierredon, *Histoire politique*.

588 Algrant, *The Russian connection*, p. 15.

589 On 4 September 1800 Paul I appointed eleven Honorary Commanders. Muraise, *Histoire sincère*, presents the lists of 1835, 1847, 1853 and 1856. The Almanach de Gotha lists Hereditary Commanders in 1867, 1885, 1889, 1908, 1914, 1925, 1928, 1934 and 1940. Joseph Frendo Cumbo, who claims also to be a Hereditary Knight. In this connection De Taube, *L'Empéreur Paul I,* p. 50. But Cumbo may have validly acquired this title during his time with the King Peter Order, when it was still under the Protection of King Peter II.

honorary system. In the 19th century, this development was rounded off completely. This does not mean the honours granted did not impose any obligations anymore, but at any rate not the duty and privilege to govern a real physical Commandery. Czar Paul I, as we saw, tried to rescue the dying system of outdated privileges and prerogatives and to stem the revolutionary tide. An attempt doomed to fail. In this framework he had also created Family or Hereditary Commanderies. [591] Is is natural and logical that also these titles were preserved as honorary, but hereditary titles, possessed only of social meaning, as most noble titles nowadays, which by the way is not unimportant, to say the least.

In 1899, a Roman Catholic national association of Portugal was formed. In 1902, an article in the 'Russian Pilgrim' mentions a petition to re-establish the Order of Malta in Russia. [592] From 1905-1931 reigned as Grandmaster of the Papal Order Galeas de Thun et Hohenstein. In the year 1905 followed the First Russian Revolution after five hundred people were shot dead in Petersburg on Blood Sunday. [593]

VII.18. The second US Chapter General

On 10 January 1908, a Chapter General of Knights and Descendants of Knights of the Order of St. John of Jerusalem takes the decision in New York to move the Seat of the Order to New York from Russia, pursuant to the express desires of Czar Nicolas II and to form an American Grand Priory of the Sovereign Order of St. John of Jerusalem, to continue the legal continuity of the Order, Grand Duke Alexander, cousin and brother in law of Czar Nicholas II, representing Nicholas II and by virtue of the authority exercised by the qualified Knights and Hereditary Knights, whose ancestors had received Letters Patent of Hereditary rights conferred by Paul I and others. [594] Other meetings took place on 8 August 1908, 12 November 1909,

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[591] The terminology used was 'familnyia' (family) and 'rodovyia' (ancestral). See also Ukase 190.44 of 21 July 1799, articles IV, VI and XI.

[592] Russian Pilgrim, no 41-1902, St. Petersburg.

[593] R. Goldston, *De Russische revolutie* (Amsterdam, 1970), p. 62-67. Belyakova, *The Romanovs*, p. 94, referring to Grand Duke Sergei killed at 2.40 p.m. on 4 February 1905 on Kremlin territory, by a bomb explosion ('blown to bloody smithereens').

[594] Inter alia present in New York at the Waldorf: 1) Prince Michael Khilkov; 2) Prince Pierre Troubetzkoy; 3) Prince George Radziwill; 4) Prince Pierre Wolkonsky; 5) Count Alexander Boutourlin; 6) Count Dimitri Boutourlin; 7) Count Alexander Narishkin; 8) Count von Wedel; 9) Count de la Boissière; 10) Count Alfred de Choiseuil-Gouffier; 11) Admiral Count Paul de Ligny; 12) Baron Hengelmüller von Hengervar, Austrian Hungarian Ambassador to the USA; 13) Baron de Longueuil; 14) Baron Rosen; 15) Baron James Harden-Hickey; 16) Baron de Bode;17) Viscount de Valle da Costa. Smith/Storace,

10 May 1911, 17 May 1912, and 10 May 1913. Smith/Storace refers to 'The impression gained from an examination of these *Minutes...*', which implies he actually read them. Smith also refers to *certified* minutes. [595]

The Russian Order allegedly relocated to and continued or reconstituted in New York, was apparently constituted by a majority of nobles and did more or less follow the old constitution, in sofar as this is relevant and it partly might be. [596] Reference was made by Charles Louis Thourot-Pichel, Grand Chancellor of this American Order from 1933 until the sixties of the 20th century, to the historical and present member lists of the American Order, as the reconstituted Russian Order, with a host of nobles and other reputable gentlemen and dames thereon. The Russian Order welcomed Roman Catholics and Orthodox. [597]

The decision in New York to move the Seat of the Order from Russia to New York, was allegedly taken by a large number of Hereditary Knights and allegedly took place pursuant to the express desires of Czar Nicholas II. Even if this American Order was set up as an association or corporation under private law, this would not abrogate from the fact that this organisation may be deemed to be a continuation of the Russian Order in New York. Reference is made to the foundation in 1926 of the Roman Catholic 'The American Association of the Order of Malta', under the patronage of Cardinal Spellman. This was a private law association. Reference is also made to the six Catholic national, but private law associations formed in the 19th century. In total there are about 42 of these national associations now. The American Order supposedly had a good humanitarian track record. However, as in the previous centuries, split-offs occurred in the 20th century.

VII.19. Problems with the validity of the birth of the American Order

But there are problems with the birth of the American Order. Stair Sainty, an author who disposed over the perseverance necessary to find a way in this labyrinthine environment, produced the following in his book [598] and on the internet:

> 'The self-styled Orders may be enumerated as follows: (1) (The Shickshinny Order) The proponents of the survival of the 'Russian' Grand Priories have claimed that, on 10 January 1908, a certain William

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Order of St. John of Jerusalem, p. 64-66, for further details. A fuller list to be found in Cassagnac, *l'Ordre Souverain*.

595 Smith/Storace, *Order of St. John of Jerusalem*, p. 65.

596 Infra p. 425, *XIX.11. Being organised like the original Order.*

597 According to Stair Sainty, 'Pichel had a reputation of selling false titles, and other criminal activities'.

598 Stair Sainty, *Orders of St. John.*

> Lamb, sometime Colonel and purported descendant of a General Ivan Lamb (the exact spelling of the name of the member of the Russian Chapter of 1800 identified by William Lamb as his purported ancestor is unclear), who had been apparently received into the original Russian Grand Priory by Czar Paul, held a meeting at the Waldorf Astoria Hotel in New York City, to form the 'Grand Priory of America of the Sovereign Order of Saint John of Jerusalem'. The claim is made that eight Russian noblemen, purported descendants of so-called 'hereditary commanders', were present at this occasion. Minutes of this meeting have been produced but the only record of such a group having met at the Waldorf Astoria is a meeting of an 'Order of Knights Hospitaller' organized by a certain Charles Hayward. [11] Minutes have been produced of further meetings which supposedly took place on 8 August 1908 and 12 November 1909 (when another Hayward group meeting was held), and on various dates between 1911 (on which occasion a certain William Sohier Bryant was described as Chairman) and 1913. [12] The first secession from this group appears to have taken place as early as 1910, incorporating in New Jersey in 1911 but collapsing in 1912. The pretense that the Czar approved either of these organizations is completely false. No contemporary evidence, other than the minutes of these meetings which were probably written much later, has been produced to support these claims and it is difficult to imagine what these Russian noblemen were doing in New York at that date. If any descendants of members of the Russian Grand Priory had wanted to revive it, why they would they choose to do so in New York? Even had they actually so met they had no valid authority, in any case, to form such an 'Order'.

At this point we would like to say that judging from this text, there are apparently a relatively large number of people who believe in the survival of the Russian Grand Priories. It is hard to believe they would all be in bad faith. Furthermore, Colonel Lamb is mentioned as a purported descendant of Ivo Lamb, who indeed was received in the original Order (or his newly created Order) by Czar Paul I. [599] Furthermore, it is said that minutes have been produced and there is a 'record' of having met. [600] Minutes of other meetings have been produced, but were allegedly written much later. Finally, Stair Sainty wonders why one would want to meet in New York. But New York was already then a metropolis and the gateway to the promised land of opportunities. At the same time, Stair Sainty records in a

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[599] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 34, note 94. But according to the same authors, p. 40, note 111, this family became extinct and the name was transferred to I. Vaskoff. Different Smith/Storace, *Order of St. John of Jerusalem*, p. 64, who claims Lamb was a direct descendant of General Lamb.

[600] Algrant, *The Russian connection*, holds there is 'an absence of any documentation'.

list of ‘false Orders’ the following Orders and mentions the years they were started, behind their names:

> ‘Grand Priory in America of the Sovereign Order of Saint John of Jerusalem (1908)
> Association of the knights of Malta (1910)
> Association of the Sovereign Order of Saint John of Jerusalem (1911)’.

Stair Sainty carries on:

> ‘At a meeting held on 30 December 1910 an ‘Association of the knights of Malta’ was allegedly constituted, [13] with the record thereof being recorded by the State of New Jersey on 3 January 1911; this was supposedly to become the ‘Association of the Sovereign Order of Saint John of Jerusalem’. It was claimed that the Grand Duke Alexander Mikhailovich of Russia (both cousin and brother-in-law of Czar Nicholas II) accepted the Grand Magistery in person in either 1913 [14] or on 1 September 1914. [15] The Grand Duke Alexander was a serving rear-admiral in the Imperial Russian Navy and, as war broke out with Germany on 1 August 1914, he was unlikely to have been involved in such an irrelevant charade at this time. It appears, however, that he did accept such a position in about 1920 (three years after the overthrow of the Russian Monarchy) in association with some Paris based Russian noblemen, but without the approval of the Head of the Imperial House of Russia and two of his sons have purportedly denied that he was ever Grandmaster. Since the Grand Duke's death in 1933, two other members of the Romanov dynasty, it is claimed, have been associated with so-called Russian Orders of Saint John; the late Grand Duke Andrew Wladimirovich (uncle of the present Head of the Romanov Dynasty) and the most junior member of the dynasty, the late Prince Vassili Alexandrovich. [16]‘

Stair Sainty says that the record of the allegedly held meeting was recorded by the State of New Jersey on 3 January 1911. Grand Duke Alexander ‘was unlikely to be involved in such an irrelevant charade’, but had already visited the United States in 1893 [601] but at the same time Stair Sainty says Grand Duke Alexander did accept such a position in about 1920. This then not in the USA, but in association with some Paris based Russian noblemen, but without the approval of the Head of the Imperial House of Russia (as is said, but how does one know?) and two of his sons have ‘purportedly’ denied that he was ever Grandmaster. His daughter affirmed that he had been Grandmaster of an American priory. [602] But is it not remarkable then

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[601] Grand Duke Alexander Mikhailovitch, *Reminiscences* (New York, 1932).
[602] Algrant, *The Russian connection*, refers to Princess Yousoupoff.

that ‘Since the Grand Duke's death in 1933, two other members of the Romanov dynasty, it is claimed, have been associated with so-called Russian Orders of Saint John; the late Grand Duke Andrew Wladimirovich (uncle of the present Head of the Romanov Dynasty) and the most junior member of the dynasty, the late Prince Vassili Alexandrovich’?

> ‘New evidence that has come into this author's hands indicates that the entire history of the so-called Russian Grand Priory from its purported inception in 1908 until 1933 when Bryant took over, was in fact the invention of C. T. Pichel. In a letter addressed to Harrison Smith, Mr Edelen, Pichel's closest associate for many years, wrote (on January 22, 1980: ‘My problem with the history is that all seems to be false from 1908 to 1932 as published by Pichel. I know his Minutes are false. Dr Bulloch was never Grand Chancellor of the Order. He was the Archivist of the old Scottish-American Order of St John [24] and kept these records at Lancaster, Pennsylvania. When he was old and blind, in the early 1950's, Pichel went to him with a story that he was writing a history of the Knights of Malta and needed some records from the Archives. Dr Bulloch let him borrow whatever he fancied and then obligingly died while Pichel had the most important records. We took the material, twisted it around, took names of noblemen from the Times Index and created an Order stemming from the Grand Priory of Russia, all a hoax.
> The Scottish-American Order went out of business in New York about 1909 following a suicide of the Grand Chancellor, as well as a scandal involving payment (or non-payment) of life insurance policies on the lives of members. Some members in New Jersey tried to save the situation by securing a charter as the ‘knights of Malta’ in Trenton in 1911. Their effort failed and by 1912 was abandoned. Then Pichel came along in the 1950's and claimed to be the duly elected officer of that Corporation to give his Order some evidence of antiquity and to substantiate the false Minutes (from 1908-1932)’.
> Smith replied, February 20, 1980: ‘I am somewhat puzzled by the information about Pichel. I remember his ways well and you will note a sense of caution in my using his sources, but I think the question you raise is: Is everything he writes and cites about the foundation in America, the role of Grand Duke Alexander, and the role of his successors down to the arrival of Pichel on the scene - is all that a total fabrication? I can conceive of distortion, twisting and mis-use of facts, but are we to conclude there is no foundation whatsoever to an American Grand Priory or Order coming out of the successors to Czar Paul in the time of Nicholas II? If this is true then the revived modern Order has no descent to fall back on in historical evolution other than to cling to, to merge with, etc, the Hereditary Knights [25] in Paris after the fall of the Czar. Surely this Scottish Canadian Masonic thesis does not support our foundation, for it only enters our picture in the 1960s. If then we turn back to the Paris movement, which certainly can be proven to have existed, this leads us into both Prince Troubetzkoy and then Prince Andrew of Yugoslavia, as

> successors to King Peter. [26] The first ties us up with 'hereditary commanders' out of the Paris group, and the latter gives us 'royal foundation'. It seems to me that this route would eventually lead to a reconciliation, although there are many, many problems between the fragments of our Order - no doubt you know much more about this than I do. It will be a long up-hill road to reunite what has been shattered; it may come after my life time - but surely it must be the ultimate goal of all of us who come out of the Russian branch of the old (sic) original Order'.

We see that a lot of doubt is cast on the basis of this correspondence. It is said there is evidence the American Order was an invention only. Interesting is also that Harrison Smith refers to a Canadian Masonic thesis. Freemasonry knows an advanced degree of Knight of St. John. [603] But even if the letter of Edelen to Harrison Smith, as referred to by Stair Sainty, does exist and is not a forgery, we must not forget that the letter allegedly written by Edelen, was written in 1980. At that time Edelen had already fallen out with Pichel for years. In the 1960's, the American Order had become rather succesful –Smith says that the American Order 'was rather dormant after the death of its Grandmaster..'. – [604] and consequently had also already been attacked by adepts of SMOM and of other 'recognised Orders', apparently trying to monopolise the common notion and the ideals of the Order of St John, as well as by other Orders.

We must also note that two US Courts established that Pichel believed what he claimed. [605] It is rather hard to follow that during these two extensive trials, this affair would not have come up. As we saw, also Stair Sainty is convinced that Pichel believed what he said and wrote about the American Order. Edelen was involved in about three to four Orders of St. John and he takes care not to express himself too categorically (using the terminology 'seems'). At the time Edelen wrote his convenient or inconvenient accusatory letter, he was involved in a fight for control of the American Order. Later, as we shall see, Edelen was also involved in the formation of a Grand Priory in Canada. The Ecumenical Order seems to have originated from this Grand Priory. Their documentation shows a strong support for the American Order. Why would Edelen then have changed his

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603 James F. Wathen, *Is the Order of St. John masonic?* (Rockford, Illinois 1973). See also Smith/Storace, *Order of St. John of Jerusalem*, p. 68.

604 Smith/Storace, *Order of St. John of Jerusalem*, p. 70.

605 Appeal from the United States District Court for the Eastern District of Tennessee at Chattanooga. No. 83-00369-R. Allan Edgar, District Judge. Argued: June 5, 1997, Decided and Filed: July 14, 1997, action started in 1983: 'There is no reason to conclude that Charles Pichel did not believe that the Corporation owned the collective membership mark in 1958. At this time, Pichel was the 'Grand Chancellor' of the Order, which had used the mark since long before its arrival in America.'

point of view? We conclude that Edelen is probably an unreliable witness and his alleged letter to Harrison Smith, even if true and original, cannot easily be taken seriously. This cannot be called reliable evidence, while we also refer in this connection to the ancient adagium 'Unus testis, nullus testis'. That Stair Sainty also refers to the minutes of a Sovereign Council meeting, 'of one of the many King Peter Orders', held at the New York Athletic Club from 10-14 April 1981, containing an alleged similar 'confession' given by Edelen to this Sovereign Council meeting, [606] does not make this any different, except that the same witness reiterated the same statements. There is a remarkable similarity here with the the 'Taxil hoax'. [607] Yet we must be careful. Conveniently or inconveniently, more than once, especially when it matters, documents have a tendency of popping up or disappearing. For example, in the time just after Paul I, a wagon load of documents about the Russian Catholic and Orthodox Grand Priories seems to have been destroyed or has disappeared for some other reason (thus Maisonneuve); Colonel Pichel allegedly suddenly or slowly went berserk and burnt all his archives, or his house with all these archives in it was set on fire either by himself or by others.

Equally categorical as Stair Sainty is Foster. [608] According to Foster, the following categories can be distinguished within or around the Russian tradition:

> '1) The Hereditary Commanders of the Russian Grand Priory. In the West, a revival of this tradition took place in Paris, June 1928, via Russian Nobles who were in exile. The initiative of the Hereditary Commanders continued in the USA from the mid 1970s onwards; The Sovereign Order of the Orthodox Knights Hospitaller of St. John of Jerusalem.
> 2) A group of organisations emerging from the "American Grand Priory", which had no historic connection to the Russian Grand Priory, but

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606 Robert Willard Yates Formhals, *White Cross: Story of the Knights of Saint John of Jerusalem, with particular emphasis on the Hospitaller Order of St. John of Jerusalem, Knights Hospitaller since 1964 under Royal Charter of Peter II, King of Yugoslavia* (Camarillo, California, 1979).

607 An American Freemason, a General Albert Pike, allegedly presented a 'Luciferian Doctrine' in a letter for the floor at a July 14, 1889, Supreme Council Freemason convention in Paris, France. This letter was then published. According to the letter, the Luciferian doctrine should be presented to high degree Masons, while keeping the lower degree initiates and the general public ignorant. Twenty years later, a former expelled Freemason, Gabriel Jogand-Pagès, a/k/a as Léo Taxil, suddenly announced at a public meeting in Paris that he had concocted a huge elaborate joke that had fooled everyone and that now, as a consequence of his confession, the above letter could be disregarded. See also Zeijlemaker, *Vrijmetselarij ontleed*, p. 206-207.

608 Foster, *The survival of the Russian tradition*.

claimed to have been started by Hereditary Commanders of the Russian Grand Priory in New York in 1908. The driving force of this group was Charles Louis Thourot-Pichel.
3) The King Peter Constitution organisations. In 1963 King Peter II of Yugoslavia supported one of the groups to emerge from group 2). The King's group fragmented both during his membership, and after his death. The King as a Monarch who had never abdicated possessed a "fons honorum" so his group was transformed by this fact, into a knightly fraternity. Whether this can remain the fact, following his death, and the refusal of his son, the present head of the Yugoslavian Royal House, to support his father's former groups, is questionable. The King was also trustee to the relics of St. John, following his father. The sisters of the last Czar passed the relics onto King Alexander for safe keeping, in 1928. However the relics were lost to the Germans in the War, and apart from rumour, have never been seen since. This point then, as a means of authenticating a connection with the Russian tradition is academic, but never-the-less is accepted as a valid point by at least one respected academic.
4) Various groups claiming a Russian connection, but of uncertain origin.
5) The Most Holy Orthodox Hospitallers. This is an Order of Chivalry founded in 1972 by Archbishop Makarios, (Head of Church and President of Cyprus) within the Orthodox tradition, inspired by the creation of Paul I. It is a recognised State Order of Cyprus. It continues to carry the recognition of the Head of the Cypriot Church, and the recognition of the President and State of Cyprus.

The only organisation which can trace itself the Russian Grand Priory that existed before the Russian Revolution of 1917 (and therefore the only legitimate claimant to the Russian tradition) is that of Group 1), The Sovereign Order of the Orthodox Knights Hospitaller of St. John of Jerusalem. The pedigree of the Paris group which proceeded the New York group is assured with its well documented beginnings and has not appeared to have produced the plethora of offshoots to which the groups in 2), 3), and 4) appear to have given birth.

Prince Paul Alexandrovitch Demidoff who was listed in the Almanach de St. Petersbourg 1913-1914 page 178 as "ancient officer du reg. des chevaliers gardes, commandant Hereditaire de l'Ordre de Malte" was one of the Hereditary Commanders who re-established the Russian Grand Priories activities in exile, and was one of the signatories in the Declaration signed at Paris June 1928, which re-established the activities of the Russian Grand Priory in exile, thereby providing unquestionable proof of the continuous existence of the Russian tradition of the Order of St. John of Jerusalem.

In 1976 a fresh initiative in the life of the Russian Grand Priory was embarked upon by Count Nicholas A. Bobrinskoy, a Hereditary Commander (a descendant of the Empress Catherine the Great), who had

> discussed the need for continuing its activities with a number of other Hereditary Commanders. The life of the Priory was continued under the name of 'The Sovereign Order of the Orthodox Knights Hospitaller of St. John of Jerusalem' and was officially established on the 20th April 1977. Initially the eldest son of Grand Duke Alexander Mikhailovich, Prince Andrei Alexandrovich became Protector, and after his death in 1981, his younger brother, Prince Vassili took on the role. Following the death of Prince Vassili, the Orthodox Knights came under the Protection of Prince Michael of Russia.
> The group's claim to be in succession to the 1928 Association was strengthened by the membership of Prince Serge S. Belosselsky-Belozersky who was a signatory to the 1928 Declaration. The other groups cannot claim a Russian identity in the same way.'

It is however not clear how 'The initiative of the Hereditary Commanders continued in the USA from the mid 1970's onwards' and what the legitimacy is of 'The Sovereign Order of the Orthodox Knights Hospitaller of St. John of Jerusalem'. The 'group of organisations emerging from the "American Grand Priory' which had no historic connection to the Russian Grand Priory, but claimed to have been started by Hereditary Commanders of the Russian Grand Priory in New York in 1908' and whose driving force was Charles Louis Thourot-Pichel, is what we refer to as 'the American Order'. Indeed they claimed to have been started by Hereditary Commanders of the Russian Grand Priory in New York in 1908. It is not motivated by Foster why this group had no historic connection to the Russian Grand Priory. Indeed the King Peter group emerged from the American Order and we note that Foster agrees that it had valid fons honorum, [609] so this group was transformed into 'a knightly fraternity', but why not call it a dynastic Order, as the International Commission for Orders of Chivalry (ICOC) did? As to 'The Most Holy Orthodox Hospitallers', we note that this is an Order of chivalry founded in 1972 by Archbishop Makarios, who was Head of Church and President of Cyprus, 'within the Orthodox tradition, inspired by the creation of Paul I' and that it is supposed to be a recognised State Order of Cyprus. This would then be an Order of St. John with State recognition, but where and how are its historic connections or roots?

According to Foster, 'the only organisation which can trace itself to the Russian Grand Priory that existed before the Russian Revolution of 1917 (and therefore the only legitimate claimant to the Russian tradition) is that of Group 1), The Sovereign Order of the Orthodox Knights Hospitaller of St. John of Jerusalem. The pedigree of the Paris group which proceeded the

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[609] Protection formally accepted by King Peter II on 21 June 1965; qualified as dynastic (chivalric) Order by the International Commission for Orders of Chivalry on 30 November 1978.

New York group is assured with its well documented beginnings and has not appeared to have produced the plethora of offshoots to which the groups in 2), 3), and 4) appear to have given birth'. But we note that Sherbowitz & Toumanoff have rather categorically expressed their opinion on this group and rejected its legitimacy. They entirely reject the concept of Hereditary Commanders as well as the genuineness of the Paris group and motivate this extensively. [610]

VII.20. Protection of a split-off of the American Order by King Peter II of Yugoslavia

Stair Sainty produced a useful list of Grandmasters of several Orders of St. John. [611] We note it is said in this list that 'Exiled King Peter II of Yugoslavia was elected as the Royal Protector under Cassagnac, which caused a split. The Shickshinny Convent and filiants do not appear to recognise Cassagnac as ever being a Lieutenant Grandmaster or Grandmaster.' And also 'In January 1965, King Peter II of Yugoslavia, the High Protector to this Order, rejoined the Shickshinny Convent to be elected as Grandmaster in January 1969.' Apparently this King did not regard the American (or Shickshinny Order) as a hoax. We noted that Stair Sainty contends that the Shickshinny organisation had no lineal descent (whatever that may be) from the original Order of St John and there was a claim by this first mentioned organisation that Grand Duke Alexander of Russia was Grandmaster 1913-1933, but this claim was entirely fictitious. Further, that in 1953, the organisation revived a previous Corporation of the 'Knights of Malta' granted in New Jersey 1911. We deem 'lineal descent' (or 'historical roots') important, but in casu not decisive, as we shall explain infra. [612]

VII.21. The origin of The Ecumenical Order

But on the other hand Stair Sainty also said that:

> 'The apparent closest successor of the Shickshinny fantasy today is a body now particularly active in Canada, see under 11A, although several others among the self-styled Saint John Orders were formed from schisms within this and other groups.

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[610] Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 37, note 103 and also p. 122, note 274. Refer also to infra p. 238, *VII.26. The foundation of the Association of Hereditary descendants of the Knights of St. John in Paris.*

[611] Stair Sainty, *Orders of St. John.*

[612] Infra p. 418, *XIX.6. Irrelevancy of historical roots.*

This is the ‘Cumbo Order’, also known as ‘The Ecumenical Order’. We do not immediately understand how and why Stair Sainty has reached this conclusion. Maybe it is because this organisation is allegedly again professing Colonel Pichel’s old adagium which ran more or less like ‘there is only one genuine Order of St. John and that’s ours’, but that is what many seem to claim, including but not limited to SMOM.

Indeed the present Grandmaster of the Ecumenical Order is usually presented as the 75th Grandmaster, while the recently deceased ‘Grand Prelate’ of this organisation, a Bishop Mitchell, seems to have been very deeply ‘convinced that our Order is the only genuine Order’. It would be interesting to know why.

The question then is not only 1) whether the American Order was indeed formed in 1908 as is said, but also 2) whether the The Ecumenical Order is indeed the major successor or continuation of the ‘Shickshinny Order’ (which is the American Order after having moved to Shickshinny). As to this point, Stair Sainty had the following to say:

> ‘(11) The ‘international grand priory’, and ‘autonomous priory of Sicily-Aragon’ of Saint John has a ‘Prince Grandmaster’ in the person of Don Roberto Paternò Castello dei Duchi di Carcaci, self-styled ‘H.R.H. Prince Roberto Paternò Ayerbe Aragona, Duke of Perpignan’. Paternò transferred his attentions to Saint John following the failure of his pseudo-’Order of Saint Agatha of Paternò’ see below). Sometime styled Prince of Emmanuel, he also lays claim to the thrones of Aragon and the Balearic Islands, without any support, as far as is known, from the citizens of Spain whom he claims for his potential subjects. This gentleman is actually a great-nephew of the late Lieutenant of the Grand Magistery of the Sovereign Military Order, Frà Ernesto Paternò Castello, who emphatically denounced his unfortunate relative, [56] but has long been associated with various self-styled ‘Orders’. Since Paternò joined the Shickshinny group in 1973 (from which he resigned in 1977), his ‘Order’ has now fragmented and divided into a branch based in Malta, an ‘Irish Association’, now quasi-independent but about which little is known and (11B) a group once associated with Paternò named the ‘priory of Malta’. This was part of Paternò's ‘autonomous priory of Sicily-Aragon’, whose sponsor (‘prior’) was a certain Kelinu Vella Haber, ‘Marquis of Alaro, Alcatan and Erbesso’, and who was associated with a self-styled ‘baron of Palmanova’, actually Kenneth Bertram Benfield, and a certain Orlando Pietro Serra, otherwise ‘prince of Kentoiphai’. Paternò managed to establish a ‘Grand Priory of Canada’ [57] which, on May 27, 1984, held a ‘solemn investiture’ presided over by a Bishop I Borecky, described as ‘H.E. the Grand Prelate’, and photographed wearing the robes of an Orthodox cleric. The officers listed in the program, the first four of whom were each styled ‘Count’, were Thorbjorn Wiklund (see also under 1), the infamous Crolian Edelen de Burgh (now deceased), Eric de Leuwenhaupt and J. Frendo Cumbo, and

three ‘chevaliers’, F. Copeman, W. Coleman and C. Wilkinson. [58] Somehow the Canadian Prime Minister's office was persuaded to send a letter of greeting, as did the Premier of Ontario Province. Other more recent publications of the Paternò ‘Order’ show that Mr Copeman has been promoted to ‘Count’, Wiklund is now Wiklund de Valformet, Louis Scerri Montaldo is ‘Grand Prior of Malta’, Gunnar Laatio is ‘Grand Prior of Scandinavia’ and a new Grand Prior of the United Kingdom, a Dr James Walsh had been appointed. A list of ‘Ambassadors at large’ included several who formerly held more lowly posts, while a new addition was a Prince Fahed Hatem Bey, of otherwise unknown origin. The address of the ‘European Grand Priory and local Grand Priory headquarters’ was given as the ‘Auberge des Chevaliers’ in Malta. [59] A year later a Mr Arthur O. Allen seems to have emerged and shared with Mr Cumbo the position of Grand Chancellor. [60]

There is a ‘Grand Priory of Russia’ of this body of which the Chancellor is a Mr Eugene I. Deballov whose representative in the USA, a Mr Nikita E. Pokrovsky, was appointed on March 18, 1993. On May 11, 1993, Professor Pokrovsky wrote the New York headquarters of the Most Venerable Order of Saint John stating that he was International Visiting Professor from Moscow University at Wartburg College, Iowa and that in the past year he had been a consultant to the Sovereign Order of St John of Jerusalem (Grand Priory of Russia). He suggested discussing a humanitarian project of the Russian Grand Priory. Needless to say his suggestion met with a polite rebuttal. This group has an address in Moscow [61] but its connection with Paternò is exposed by the address of their European and Commonwealth Grand Priory Headquarters at Merchant's Street, Valletta.

(11A) The successor or a further schismatic group of the Paternò Grand Priory of Canada was until the late 1990s under the direction as ‘Grand Prior’ of a self-styled ‘Prince’ Korey (previously known as ‘Count’) who managed to persuade (former) King Michael of Roumania to accept the post of ‘Protector’. This, however, did not in any way alter the legal status of this body and King Michael is apparently unaware that his name is being used as a sign of this ‘Order's’ legitimacy. [613] Korey was more recently succeeded by Mr Joseph Fred (or Frendo) Cumbo, self-styled Marquis and Count of Torre Sarroca (an invented title), now of Torre Cumbo, Auberge de Chevaliers, 52 Kingwood Drive, Courtice, Ontario L1E 1Z3, Canada. He is a sometime resident of Malta and a former officer of the Paternò Order,who may have been involved with at least one other self-styled Saint John order (that run by ‘Prince’ Enrico Vigo, self-styled claimant to the Byzantine throne). Cumbo's claims to

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[613] The author confirms on the basis of copies of signed documents in his posssession, that King Michael I is aware of his Protectorship and accepted this position. The character and status of the organisation was thereby changed into that of a chivalric Order. King Michael I however turned down a later request to become Grandmaster.

> recognition by the Canadian authorities, presented in the form of polite letters of acknowledgment of donations to various charities from several government officials (including a former, then serving, Governor-General) in no way affected its legal status. Although incorporated under Canadian law, this body is not recognzied as an Order of Chivalry by the Canadian authorities, nor (as has been claimed on its behalf) has it been recognized by the Most Venerable Order of Saint John. In the recent report of the 'False Orders Committee' of the Alliance of Orders of Saint John this body has been listed under 'Unrecognized Orders' A.1, 1, as the continuation of the Shickshinny Orders. Cumbo has now elevated himself to the position of 'Prince and Grandmaster', while 'Prince' Roberto Paternò (Ayerbe Aragona) Castello retains the title of 'Grandmaster Emeritus', a 'Count' Emanuel Bonello della Torrella is sometimes listed as 'Lieutenant Grandmaster' or 'Grand Prior of Australia' and a Colonel Derrick Langford as Grand Chancellor. Other officers include a Grand Prior of Malta, 'Baron' Adrian Busietta.'

The situation is rather complex indeed, but at this point during our investigation we face what some may call an insurmountable difficulty for the acceptance of The Ecumenical Order's legitimacy. This difficulty is – without prejudice to the outcome of a discussion about the question whether the American Order was indeed formed in 1908 or was 'invented' later and if it was, whether it was legitimate or not – that it can obviously not be argued with certainty, that The Ecumenical Order is the same as the American or Shickshinny Order; has the same corporate identity; or is just a or the only legal or factual successor to the American Order. It should be noted that as far as we know, the Cumbo or Ecumenical Order has not come forward sofar with any public explanations or rebuttals at all. There is however known a vague claim of being descended from French Knights, who allegedly established their Order in Canada in 1647.

We therefore have to assume for the time being that the Cumbo Order, a/k/a The Ecumenical Order, finds its origin in a further schismatic group of the Paternò Grand Priory of Canada, but who indeed were favoured that H.M. King Michael I of Romania wrote their Grandmaster George Korey Krzeczowski to be pleased to accept the post of being their 'Protector' on or about 19 August 1993.

At any rate Stair Sainty seems to regard the Cumbo Order (or The Ecumenical Order, in our terminology) as the major continuation of the Shickshinny Order, or in Stair Sainty's words 'the Shickshinny phantasy'. In our view this is questionable. This seems primarily based on their relative success, as they have grown relatively substantially in the last five years. The Grandmaster is presenting himself or allows presentation of himself as the 75th Grandmaster. That means he is invoking the 'Russian tradition' and also that his organisation has 'lineal descent' from the American Order,

which, as we saw, is questionable. But he certainly is not the only Grandmaster doing this.

If the American Order was indeed founded in 1890/1908, then the question is whether it was formed by descendants of Russian Hereditary Commanders. If this is so, then it is in our view a legitimate reconstitution of a former, quaint part of the original Order. But we do not think it is relevant for being a legitimate Order of St. John to be able to claim 'lineal descendency', or to be a 'legitimate offspring' from the original Order and not even that it is relevant in this connection to be 'recognised'.

The whole point of being able to legitimately claim descendency or being a legitimate offspring from the original Order, or being recognised, at least from a practical point of view, is rather an issue beside the point for being a legitimate Order of St. John or not. Even where an Order of St. John is not able to claim lineal descendency from the original Order of St. John (and no Order can), this Order can still be a legitimate Order of St. John. See for example the Most Venerable Order or the Johanniter Orde in Nederland. See the King Peter Order during the time King Peter II still provided his Protection to this Order.

VII.22. Developments from 1909 till 1913

On 30 April 1909, Prince Heinrich von Mecklenburg-Schwerin, Prince Consort to Queen Wilhelmina of The Netherlands formed a Commandery of the Balley of Brandenburg in The Netherlands with 15 Knights. This happened with the Balley's consent. Also in 1909, Grand Duke Alexander allegedly recommended the reconstitution of the Orthodox Russian Grand Priory in the U.S.A. and the formation of a Grand Priory of America. In 1911, a Knights of Malta Inc. seems to have been established. On 18 January 1911, it appeared from the registration in the Principal Register, Collective Membership Mark, of the USA, that the flag and the name 'Sovereign Order of St. John of Jerusalem, Knights of Malta', were legally protected as of 18 January 1911, the starting date of the activities of the said Grand Priory of America in the USA. No protest was ever received against this. Can any Order still protest against this state of affairs, as well as against the reconstitution and the protected name, inter alia in view of the statute of limitations? [614]

From 1912-1913 followed the Balkan Wars. Italy occupied Rhodes. In the Treaty of Lausanne, Turkey ceded its rights over Tripoli and Cyrenaica to Italy. Italy agreed to evacuate the Dodekanese, but continued to occupy Rhodes. During the First Balkan War, Count Vladimir Armfeldt, as member

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[614] Infra p. 401, *XVIII.3. Sovereign Order of St. John of Jerusalem Inc. v. John L. Grady.*

of the Orthodox Russian Grand Priory, was permitted to wear his decoration. [615] On 17 May 1912, a new Constitution of The Ecumenical Order was decided in New York. On 17 November 1912, Count Alexander Vladimirovitch was granted permission by Czar Nicholas II to wear his decoration of the Russian Orthodox Grand Priory. In the years 1913-1914, the Almanach de Petersbourg, edition 1913/1914, included high officials who were officers in the Chevaliers Gardes, founded by Paul I as bodyguards to the Grandmaster, but who may have murdered him and Hereditary Commanders of the Order of St. John, inter alia showing Paul Alexandrovitch Demidoff (1869-1935) [616] as Hereditary Commander of the Order of Malta. There is a photograph of him wearing the Hereditary Commander Cross of the Russian Order, the eight-pointed Cross of Malta, surmounted by a Crown.

VII.23. The involvement of Grand Duke Alexander in the American Order; the beliefs of those represented in New York

On 1 September 1913, His Imperial Highness Grand Duke Alexander Mikhailovich Romanov (1866-1934) was elected, allegedly in his presence, in New York by the 'Chapter General in Convocation' as 71st Grandmaster of the Order. William Sohier-Bryant became Grand Prior of America and Europe and Lt. Grandmaster. This Grand Duke was a direct descendant of Czar Nicholas I and was a cousin and also brother in law of Czar Nicholas II and resided at Court. It has been said that when accepting the Office, Grand Duke Alexander was acting as the official representative of the Imperial Romanov Family and as the Custodian of the First Treaty of 1797, [617] bringing with him the full obligations of this Treaty, which were then incorporated into, accepted by and to be activated by the Order for all time. All descendants of Hereditary Commanders and Hereditary Knights as well as all descendants of the Russian Imperial Families were said to have collectively represented the full force and effect of the Treaty of 1797. [618]

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[615] Division of His Imperial Majesty's Chancery, year 1912, no. 96803.

[616] Smith/Storace, *Order of St. John of Jerusalem* p. 178.

[617] There were two Treaties of 1797. The First Treaty of 1797 called for the the establishment forever in Russia of the Russian Catholic Grand Priory, the Second Treaty of 1797 for the appointment of Paul I and his heirs as August Protector of the original Order.

[618] Mabel Atkinson, a descendant of Nelson and Grandmaster of the Athenian Order, in a letter entitled 'Historical continuity and validity', to the Supreme Council of the Order, dated 3 May 1964, quoted in Pichel, *History*, p. 165 ff.

Generally speaking with regard to the various above developments, assuming they indeed did happen, the question is whether the Russian Order carried on in the 19th century and whether the decision taken on 10th January 1908 was a valid decision taken by the original Order, respectively by the Russian Order.

The Russian Order somehow carried on in Russia. This is confirmed by the evidence cited in this study and also by the writers mentioned in Annex IX to Smith/Storace, [619] a series of studies of the Russian Order carried out from 1840 to 1917.

The decision taken by those forming the American Order in 1908 to reconstitute, was valid, because of their historical ties with the former Orthodox Russian Grand Priory, which would always have its own arrangements. In a sense Von Hompesch and the Sacred Council itself were at the root of the problems which present themselves already since about 1962, of mutual mistrust and attacks of Orders of St. John against Orders of St. John. Von Hompesch and the Sacred Council gave approval and so did Pope Pius VI, to Czar Grandmaster Paul I for the formation of the Orthodox Russian Grand Priory. [620] Whether the decision taken in 1912 to form a Grand Priory of America and a Grand Priory of Europe was valid, can be questioned only, if one rejects the opinion of many historians that before and after Tommasi's appointment various separate Orders existed and could legally exist. It is then in principle up to an Order to form whatsoever Grand Priories it desires. Also protests were apparently not received from anyone.

The belief of those represented in New York seems to have been that indeed they were the successors of the original or Russian Order. However, it conflicts with the reality which in the 19th and later in the 20th century slowly came into being, i.e. the recognition under public international law of the Papal Order SMOM formed in 1879 by Pope Leo XIII by various States and the existence of various other Orders of St. John with alleged historical roots to the original Order. But the Papal Order never protested against the reconstitution of the Russian Order or the foundation of the American Order in 1908. Only 54 years later, it published a 'White Book', presumably also as a protest against the American Order.

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[619] Smith/Storace, *Order of St. John of Jerusalem*, Annex IX, p. 225-227.

[620] Supra p. 153, *V.30. Paul I to found the Orthodox Russian Grand Priory (Third Treaty, 1 June 1798).*

VII.24. Developments from 1913-1919

From 1913-1933, the Grandmaster of the American Order was Grand Duke Alexander Michailowich Romanov, with the additional title of Grand Prior of the Russian Grand Priory. From 1914-1918 followed the First World War (Great War). During the years 1915/1916/1917, the Order was still functioning in Russia according to M. Paléologue, French Ambassador to Russia. [621] Paléologue attended at the Church of the Order and viewed its Regalia twice in the last years of Nicholas' reign. The Throne was still kept in the Palais de Malte of the noble family of Worontzoff, where the École des Pages trained the Corps Officers after the tradition of the Knights of St. John. On 6 December 1916, Czar Nicholas II granted the title of Hereditary Commander of the Order upon two members of the Order. This shows that according to Nicholas II, the Russian or Paul I Order had not become extinct in Russia, at least not as a decoration. [622]

In 1917 followed the Russian Revolution, i.e. the February Revolution and the October Revolution. In 1918, Czar Nicholas II was assassinated. [623] The relics of the Russian Order were carried to Kopenhagen. Palestine became a British mandate. The republic was called out in Austria. Kaiser Wilhelm II of Germany was deposed. The Peace of Brest-Litowsk between Russia and Germany was concluded. In 1919, a Grand Priory of Denmark was formed by an Imperial Russian General. The First World War ended with the devastating Treaty of Versailles.

VII.25. The period from 1919 till 1945

In 1920, the Johanniter Orden i Sverige was established under the patronage of the King of Sweden. Italy ceded Rhodes to Greece. In 1923, the Republic of Turkey was created. Mustafa Kemal (Ataturk) became its first President and introduced a separation between State and religion. On 22 May 1924, France, as last of the Roman Catholic States, recognised the Grandmaster of the Papal Order as a Prince. In 1925, the French Government recognised the right of Frenchmen to display the crosses of Malta as a foreign decoration again (due to the efforts of Pierredon). On 24 November 1925 followed the

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[621] Maurice Paléologue, *La Russie des tsars pendant la grande guerre* (Paris 1921), I, p. 337 ; II, p. 243; II, p. 301and p. 319-320.

[622] Smith/Storace, *Order of St. John of Jerusalem*, 'Appendix IX, Historical Guide to the Grand Priory of Russia'.

[623] On 14 August 2000, Czar Nicholas II and his family, were declared saints by unanimous decision of the Bishops of the Russian-Orthodox Church. Earlier on 31 October/1November 1981 in New York, by the Russian-Orthodox Church outside Russia.

Constitution in Paris of the 'Union de la Noblesse Russe', making use of their hereditary rights. In 1926, finally followed the Foundation of 'The American Association of The Order of Malta', under the patronage of Cardinal Spellman. In the years 1927-1928, a Roman Catholic 'Magistral Knights Association', or 'American Chapter of Knights' was formed in the United States. [624] In 1927, a Roman Catholic national Association of Poland was formed. In 1928, a Roman-Catholic national Association of Hungary was formed.

VII.26. The foundation of the Association of Hereditary Descendants of the Knights of St. John in Paris

On 24 June 1928 [625] followed the foundation of the 'Association of Hereditary Descendants of the Knights of St. John' in France. Grand Duke Alexander was elected its President and then its Royal Protector. Among the sixteen founders were thirteen Hereditary Knight-Commanders. The American Order or Pichel saw or constructed it as a valid initiative which took place in Paris and was then amalgamated with the American Order, the Russian Grand Priory of Paris becoming an integral part of the American Order and Grand Duke Alexander accepting the Office also as their Prior.

It will probably come as no surprise to the reader that in the meantime the alleged successors to this group, perhaps in a quest for respectability, are opposing the American Order and deny that the Grand Duke ever had anything to do with the American Order. The foundation is also attacked by Sherbowitz & Toumanoff, who claim it is based on totally wrong historic assumptions, [626] while others [627] see it as the real re-establishment of the activities of the Orthodox Russian Grand Priory, negating the American Order as a hoax of Pichel.

VII.27. The Treaty of Laterans

From 1929-1931, the Lt. Grandmaster of the Papal Order was Pie Franchi de Cavalieri. In 1929, a Roman Catholic national association of Belgium was formed and rapprochements took place between the Paris group and SMOM, but were rejected by SMOM.

On 11 February 1929, the Treaty of Laterans was concluded between the Church and Italy. Italy, under Mussolini, recognised the Pope's sovereignty within the new limited Papal State. This comprised Vatican City, the four

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[624] A 'Western United States Association' was added.
[625] Feast Day of St. John the Baptist.
[626] Sherbowitz & Toumanoff, O*rder of Malta and the Russian Empire*, p. 36-40.
[627] Foster, *Hospitallers from 1798.*

patriarchal basilicae, the catacombs, the buildings of the Roman Curia, some institutes and seminaries and the villa at Castel Gandolfo. The Church also got the say in Italy over education and marriage. On this basis, the relationship between Church and State was established in the Constitution of the Italian Republic.

On 27 November 1929 followed a 'New Rule' for the Teutonic Order. It emphasised religious discipline. In 1930 followed another treaty (based on the Lateran Treaty) concerning the extra-territoriality of the Papal Order within Italy. In 1933, a Roman Catholic national association of Ireland was formed [628] and Grandmaster Grand Duke Alexander died. Catholic associations were also formed outside Europe in Argentina, Brazil, Colombia, Peru, Mexico, Cuba, Nicaragua, Canada and in the Eastern United States.

From 1933-1951, Lt. Grandmaster of the American Order was William Sohier Bryant. On 15 February 1933, Colonel Pichel was elected Grand Chancellor of the American Order. In the period 1934-1936, Grand Duke Cyrill, Head of the Imperial House of Romanov in France, formally conferred Hereditary Commander titles in the Order of St. John of Jerusalem in the name of the Russian Grand Priory. [629] From 1940- 1945 followed the Second World War. During the period 1938-1945, the Priories of SMOM in Austria and Bohemia were suppressed. They were revived after the war.

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[628] Catholic Associations were also formed outside Europe in Argentina, Brazil, Colombia, Peru, Mexico, Cuba, Nicaragua, Canada and in the Eastern United States.

[629] Smith/Storace, *Order of St. John of Jerusalem*, p. 85-87, quoting Cassagnac, *l'Ordre Souverain, p.* 84-85. Belyakova, *The Romanovs*, p. 29, Daria Evgenievna Kotchoubey, great-granddaughter of Nicholas I, referring in 1931/1932 to her grandfather Maximilian Duke of Leuchtenberg as former Grandmaster of the Maltese Order.

VIII. SIXTH PHASE (1940-2004): SEVERAL ORDERS DISPUTING EACH OTHER'S LEGITIMACY; THE CREATION OF THE INTERNATIONAL ALLIANCE OF ORDERS OF ST. JOHN

VIII.1. Growth of the American Order

In 1940, the Almanach de Gotha mentioned Bork Elim Demidoff as Hereditary Commander of the Order of Malta. [630] The American Order had up to 1940 from 1908 allegedly not less than 52 Descendants of Hereditary Knight Commanders, 28 Descendants of Knights of the Order, 31 Princes, 50 Counts, 3 Archdukes, 4 Dukes, 1 Grand Duke of Russia, 17 Barons, 7 Prime Ministers, 15 Archbishops and Bishops, 1 Exarch, 2 Cardinals, 3 Kings and Queens and many Viscounts, Marquises, Ministers, Consuls, etc. [631] On this – disputed – list, there may have been persons who were also member of other Orders at the same time. As of 1914, the American Order had become increasingly known in certain circles in New York and Washington, because of a large number of new members from the ranks of diplomats, generals and admirals, who had distinguished themselves in the First and Second World Wars.

In 1941, the relics seem to have been transferred from Kopenhagen to an Ostrog monastery.

VIII.2. Use by SMOM of the the word 'Sovereign'

Since 1942 or 1936, the Papal Order was called 'Sovereign Military Order of Malta'. The distinctive element in this name is not the word 'Sovereign', but the word 'Military'. This latter word is the distinctive element which prevents confusion with other Orders of St. John. The word 'Sovereign' in this name was used at that time and is still being used by about at least twenty other similar organisations. The word Sovereign has various different meanings. It can be said to mean to possess sovereignty, the exercise of supreme authority within a limited sphere, [632] but it can also mean a superlative in quality (excellent), [633] or 'independent', in the sense of international law.

This express change of name by introducing the distinctive element Military means it can be argued the Papal Order renounced the right to

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630 *Almanach de Gotha* (1940), p. 546.

631 Pichel, *History*, p. 74 ff., List of members of the (American) Order between 1908-1940.

632 Compare the Roman 'imperium': J.E. Spruit, *Enchiridum, een geschiedenis van he Romeinse privaatrecht*, (Deventer 1994, 4), p. 30.

633 Merriam-Webster's Collegiate Dictionary.

attack other Orders of St. John because of their use of the word Sovereign. The name change can be seen as an implied recognition that there are other Orders of St. John with a right to use the word Sovereign in their names, except the use of this word in combination with the word Military. The original Order was called 'The Holy Religion of St. John of Jerusalem' or 'Order of St. John of Jerusalem', or 'Order of Malta' or 'the Religion', or 'The Knights Hospitallers of the Sovereign Order of St. John of Jerusalem' until the end of the 18th century. 'Sovereign Military Order' or 'Sovereign Order of Malta', was adopted since 1798**.** But this was after the original Order was dissolved. Lateron, this was abandoned again, but when Grandmaster Chigi came into power in the Papal Order in 1933, he re-assumed it in the Papal Order's style. [634] This was then formalised in 1942.

VIII.3. Recognition and sovereignty

The international community is not static. New States come into existence. Revolutions occur and new Governments establish themselves. Territorial changes take place. Of these changes, the members of the international community have the choice approving or disapproving. Recognition is the process whereby a State acknowledges its approval of the change that has occurred. But because the tendency is for the approval or non-approval to be based upon political motives and not upon considerations of the legality of the change, recognition must be regarded as primary a political act.

Although political in the sense that it is accorded or withheld for political reasons, it is an act which nevertheless has legal consequences. It is in the first place evidence of the factual situation thus recognised and secondly it has the effect of bringing about certain legal consequences in regularising the relations on the diplomatic level between the recognising State and the entity recognised and in clarifying the juridical standing of the recognised entity in the courts of the recognising State.

A State, as a person of international law should possess the following characteristics: a permanent population, a territory, an effective government and the capacity to enter into relations with other States. [635] Since the Peace of Westphalia of 1648, the sovereign equality of States is the basis of public international law. [636] The concept of sovereign equality in principle entails that all States are equal, each State enjoys the rights inherent in full

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[634] Count Zeininger de Borja, in a letter to Harrison Smith. See also Smith/Storace, *Order of St. John of Jerusalem*, p. 55.

[635] Montevideo Convention of 26 December 1933 on the 'Rights and Duties of States'.

[636] Article 2, paragraph 1, United Nations Charter: 'The Organization is based on the principle of the sovereign equality of all its Members.'

sovereignty, each State has the duty to respect the personality of other States, the territorial integrity and political independence of a State are inviolable, each State has the right to freely choose and develop its political, social, economic and cultural systems and each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States. [637] At the same time, some have called this principle of sovereign equality as the most intractable and disruptive of international principles. [638]

VIII.4. The public international law personality of the Holy See and SMOM

There are a number of public or intergovernmental international organisations which are not States, but have acquired international personality. This means being capable of possessing rights and duties and having the capacity to maintain its rights by bringing international claims. [639] Public international organisations are of a universal, regional or integrational character. These intergovernmental organisations should be distinguished from the non-governmental organisations, or NGO's. Thousands of these are contained in the Yearbook of International Organisations. [640] Many have been granted the socalled consultative status, [641] of which several gradations exist.

The Vatican, or its government, the Holy See, the spiritual and temporal government of the Roman Catholic Church and also the government of Vatican City, legally is usually not classified as a State or as an international organisation, but as 'another subject of international law'. [642] This is not the same as a State. The Holy See is nevertheless participating as a full fledged actor in United Nations conferences. It acquired the status of a 'Non-Member State Permanent Observer' at the United Nations in 1964. The only one sharing this designation was Switzerland, who recently joined the United Nations. [643] This status gives the Holy See the right to speak and vote

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637 UN General Assembly Resolution 2625 (XXV), 24 October 1970.
638 D. Mitrany, *A Working Peace System* (1943).
639 ICJ Reports (1980), 73, p. 89.
640 UN publication.
641 Article 71, United Nations Charter.
642 Shabtai Rosenne, *Practice and methods of international law* (1984), p. 161: 'Appendix IX, Model plan for the classification of documents concerning state practice in the field of public international law', Council of Europe, Committee of Ministers, Resolution (68), adopted by the Ministers' Deputies on 28 June 1968; François, *Handboek I*, p. 195-199.
643 September 2002. See also E. Suy, *The status of observers in international organizations*, in RdC, (1978 II), p. 75-179.

at UN conferences. The Holy See 'exists and operates within the international community as the juridical personification of the Church'. [644] No other religion was granted the elevated status of Non-Member State Permanent Observer. Other religions participate in the United Nations as non-governmental organisations. As a matter of fact, the Holy See invited itself the United Nations in 1964, under Secretary-General U Thant. [645] Earlier attempts to become a member of the League of Nations in 1920 and in 1944, to become a member of the United Nations, were not successful. A unilateral alleged 'ius legationis' was applied. [646]

The Holy See has been defined as a non-territorial religious entity. [647] The Vatican does not have a permanent substantial citizenry. Italy carries out many of the vital State functions of the Vatican, such as policing, punishing crimes and maintaining public utilities and public transportation. The Vatican has a nominal territory of 0,44 square kilometers, the smallest State territory in the world, with a frontier of 4.07 meters, the smallest in the world. It has a non-permanent population of about only 1.000 people, of whom only about 500 have citizen rights. SMOM has extra-territorial real property in Rome itself and is allegedly sovereign there. SMOM seems to be wholly dependent on the Holy See.

It is then not easily acceptable that an Order of and subject to the Holy See, the Papal Order SMOM, can be deemed to be sovereign (= independent), although it does have international public law legal personality in the view of various States. SMOM's 'sovereignty' was defined by a specially composed 'Cardinalitial Tribunal' as ´functional', depending on its international activities and not on the possession of territory. The personality enjoyed by international organisations under public international law is restricted to the acts, required in order to enable the organisation to fulfil its purposes. [648] It remains unclear what the public international law legal personality of SMOM means. Cox calls his paper 'the last in a long series of attempts to explain the somewhat anomalous sitiation of the Order'. [649] SMOM was also declared by the Tribunal as having a

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644 Eugene Hyginus Cardinale, *The Holy See and the international order*, 1976.

645 UN Press release of 21 April 1960 for the criteria applied by Secretary-General U Thant.

646 Coriden, *Code of canon law 1983,* Canon 362 which also specifically says that the norms of international law are to be observed in this context.

647 Yasmin Abdulla, 'The Holy See at the United Nations conferences: state or church?', Columbia Law Review (1996) and William Schabas, *Notes on the legal status of the Vatican city and the Holy See* (1994).

648 Seidl-Hohenveldern, *International economic law*, p. 78-80; M.S. Korowicz, *Some present aspects of sovereignty in international law* (Leyden 1961).

649 Cox, *Acquistion of sovereignty, p. 2*; G. Cansacchi, *La personalitá di diritto internazionale del S.M.V. Gerosolimitano detto di Malta* (n.d.) 8; A. C. von Breycha-Vauthier and M. Potulicki, 'The Order of St. John in international law: A

religious character and in consequence thereof, to be subject to the Congregation of Religious. It is an Order of the Roman Catholic Church and Papal in this sense. It can in theory be abolished by the Pope, [650] the more so because its sovereignty was declared functional by the Tribunal.

Velde [651] quotes a relatively large number of authors who deny the sovereignty claimed by SMOM. [652] Alexander Hold-Ferneck, Wilhlem Wengler, Dominique Larger and Marcel Monin, Roberto Quadri and Debez reject the status of subject of international law. James Crawford, Gerhard von Glahn and D.P. O'Connell do not take a clear stand on the status of SMOM. Ian Brownlie says that in the law of war the status of SMOM is merely that of a relief society within the meaning of the Prisoner of War Convention, 1949, article 125. Helmut Steinberger only accords sovereignty to the historical exception of the Holy See. The French Republic does not recognize the SMOM as a subject of international law.

But the Holy See might be deemed not even to be a legitimate government itself, as it is not democratically chosen and is episcopalist/ monarchical. It seems to lack democratic legitimacy since the Lateran Synod of 1059, [653] in spite of later tendencies to conciliarism. [654] The right of a State to freely choose its political system is limited by public international law and the concept of human rights. This concept inter alia calls for equality of men and women, for the right of subjects to participate in their government and for democratically elected organs. See also the

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forerunner of the Red Cross' (1954) 48 *American Journal of International Law* 554; C. D'Olivier Farran, 'The Sovereign Order of Malta in international law' (1954) 3 *International and Comparative Law Quarterly* 222; C..A. Pasini-Costadoat, *La personalidad internacional de la S.M.O. de Malta* (September-December 1948) Revista Peruana de Derecho Internacional 234; G. Cansacchi, *Il diritto di legazione attivo e passivo dell'Ordine de Malta* (1940) 65; A. Astraudo, 'Saint-Marin et l'Ordre de Malta' (1935) *La Revue Diplomatique* 7.

650 Grandmaster De Rohan, when faced with this Papal threat, backed down. Ciappara, *Roman Inquisition*, passim.

651 François Velde, 'The Order of Malta, Sovereignty and International Law'.

652 Georg Dahm, *Völkerrecht*; 1:182; Paul Guggenheim, *Traité de Droit International Public* (Geneva, 1954; p. 339n) ; Hold-Ferneck, *Lehrbuch des Völkerrecht* (Leipzig, 1930; 1:246) ; Wilhlem Wengler, *Völkerrecht* (Berlin, 1964; 165-6) ; Dominique Larger and Marcel Monin, 'A propos du protocole d'accord...,' in *Annuaire Français de Droit International*, 1983:228-40 ; Roberto Quadri, 'Droit International Public', in Recueil des Cours de l'Académie de Droit International, 1964; vol. 113, p. 422 ; Debez (1964; p. 129); James Crawford, *Creation of States in International Law* (Oxford, 1979), p. 29); Gerhard von Glahn, *Law among nations: an introduction to public international law* (1986, 5th ed; p. 67); D.P. O'Connell, *International Law* (1965: p.94); Brownlie, *Principles*, p. 64; Helmut Steinberger, 'Sovereignty', in R. Bernhardt, ed., *Encyclopaedia of Public International Law* (2000, vol. 4), p. 512.

653 Under Pope Nicholas II (1058-1061); a move against the Holy Roman Emperor but also the people.

654 Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 38-47, for conciliarism, regalism, episcopalism, richerism and gallicanism, etc.

supplemental (Kopenhagen) criteria formulated by the Member-States of the EU on 16 December 1991, for recognition of new States in East-Europe and the former Soviet Union. The new State, if desiring to be recognised, must inter alia accept the democratic principles, human rights and the rights of minorities and ethnical groups. [655]

Until 1870, the Pope was Head of the Roman Catholic Church and at the same time temporal Prince, Sovereign of the Church State. This State had international public law personality and as Head of the Church, the Pope may also have had international legal personality, although this is disputed. [656] The Church State, having an area of 17.218 square miles at the time, was annexed by Italy in 1870, except for the Vatican and Lateran Palaces and the Villa of Castel Gandolfo.

Internationally, it was not deemed desirable, that one nation could control an institution like the Roman Catholic Church with its far-reaching influence. By the Italian Guarantee Act of 13 May 1871, the Pope was declared to be inviolable [657] and awarded sovereign prerogatives, but without a formal territory. This ended the temporal power of the Pope. One could therefore question the capacity of international legal subject and the Sovereign position of the Holy See.

In 1929, the Mussolini-regime provided the Church with the formal territory of the Vatican again. [658] This involved a political agreement, a concordate and a financial arrangement. It ended a controversy of about sixty years. It gave the Church its coveted Sovereignty, in exchange for irrevocable recognition by the Holy See of the Italian ownership of Rome and of the House of Savoia as Italy's Royal House. It gave additional fame and further legitimacy to Mussolini and to fascism. Mussolini repaired the old unity State-Church, because like many rulers before him, starting from Constantine the Great, he saw its strong possibilities to control the masses (appeals to sacrifice, resignation, renunciation, rewards in heaven or punishment in hell, equality in heaven, but not necessarily on earth, etc.). [659] Fascism and the Church also share such notions as disciplin, hierarchy, obedience, etc. Mussolini also wanted the Roman Catholic Church, which he

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[655] Kooijmans, *Internationaal publiekrecht*, p. 24; article 6 Grondwet 1987 and article 9 EVRM (Europees verdrag ter bescherming van de rechten van de mens), freedom of religion, v. article 6 EVRM, due process. In case law and literature, EVRM is deemed applicable to ecclesiastical communities.

[656] François, *HandboekVolkenrecht I*, p. 195, note 1.

[657] The Italian case law took the view that a Head of State when not acting in a public law capacity, cannot invoke immunity of jurisdiction.

[658] Treaty of Laterans of 11 February 1929.

[659] Compare article 8, (Dutch) *Staatsregeling 1798* (translated): 'The respectful acknowledgment of an All governing Supreme Being strenghtens the bonds of society, and remains very dearly recommended to every Citizen.'

saw as essentially Italian – practically all Popes had been Italian, practically all Papal diplomats had been Italian – to remain supranational, for Italy's sake.

But is this sovereignty of the Vatican a real sovereignty? Where application of formalistic criteria for sovereignty would lead to a blatant contradiction with reality, would the claim of a State to be sovereign fail to be generally accepted. [660] The mere posssesion of the outward trappings of political sovereignty does not make a State truly sovereign in the economic sense. [661]

VIII.5. The ius legationis

The public international law prerogatives of the Pope express themselves in the conclusion of treaties and the ius legationis. The treaties are called concordates, but sometimes also as treaties.The treaties concluded by the Pope since the 12th century are all concordates, i.e. they have in principle nothing to do with the Church State but exclusively concern the regulation of Church relationships and therefore have been entered only in the Pope's quality of spiritual head of the Roman Catholic Church. The ius legationis of the Vatican is exercised not necessarily on the basis of reciprocity, but also one-sidedly. Representatives are also accredited in countries, who themselves do not have a diplomatic representative with the Vatican. The Papal representative of the highest rank is called the 'Nuntius' and equal to Ambassador. In Catholic countries he usually is the 'Doyen of the Corps Diplomatique', in the other countries where this was usual in 1815. [662] The Holy See claims that the Nuntius always should have priority (a remnant of the old Papal claim to temporal supremacy, but more or less based on the Vienna Congress Act) but this is not always accepted.

In 1959, 14 States out of the then 82 UN Members had formal relations with the Vatican. In 1985, 53 States of the then 159 Member States had diplomatic relations with the Holy See. [663] Presently about 94.

As a consequence of the Holy See having acquired the status of a 'Non-Member State Permanent Observer' at the United Nations in 1964, SMOM acquired the status of 'Permanent Observer' in the category 'Permanent Observers having received a standing invitation to participate as observers in the sessions and work of the General Assembly and maintaining permanent offices at UN headquarters', together with the Red Cross and the

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[660] Seidl-Hohenveldern, *International economic law*, p. 22.
[661] Ibidem, p. 26.
[662] Vienna Congress Act, Article XVII.
[663] Center for Reproductive Law and Policy, *Church or state?* (1995). Since 1957, relations are understood to be between the United Nations and the Holy See.

International Federation of Red Coss and Red Crescent Societies, [664] a 'recognised non-governmental international agency'. As part of the Holy See, SMOM apparently was able to also acquire the status of Permanent Observer. [665] But SMOM, deriving its position from the Holy See and being dependent on the Holy See, is not really independent. The Holy See gave it a limited functional independence, in sofar as its international charitable activities are concerned. This independence is not based on the possession of territory or anything else. Therefore SMOM did not gain full independent international personality. SMOM nevertheless is deemed to be a public international law person. But it is not a State and therefore the embassies it created, cannot be regarded as real embassies.

VIII.6. Dropping nobility as a criterion for membership after 1945

In 1945, the Swedish Knights put themselves under the Protection of the Royal House of Sweden. In this year, the relics seem to have been transferred to a museum at Cetinje, Yugoslavia. On 11 May 1946, the Swedish Knights adopt a new constitution. This caused the coming into being of an autonomous, non-State, but private Swedish Order of St. John, then under the guidance of King Gustav V, called 'Johanniter Order i Sverige'. It came into being not as a State Order or as a State decoration, but as a private law Order and as a private decoration. Later on, King Gustav Adolf VI renounced the right to be the Chief of the Order and to appoint Knights. This Order also does not apply nobility as a criterion for membership. Already the Treaty of Amiens said that proofs of nobility were not necessary for the admission of knights. [666] The Knights of Grace are by far in the majority.

In 1948, the Balley of Brandenburg abolished the requirement of nobility for entrance. The nobility requirement used to be rather strict in Germany. Where others were content with four quarters, the German Langue had applied even eight quarters. We know why, because of famines and to maintain a closed shop. As of 1852, the nobility requirement had been applicable also for membership of the revived Balley. But the Germans did not nobilitate anymore after the abolishment of the German Empire in 1918, respectively after the First World War. The qualities now required were 'character and spiritual potential'. In this way, the old nobility principle was applied to 'nobles with a civil form of name.' [667]

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[664] Until 1986 International Red Cross.
[665] UN General Assembly Resolution no 48/265, 24 August 1994.
[666] Supra p. 186, *VI.19. The Treaty of Amiens*.
[667] Klimek, *Im Zeichen des Kreuzes*, p. 36.

This means that it is questionable whether any criterion of nobility for the legitimacy of an Order of St. John can be applied or deemed to be a valid criterion. Nobility was abolished in Austria after the Second World War. The Balley of Brandenburg was recognised as a genuine Order of St. John by SMOM. It is a member of the 'International Alliance of Orders of St. John', formed in 1961. Furthermore, this may mean that one is of the opinion that by knighting the civilian as a member of the Balley, this civilian is being nobilitated. But this is an argument not followed by the British, because the Venerable Order itself declared that by joining the Venerable Order, one cannot consider oneself to have been knighted. One cannot call oneself 'Sir' and the rank abbreviations (e.g. Cmdr) are to be used only inside the Venerable Order itself. On the one hand one is dropping the nobility requirement, while on the other hand one seems to reserve the concept of Order of St. John to nobility.

VIII.7. The Vatican taking a stand against 'false' Orders

On 31 July 1950, Grand Duke Andrew Wladimirowitch Romanov (1879-1956), grandson of Alexander II, issued a declaration [668] to the effect that the Order of St. John and its Hereditary Commanders were never abrogated in Russia and legally continued to exist. [669]On 24 September 1950, a declaration to the same effect was issued by a number of Hereditary Commanders in Paris. [670] From 1951-1955, Baron d'Engelhardt Schnellenstein was Lt. Grandmaster of the American Order.

In 1951, Pope Pius XII issued an edict calling for a revision of the constitution or statutes of all Roman Catholic religious Orders. On 19 February 1953, a Cardinalitial Tribunal asserted the religious character of the Papal Order. On 30 November 1953, a Sentence was published saying that in religious affairs only, the Papal Order is subordinated to the Holy See. It was established five times, but internally, i.e. in the relationship Holy See/SMOM that the Papal Order is supposed to be sovereign.

In 1953, the Holy See also issued an 'Official Statement of the Holy See on alleged Orders of Knighhood'. [671]

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668 Translation in English of the French original in Smith/Storace, *Order of St. John of Jerusalem*, p. 127.

669 Foster, *Hereditary commanders and royal protectors*.

670 'Association des Descendants Héréditaires des Commandeurs Russes de l'Ordre de Malte'.

671 H.E. Cardinale, *Orders of knighthood, awards and the Holy See* (1983); published by l'Osservatore Romano 1953 and 1970.

On 12 March 1954, the Danish Johanniter Orden was put under the Danish Crown. From 1956-1960, Count Zeppelin was Lt. Grandmaster of the American Order. On 21 November 1956, a Papal Brief approved the new Constitution of the Papal Order, creating three classes with sub-classes and adding 'Knights of Obedience'. In 1956, the Headquarters of the Americn Order were transferred to Shickshinny, Pennsylvania and the American Order formed a 'Sovereign Order of St. John of Jerusalem Inc.', as a Delaware non-profit corporation. [672] As will be seen below, this was an important step, because certain trademarks were put into this corporation. This has had a far-reaching effect, as we shall see below.

In 1959, the Constitution of the American Order changed in Shickshinny. Colonel Pichel is in complete control as Chief -Executive Officer and Secretary-Treasurer. This seems to be the beginning of a tendency which is later called by its adepts, the autocratic, versus the democratic way of governing an Order of St. John. For example: 'SMOM is democratic, we are autocratic. They have associations, we have Grand Priories'. One invokes the way the old Grandmasters operated, i.e. as enlightened despots. Obedience is more than once invoked for this practice. In our view this is contrary to association law as well as to the Statutes of the original Order itself, although obedience is a core notion there also.

Compare van Drimmelen's exposé on types of Church organisations, distinguishing between the episcopalist-hierarchical, the presbyterial-synodal and the congregational organisation, [673] while he also points out the background of the episcopalist system. The lack of a clear separation of powers is a consequence of the meaning attributed by the various ecclesiastical communities to the spiritual office and the concept of the 'vicariate'. The office is deemed to proceed from God and the higher the office, the more untouchable. [674]

In the year 1959, also a French Russian Grand Priory was founded and registered with the Government of France.

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[672] Smith/Storace, *Order of St. John of Jerusalem*, p. 65.
[673] Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 201-214.
[674] Ibidem, p. 216-217 and also p. 268.

VIII.9. The Bundespräsident approves the decorations of the Balley of Brandenburg

Another important event in this year was that the Bundespräsident of Germany approved the 'Stiftung und Verleihung' of decorations of the Balley of Brandenburg. German Law knows the Ordensgesetz. [675] This law does not provide a definition of decoration. The notion is pre-supposed. This law distinguishes between officially approved and not-officially approved decorations. 'Orden und Ehrenzeichen' may only be founded and granted by the 'Bundespräsident' or with his approval (§ 6 OrdenG). The criteria applied in this connection are not laid down in the law. Officially approved decorations are sub-divided in 'Orden, Ehrenzeichen und Ehrensold'. Only with approval of the Bundespräsident is it allowed under German law to wear decorations awarded by foreign public law organisations. Private national or private foreign parties also need the approval of the Bundespräsident for the granting of Orden und Ehrenzeichen. The law contains a criminal sanction (§ 15 OrdenG) with regard to the wearing of not-officially approved decorations (Ordnungswidrigkeit, or misdemeanor).

Because the Bundespraesident of Germany approved the Stiftung und Verleihung of decorations of the German Johanniterorden, the German State approved the decorations and the granting thereof. Basically, this meant that it was accepted by the State that the 'Herrenmeister' could not only grant decorations of the Balley to its own members, but also to outsiders.

After five years of membership of the Balley and being over 35 years old, a member will automatically become a 'Rechtsritter', or 'Knight of Justice' and receive the relevant cross. An Honorary Members Cross or an Honorary Knights Cross may be awarded to outsiders.

One can indeed envisage a system in which prior approval to accept any decoration is needed. But what is an officially acceptable decoration abd what is not? Because of the approval, the decorations granted as a private organisation have a certain official status. But there is a difference between approval (Genehmigung) and recognition (Anerkennung). If this is a reason to hold that the Balley of Brandenburg is a 'recognised Order', we deem it rather meagre. The next step was the amendment in 1971 of the Statutes 'with approval of the Bundespresident'. A link with power to obtain added prestige, has been succesfully established again.

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[675] *Gesetz über Titel,Orden und Ehrenzeichen* vom 26. Juli 1957, zuletzt geändert durch Gesetz vom 18.06.1997 (Bundesgesetzblatt I, S. 1430).

VIII.10. Pope John XXIII approves the Constitution of the Papal Order

On 2 May 1960, the Union of Russian nobility in exile and a group of Hereditary Commanders advised SMOM they are not involved in the American Order and rejected the latter's claims to have inherited the rights of the Grandmastership of Czar Paul I. From 1960 -1961, the Lt. Grandmaster of the American Order was de Cassagnac, who would have a far-reaching schismatic effect. [676] In 1961, Pope John XXIII approved the definitive Constitution of the Papal Order and named a Cardinal as Protector of the Papal Order. The Papal Order is an Order of the Roman Catholic Church. The name used is 'Sovereign Military Order of Malta'. The original Order, according to Roman Catholic writers always was a Roman Catholic religious Order subject to the Pope. The original Order always wanted to be independent and was a very useful invention, but had to cope many times with usurpations by the Pope.

However, it practically always sucessfully protested thereto. Already in the 18th century, it sort of recognised the previous Protestant split-off, i.e. the important Balley of Brandenburg and then its primary successor (or itself, if one would hold the original Order still continued), became fully ecumenical, under Paul I. Historically, the Order started as a community of laymen and priests with high ideals, but also with political, economic and other motives. It always had a mixed character. The Knights soon achieved overriding influence in its management and control and it became one of the first supranational and relatively free organisations, relatively free from interference by feudal lords and from the Pope. After the Crusades, they had to retreat to Cyprus, from there to Rhodes and thence to Malta, where they became very active corsairs and later on Malta became extremely important as a Mediterranean economic hub. In Rhodes, but particularly on Malta, after the Great Siege, the original Order had developed into a well to do oligarchy, also reaping a substantial income from the vast feudal estates in mainland Europe. After the idealistic beginning period, the responsions were in reality spent to maintain their State and lifestyle, not on the sick, or only marginally. The French Revolution brought everything to an end. Already in the 18th century, the original Order recognised the previous Protestant split-off of the Balley of Brandenburg. One became wholly ecumenical under Grandmaster Paul I.

To maintain this always was a religious Order subject to the Pope is at best only part of the truth, while it can well be and was regularly questioned whether acts of war or the notion of fighting Infidels, can ever legitimately

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[676] Infra p. 257, *VIII.12. The influence of the Alliance; the first schism in The American Order.*

be an activity of a truly Christian religious Order, whatever St. Augustine (354-430) or St. Bernard of Clairveaux had to say on this. Historically it could, but dogmatically is the question.

But the concept of a just war had become connected with the concept of a war against heathen Normans, Hungarians and Arabs. Already in the 9th century, Pope Leo IV and Pope John VIII had promised eternal life to all those who would fall in battle against the Arabs or the Normans. [677] Of course this does not take away anything from what significance they may have had in the defense of Western Europe against the expansion of the Ottoman Empire and from their valor. However, the attempted return of particularly the Papal Order to this alleged pure and Catholic religious and ideal Order, in principle reserved only to nobles with four or more quarters of nobility, while consistently and actively fighting others on the grounds of lack of legitimacy, is a denial of the historical origin and of the historical, political, ecumenical and legal development of the original Order, respectively of its various parts or split-offss. The same goes for the constant inflation of the political and military importance of the original Order, way out of the true historical proportions. The Orthodox or Russian Order, as allegedly reconstituted in the United States, more particularly in New York, in 1908 (the American Order), from its start seems to have adapted to the times by first and foremost on the social significance and social achievements of the practising Christian postulant. Not primarily on his or her nobility and presumed strict Catholic, Protestant or Orthodox Christian faith, or his being professed.

They defined nobility in a less stringent way. In Germany, new nobility was not added after the Great War. As said, this compelled the Balley of Brandenburg to apply a new definition of nobility after the Second World War. The American Order also still maintainined its independence from every authority in sofar as legally and factually possible. In this context, it has to be remarked that the American Order, as The Ecumenical Order, formally was a quasi-religious Order. It had (very few) professed members and was not even a quasi-monastic Order, because it had no conventual life whatsoever. The Papal Order in this respect made full circle, but also can only be regarded as a formal quasi-religious organisation, because it has way too few professed members and also way too little conventual life. About three to nine people? It also claims not to be an Order of the Roman Catholic Church.

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[677] Mayer, *Kreuzzüge*, p. 20.

VIII.11. The American Order attempts to become accepted by the United Nations; the formation of the Alliance of Orders of St. John

On 3 February 1961, the American Order endeavored to become accepted and registered at the United Nations in New York as a government organization. On 13 June 1961, several Orders of St. John formed an Alliance of Orders of St. John at Nieder-Weisel, Germany. The 'Alliance de Chevalerie des Hospitaliers de Sint Jean de Jerusalem' (Chivalric Alliance of Orders of Saint John) or 'the Alliance' has as aims 'to reduce to silence the enemies of Christ' (sic) and 'to succour the sick and help the destitute.' [678] We submit that the first purpose seems to go rather far, in our view too far and wonder who 'the enemies of Christ' are deemed to be and why. The Alliance was formed in 1961 [679] by the Johanniter Orders in Germany (the Protestant Balley of Brandenburg), [680] the Netherlands (the Protestant Johanniter Orde) and Sweden (the Protestant Johanniter Order i Sverige), with the subsequent addition of the English (Anglican) Most Venerable Order, in 1963. Therefore basically by completely new organisations, with no real historical roots except perhaps the Protestant Balley of Brandenburg. The Roman Catholic Sovereign Military Order of St. John joined them in 1963. It is not clear whether this Alliance is more than a contract to co-operate, [681] or, if it is more, what the legal form of this Alliance is, a foundation or an association for example. It is clear what the text of the convention is and part of it follows below. As said, its aims are 'to reduce to silence the enemies of Christ' and 'to succour the sick and to help the destitute'. To 'reduce (people) to silence' seems directly in contravention with the right to freely express opinions, also called 'freedom of the press'.

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[678] The headquarters of the Alliance are in Basel, Switzerland. Its President is Baron Bernd Freytag von Loringhoven, 'Statthalter' of the Balley of Brandenburg and it is administered by a Secretary, presently R. Ehinger Krehl. The administration is at the Swiss Commandery of the Balley of Brandenburg, 15 Aeschenvorstadt, CH-40511, Basel, Switzerland.

[679] Its first president was H.R.H. the late Prince Bernhard of The Netherlands.

[680] Four associations in union with the Balley of Brandenburg, are also comprised as part of the Convention and these are 'Johanniter Ridderskap i Finland'; 'Association des Chevaliers de St. Jean, Langue de France'; 'Genossenschaft der Johanniterritter in der Schweiz' and the 'Johanniterarend Magyar tagazota'.

[681] 'Annales de l'Ordre Souverain Militaire de Malte' (July-September 1962), publishes the 'Convention of Alliance between the British, German, Dutch and Swedish Orders of St. John'.

According to the preamble of the statement of 13 June 1961:

> 'A knight must do his utmost to combat all manifestations of unbelief. He must employ every form of persuasion to combat the enemies of the Church, using all the powers and spiritual forces at his command; a word of encouragement at the right moment, a disinterested piece of advice, a noble action.'

Evidently, a 'combat' is going on and perhaps the people against whom this combat is directed, do not know about it at all. What is a combat? A knight 'must employ every form of persuasion to combat the enemies of the Church, using all the powers and spiritual forces at his command'. The knight has no leeway, he 'must' and what is meant with 'every form of persuasion'? What is meant with 'powers and spiritual forces at his command'? Evidently, the 'disinterested piece of advice', is not so disinterested at all. The preamble carries on:

> 'The Order represents the whole spiritual heritage of its founders; in taking their vows knights assume for themselves, of their own free will and conviction, the objectives of their Crusader predecessors.'

What is 'the Order'? There is not one Order of St. John, but the facts prove that indeed there is a collective concept of Order of St. John. This part of the preamble is clearly harking back to the ideals of the founders. Their ideals remain shrouded and the founders were not Crusaders, but Italian merchants from Amalfi. The objectives of the Crusaders were to fight the Infidels and to obtain spiritual and temporal advantages. As we saw, a crusade formally had to be called for by the Pope, it required a vow of taking up the cross, while a collective or plenary oblate ('remissio peccatorum'), also for survivors and temporal privileges, were awarded. The preamble again:

> 'The Order is a non-political body of people inspired by the same ideals. They support, exhort and encourage each other, fraternally and chivalrously, in the accomplishment of their duty and their work. The Order unites them in a powerful Brotherhood, giving them strength and spiritual sustenance. The vow they take is a living reminder of the duties they must faithfully fulfill and of self-renunciation; it embodies the entitlement of nobility alike for the Order itself as for its members'.

Is there a collective Order and is it indeed a non political body? Where reference is made to being 'recognised' and crowned heads are involved where available, we deem this body very political. What the ideals are is not clear at all, but the idea anyway is to 'support, exhort and encourage each other, fraternally and chivalrously, in the accomplishment of their duty and their work.' The closing sentence 'it embodies the entitlement of nobility

alike for the Order itself as for its members', seems to postulate that they are entitled as Order and as members to nobility, because they made a vow. The Convention between the four Orders further says:

> 'I. All Orders of St. John to-day are dedicated, according to their various Constitutions, to the Christian faith and to the work of caring for the sick and needy. The fulfillment of these tasks is largely exemplified in the establishment and operation of hospitals, welfare institutions, nursing schools, first aid organizations and associations for social aid and care of the sick, and like institutions.'

In saying 'All Orders of St. John to-day', the Convention does not make any exceptions or distinctions between Orders of St. John. In how far can the establishment and operation of the hospitals, etc., they say are under their aegis, really be atributed to them?

> 'II. The signatory Orders of St. John hereunder mentioned are akin to the older Tongues, respect the ancient rule and its underlying purpose, but are each of them free, independent and autonomous, and they now form an Alliance of Orders of St. John to be known by that description.
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> III. The signatory Orders are firmly of the opinion that the unity of all Orders of St. John is demanded by history, by their faith and by their common purposes and will fortify their international standing, and that if their efforts and labours are to be effective on the international plane these should be carried on shoulder to shoulder and as a common task.'

With the statement that they are 'akin to the older Tongues, respect the ancient rule and its underlying purpose, but are each of them free, independent and autonomous', is suggested the old languages or tongues were free and independent. The talk about respecting the 'ancient rule and its underlying purpose', is hopefully harking back to the original ideals and not to the blind disciplin of 'obedience' at all times to one's superiors, because this was the heart of the old rule. On the one hand it is said one is free, independent and autonomous, but on the other hand one is 'firmly of the opinion that the unity of all Orders of St. John is demanded by history, by their faith and by their common purposes.' Again, no distinction is made here between Orders of St. John.

See in this context also:

> 'V. Other Orders, associations, or institutions recognized as Orders of St. John by all members of the said Alliance at the time may with the consent of all such members in like manner adhere to this Convention and become members of the said Alliance.'

Therefore other Orders than the signatories may join but this requires unanimous recognition ('by all members of the said Alliance at the time'). We see that this is a heavy requirement and secondly, the signatories themselves determine who is a recognised Order of St. John or not. This process does not seem to be subject to any legal control or appeal. Are we dealing here, with regard to the original signatories, with associations, in the sense of private law legal persons and is the Alliance Convention not an agreement under private law? Does competition law come into the picture here at all? In this context we refer to:

> 'VII. The word 'Alliance' used in the heading and text of this Convention has no political meaning and is not to be interpreted in the light of public international law, and no individual Sovereign person is intended to be bound or committed by this Convention.'

In IV, again a distinction is not made between Orders of St. John;

> 'IV. To enable all Orders of St. John to promote the success of the many international tasks which they undertake and with a view to facilitating also the co-ordination of their various activities, the establishment of a suitable joint committee and of a General Secretariat may be envisaged. The realization of this will only be effected by agreement between all Orders at the time members of the Alliance of Orders of St. John hereby established and if circumstances call for it or make it appear expedient. The organization, duties and powers of these bodies will be laid down by special regulations framed by agreement in the same way. In any case the members of this Alliance recognize that regular mutual contact is desirable.'

These ('The organization, duties and powers of these bodies will be laid down by special regulations') are only partially known. The Convention closes with:

> 'Any member of the Alliance of Orders of St. John may withdraw therefrom and from this Convention by giving six months notice in writing of that intention to all other members at the time.
> VIII. This Convention shall be drawn up in the English and German languages and the text in each language shall have equal validity.
> HEREBY AGREED AND SIGNED by the Orders mentioned in Article II at the meeting of their delegates held at the Commandery of Nieder - Weisel on the 13th June 1961'.

What criteria are applied; whether these are legitimate and always properly applied and what possibilities are open to those attacked by this Alliance,

either directly, or through its 'offspring', the 'False Orders Committee', formed in 1974 and having an office at Bonn, Germany? This seems to be the most conspicuous activity of the Alliance. It seems to have been formed mainly to preserve the alleged monopoly of its members or their own position. 'Sie legten die gemeinsamen Arbeitsgrundsätze fest und grenzten sich gegenüber ähnlichen Ordensneugründungen ab (sic)'. [682]

VIII.12. The influence of the Alliance; the first schism in The American Order

As the following shows, the Alliance was immediately able to exercise political clout and maybe the creation of the Alliance was prompted inter alia by the advances of the American Order into the direction of the international community of States. It may even be that the success of the Alliance with respect to the representation of the American Order with the United Nations, caused a division within the American Order. This was actually its first division, as far as we can establish. But later, many other divisions followed. In July 1961, the American Order withdrew from the UN under protest, pending acceptance in a category of governments. In September 1961, Granier de Cassagnac was elected as Grandmaster of the American Order, but declined on 10 October 1961. A decision of the Court of Honour of the American Order of 24 February 1962 dismissed his complaints against the Grand Chancellor Colonel Pichel.

The American Order seems to have continued at any rate from 1908 until 8 April 1962, when Colonel de Cassagnac formed another new Order in the USA, this time under the Protection of H.M. King Peter II of Yugoslavia, formerly a Knight with the American Order. In 1962, the Constitution of the American Order changed again. How and in what way is not clear. But in view of the above and this change of Constitution, it had become questionable which Order was then to be regarded as the original American Order. Was it Pichel's Order or Cassagnac's Order? The decision by the Court of the American Order in the year 1962 is however rather clear. The new Order formed by Colonel de Cassagnac and the other three 20th century split-offs, all seem to be split-offs of the American Order, in spite of the fact that these split-offs usually invoke they are the uninterrupted continuation of the Russian or the American Order.

Originally, Cassagnac's new Order was an Order with Royal Protection. But this Royal Protection would be withdrawn by King Peter II six months before his demise. This withdrawal was later confirmed by Prince

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[682] W. Hubatsch and C. Freiherr von Imhoff, *Geschichtlicher Abriss des Johanniterordens.*

Alexander, his son. The interesting aspect here is that this 'King Peter Order' was generally regarded by chivalric experts as a true knightly or chivalric Order, or knightly fraternity, because of the valid fons honorum of King Peter, by virtue of which people were able to be validly knighted. King Peter claimed to be the trustee of the relics of the original Order of St. John. There was no lineal descendency from the original Order whatsoever, but Hereditary Commanders were attracted to the King Peter Order and joined it as a legitimate new Order of St. John. The King Peter Order also split up into several directions. [683]

VIII.13. The White Book on the 'Illegitimacy of Homonymic Pretending Orders'

In Autumn 1962, the Papal Order, the 'Sovereign Military Order of Malta', published a 'White Book' on the 'Illegitimacy of Homonymic Pretending Orders'. [684] This 'White Book' came surprisingly quickly after the formation of the Alliance. According to various authors, it can be established as subjective and ill founded. [685] Michel Baron de Taube was a professor of law in St. Petersburg in pre-Revolutionary Russia and a Senator of the Empire. De Taube literally says (translated from the French) 'For an historian, an objective jurist, the incontestable result of all the above is, that despite all the changes which have occurred since the death of the Emperor Paul I within the Grand Magistry of the Order of Malta, and despite all the modifications carried out in Italy to its statutes, nothing can invalidate the legal existence of the Russian Grand Priory of the Order - absolutely autonomous and which was founded in 1798 by the Grandmaster, the Emperor Paul I of Russia.' [686] The views expressed in the White Book are not always supported by 20th century historians. These views in our view tend either to twist or do not take into account all historical facts. Apparently, the White Book was mainly aimed at the Yugoslav or King Peter Order, the first split-off from the American Order.

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[683] There is an 'Order of St. John of Jerusalem, Knights Hospitaller' under the patronage of Crown Prince Alexander's nephew, Prince Karl-Wladimir Karageorgevitch. Lt. Grand Master: Prince Serge Troubetzkoy, Middlesex/ England.

[684] Ordre Souveraine Militaire et Hospitalier de St. Jean de Jérusalem Dit de Rhodes Dit de Malte, *Livre Blanc* (Rome 1962) or '*White Book*'.

[685] Smith/Storace, *Order of St. John of Jerusalem*, p. 101-128.

[686] Taube, *Notice Historique*, p. 42-44.

VIII.14. The contents of the White Book

The White Book consists of a number of translations of the same text. There are five versions, in French, Italian, English, German, and Spanish. A number of documents are attached in the same languages. From the French text, we note that the name of the Papal Order is given as 'Ordre Souverain Militaire et Hospitalier de St. Jean de Jérusalem dit de Rhodes dit de Malte'. The distinguishing elements in this name seeing the names used by all the other Orders mentioned, is 'Militaire', or 'Military', derived from the Latin 'Miles' discussed above. The French text starts with an 'Avis', a warning. Swiss Knights have been surprised recently by the existence in Switzerland of an organisation which calls itself 'Ordre Souverain de St Jean de Jérusalem'. This organisation has not been 'recognised' by the Grand Magistry of the Papal Order at Rome. It also was not 'recognised' by the 'Association Helvétique de l'Ordre Souverain, Militaire et Hospitalier de St. Jean de Jérusalem dit de Rhodes dit de Malte', allegedly being the only legitimate organisation of this Order in Switzerland. [687] This, the non-recognition, in itself probably will not be disputed. The point however is that it cannot be disputed there do exist more organisations of St. John than the Papal Order, or its 'expression' in Switzerland.

The warning then continues and ends with the statement that recently the Papal Order elected a Prince Grandmaster, in the person of Angelo de Mojana di Cologna and that this election was approved by the then Pope John XXIII that this approval was required by the Statutes of the Order, which creation goes back to the Crusades. In itself it is correct that the Pope's approval is indirectly required for the election of a Grandmaster of the Papal Order. But it is not true that Papal approval was always necessary. This is only true since the beginning of this Papal Order, which in our view was only created by Pope Leo XIII in 1879. It is also not true that this Order, created by Pope Leo XIII, goes back till the Crusades. This Papal Order is one among various reconstituted Orders of St. John, or one of many Orders of St. John, but evidently an Order of St. John claiming exclusivity. This probably is not surprising for an organisation which was created by and dependent on the Roman Catholic Church and deriving its alleged Sovereignty from this Church.

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[687] 'qui en est seule en Suisse l'expression légitime'.

VIII.15. The English text of the White Book

Continuing with the English text of the White Book, we establish this text is only seven pages long. [688] The contents of this English version can be divided into the following four sub-divisions: 1) an introduction, in which it is said why the White Book is necessary; 2) an historical part; 3) a part referring to opponents and 4) a part rejecting the opponents' position and putting forward the Papal Order's own position. The White Book therefore cannot easily be deemed to be an impartial scientific work, but seems to be more of a partisan work, or, seeing its short length, a work of a 'pamphlet' nature. In the introduction, we first of all note that the name used is 'Sovereign Military Order of Malta'. [689] The French text uses 'Ordre Souverain Militaire de Malte'. The Italian text uses 'Sovrano Militare Ordine di Malta'. The German text uses 'Souveräner Hospital-Ritterorden vom hl. Johannes von Jerusalem, genannt von Rhodos und von Malta'. The Spanish version uses 'Soberana Orden Militar de Malta'. We may establish that the name commonly used is 'Sovereign Military Order of Malta' and the essential distinguishing element in this name seems to us to be 'Military'.

VIII.16. The introduction

The introduction then refers to a 'necessity of protecting the Order's prestige from harmful attempts made against it by private groups.' Involved is therefore the Order's prestige. The accusation apparently is that there are 'private groups' (note the use of the word 'private') who are making 'harmful attempts' against the Papal Order. One might say that harmful attempts are made every day in social traffic against everybody, by private or public groups or by individuals. The point is whether these harmful attempts are illegal or not. Competition is free, unless it is illegal competition. Reference is then being made to activities during both World Wars carried out by the Papal Order in the field of 'assisting the wounded of all the belligerent armies, etcetera', due to which the Papal Order allegedly achieved 'an important position in the international field as a result of which it has established regular diplomatic relations with several countries.'

Apart from a discussion which could be started about whether or not this activity is conducive to the alleviation of human suffering, one might question whether indeed the activity of the Papal Order during both World Wars was of such a measure, that it can be deemed to be an important activity, qualitatively and quantitatively speaking and whether the result of

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[688] SMOM, *White Book*, p. 23-30.
[689] SMOM, ibidem, p. 23.

this activity enabled the Papal Order to establish diplomatic relations with several countries. The ius legationis practised by the Holy See, is a unilateral one. Surprising and also somewhat amusing, is a reference to maintenance of diplomatic relations by the Papal Order with the Holy See itself. The Sovereign Order is nothing but an Order of the Roman Catholic Church itself and what we therefore see, is that a part of this Church is maintaining, in our view 'quasi' diplomatic relations with another part of this Church. In connection with these quasi diplomatic relations, it then strikes us that the White Book even states that the Order is on a 'level of equality' with the international community of States. The Papal Order is having international legal personality indeed, but this is a derived legal personality, derived from its parent, the Roman Catholic Church and not at all a legal personality on an equal footing with a State. This leaving aside that the statehood of the Vatican itself can be questioned and is presently also being questioned. [690]

The introduction then carries on. After having come forward with these contentions, it then says that it may be 'therefore understandable to some extent that it appeared alluring to some enterprising groups to create confusion, in order to further their own ends, by resorting to the use of similar denominations and through the reorganisation and revival of some of the suppressed branches of the Order, to claim a false and non existent legitimacy.' Those organisations of Saint John, who are not formally 'recognised' by the Papal Order, therefore are attributed with deliberate wrong intentions from the start and are deemed not 'genuine' from the start. They are indiscriminately accused of intentionally wanting to create confusion. This confusion is then created, according to the Papal Order, 'to further their own ends'. This confusion is allegedly created by resorting to the use of 'similar denominations' and finally through the reorganisation and revival of some of the 'suppressed' branches of the Order. This would then result in claiming a false and non existent legitimacy.

Of course it cannot be proved that confusion is intentionally created, let alone that it is created 'to further their own ends'. Secondly, it is doubtful whether indeed resorting to the use of similar denominations is taking place. We have seen that the Papal Order calls itself 'Sovereign Military Order of Malta'. This is the name commonly used. This cannot, or at least not easily, be confused with the names of other Orders of Saint John. The fact there are other Orders of Saint John, cannot be disputed. The fact these Orders of Saint John are allowed to legally exist under the various legal systems of civilised nations, can also not be disputed. Interesting is the reference to the 'reorganisation and revival of some of the suppressed branches of the

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[690] Refer to the 'See Change Campaign' and questions raised in the European Parliament.

Order'. This means that first of all the Papal Order seems to recognise that suppressed branches of the Order have been reorganised and revived. But more interesting is the fact that it is forgotten that all branches of the original Order, if one assumes it could carry on after its dissolution by Napoleon, except the Russian Grand Priories, which were never officially suppressed, were indeed legally and factually suppressed various times. The original Order itself was abolished, dissolved and suppressed by Napoleon Bonaparte and other Sovereigns. It is also forgotten that the Papal Order itself is based on various 19th century revivals, respectively was reconstituted and died again for lack of corporate life. Also that this Papal Order, was suppressed various times by various 19th century Italian governments.

VIII.17. The historical part of the White Book

After the introduction follows an historical part. Much can be said of this historical part, but we limit ourselves to the following here. In our view, a certain Gerard started what may have been not a hospital, but rather a hostel, which then developed into a hospital. A hospital was not set up right away, as the White Book seems to imply. The development into a Military Order is then put in the White Book before 13 February 1113, when Gerard was able to obtain a Bull from Pope Paschal II, providing tax exemption and independence. It is not true, as the White Book says, that the Knights asked and obtained from Pope Paschal II a religious 'Rule'. This, if done at all, was done by Gerard and his Brethren and reference to this organisation as 'the Knights' is contrary to the historical development. The Rule allegedly asked from Pope Paschal II, entailed the observance of the three religious vows of obedience, chastity and poverty, but this was not said in this Bull.

It has been remarked above, that to achieve something in the Middle Ages, one had to have a connection with the Church. At any rate, the three religious vows were not observed throughout the Order's existence, except at a time when soldiering had not yet become the main business of the Order. Finally, we have seen it can be questioned whether Pope Paschal II was authorised at all on 13 February 1113, to give what he apparently gave in the Papal Bull of same date. At the time there also was a dispute with the Emperor, respectively a treaty or agreement which caused that Pascal II may not have been competent to give this exemption at all. [691] The development of the military Orders of St. John and the Temple was also fostered by the Popes as a tool against the Emperor and Kings. These Orders greatly hindered the development of the power of central government, which

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[691] Pact of Sutri, 12 February 1111. Supra p. 61, *III.7. The influence of the Investiture Controversy on the Order's development*.

Emperor and King tried to develop and had to develop. It can also be questioned whether it was necessary to obtain this Papal Bull, in order to be recognised as a legal entity. We believe this is not so, because the organisation seem s to have already been recognised as a legal entity at the time the Bull was asked for, but it was certainly useful. Furthermore, we do not believe that only by approval from the Holy See, legal personality could be acquired.

With regard to the conquest of Rhodes, we remark it was conquered after heavy resistance on fellow Christians and that it is doubtful whether the Order, through the conquest of Rhodes, became a subject of international law. This can be argued in different ways. The economic aspects of the original Order while being on Rhodes have been completely disregarded. Things are only placed in an idealistic aura. We also have to see the Order of St. John as a feudal phenomenon and as part of the French colonisation movement intended to make itself master and to continue to remain in that position, over the spice routes and other lucrative positions. 'The foundations of a Christian mode of life inspired by the highest ideals' [692] at any rate on Rhodes did not entail the abolishment of slavery nor quickly that of pressed labour. The population was pressed to row galleys of the Order. It did also not entail stopping plundering others. It is also not correct the Emperor Charles V granted the Order full sovereign rights on 23 March 1530 over the island of Malta and the Maltese archipelago. Indeed high and low jurisdiction was given, but Charles V in his capacity of King of the Two Sicilies retained ownership rights. [693]

Much is made of the Great Siege of 1565. Indeed tremendous courage and valour was displayed then, in the framework of a fight for survival by the Knights and the local population. This Great Siege was successfully turned into a great propaganda feat. Reference is then made to the 'glorious role' played by the fleet of the Order during the Battle of Lepanto, in 1571. We have seen that only three galleys were provided and they were placed in the rear guard, but accidentally came into the position that they were overrun by fleeing Turkish galleys.

It is true that the Sovereign Order's policy often had an influence – but not a decisive influence – on important international problems of the day. This could be qualified by many as interfering with things to further one's own ends. Particularly the Republic of Venice, also very good at this, as many might say, was often the victim thereof. The importance of the original Order and of SMOM, who claims to be the continuation thereof, is

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[692] SMOM, *White Book*, p. 24.

[693] The famous annual presentation of a falcon each year on All Saints Day in token of his overlordship.

constantly over-rated and blown out of proportion. It is forgotten to mention that on the occasion of the occupation of the island of Malta in 1798, by French troops under Napoleon Bonaparte, only a few shots were fired and the original Order surrendered very quickly and voluntarily [694] and then left the Island. It then definitively, in accordance with the deed of Charles V, lost its territory and thus was deprived of any alleged statehood. Territory is one of the main elements to be able to talk of a State at all. It was dissolved and suppressed. It therefore can well be argued that the original Order did not exist anymore and that what was left, formed a new Order under Czar Paul I of Russia.

It is rightly mentioned in the White Book that Czar Paul I reorganised (the, or this) Order's, hierarchy and established its headquarters in Saint Petersburg. It is also rightly mentioned that in addition to the other existing priories, among whom the Russian Catholic Grand Priory, he added a Russian Orthodox Grand Priory. It is omitted to mention this was approved in advance by the Sacred Council of the Order and by Pope Pius VI. It then incorrectly is mentioned that Alexander I, his son, who succeeded him on 11 March 1801, was a Protector of the Order. He assumed this position, contrary to Czar Paul I, who was asked to fulfil this position. Alexander I was Grand Prior of the Russian Orthodox Grand Priory, which was a hereditary position. Indeed he (in our view illegally) appointed a Lieutenant Grandmaster for the entire Order. This was Soltykoff.

Together with Soltykoff, Alexander I successfully machinated to get rid of the Order in Russia, because of economic reasons. Czar Paul I had endowed the Commanderies that he had formed for the Russian Priories with substantial richess, to the detriment of the Russian State Treasury. Historically, people brought in properties, to be held in trust for them or others by the Order.

What is then mentioned in the White Book about the election of Tommasi, on 6 February 1803 and about the subsequent activities of Tommasi, has been dealt with amply above. [695] In this context it was particularly remarked that the Sacred Council was composed in such a way (in our view illegally) by Czar Alexander I, that it cannot be considered other than as a Council of marionettes. By the way, this seems not to be unusual in some contemporary Orders of St. John, which can be a serious problem. But as often happens, the political reality of the times became more important than the legal position.

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[694] Sutherland, *Achievements I*, p. 250: 'But it is not in walls or bastions, but in the indomitable spirit of its garrison, that the strenghth of a beleaguered city lies'.

[695] Supra p. 156, VI: FOURTH PHASE (1798-1803): BECOMING MORE ECUMENICAL IN RUSSIA UNDER GRANDMASTER PAUL I.

The White Book then wrongly mentions the Decree of 20 January 1817, when the Russian Cabinet allegedly issued a deliberation, allegedly approved by the Czar, stating that on the death of the last remaining Russian Commanders of the Order of Saint John of Jerusalem, the heirs of the latter would not be allowed to inherit the post of Commanders of the Order and would be forbidden to wear the Order's insignia and decorations. This was not said at all in the (in) famous Lazareff decision, as we have seen above. [696] On the contrary, it can be derived from the reference to the Russian Commanders, they were at any rate allowed to carry on until they died as Hereditary Commanders. This also involved they were entitled to either sell the properties involved back to the State, or to continue enjoying them until their decease. This also entirely leaves aside the point whether or not their titles would pass to their sons. It is a well known fact that for example the Princedom of Orange since the times of Louis XIV is not in possession of the House of Nassau anymore, but the title 'Prince of Orange' still remains one of the highest titles in the possession of that House, next to the title Queen or King of The Netherlands. Loss of territory on which the title was based, does apparently not entail loss of the title.

It is mentioned nowhere in the White Book, that various scholars are of the opinion that the Papal Order (which in our view and their view cannot be deemed to be anything else than a revival of a part of the original Order, be it an important part), died for lack of corporate life. [697] It was only revived under Pope Leo XIII in 1879 by appointing a Prince Grandmaster then. It must however be granted to the White Book that if anybody would claim to be the original Order's only legitimate successor and to be exclusively entitled to enjoy its old rights and privileges (which were abolished), he is wrong. Our point of view is there a many legitimate reconstitutions and The Ecumenical Order may be one of those reconstitutions. As has been mentioned above, the denomination of the Sovereign Military Order of Malta in this study as the Papal Order, does not mean anything else than that the author is of the opinion that the Sovereign Military Order of Malta is an Order of the Roman Catholic Church, respectively is an Order of Saint John formed again or reconstituted 'Motu Proprio' Pope Leo XIII. We do not regard the fact whether or not an Order of Saint John is tied to the Roman Catholic Church as a valid argument for being legitimate or not and we also reject that The Ecumenical Order is the only legitimate reconstitution or the only legitimate Order in existence, if they ever took this point of view. The reasons therefor are amply set out supra and infra in this study.

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[696] Supra p. 206, *VII.8. The Lazareff case.*
[697] Supra p. 195, *VII.1. The Papal Order slowly corporately dying.*

However, from the point of view of the correct use of the word Sovereign which means nothing else than independent, in the name of the Sovereign Military Order of Malta, we are of the opinion that this Sovereign Military Order of Malta is not free from interference on the part of the Holy See and in that respect the use of the word 'sovereign' is not correct. We deem the use of the word sovereign as nothing else than a tradition. The Sovereign Military Order of Malta is however not the only one entitled to this tradition. But the question can be asked whether indeed the point of view of the American or Ecumenical Orders ever was or is the point of view, attributed to inter alia them by the White Paper. The White Paper generally refers to 'the abovementioned groups'. But it is obvious that even if these organisations would claim this, this would in principle be their right. This would not constitute 'an unlawful attempt to use a false interpretation of historical events upon which to build evidence and claim rights denied by the facts.' The facts are not clear at all and historical events can be interpreted in many ways and cannot be monopolised. With the same argumentation one could try to forbid a Christian church of a certain undesirable denomination to be formed or functioning.

At any rate, it is not true that all bodies and organisations set up by the Order of the Knights of Jerusalem in Russia ceased to exist and that the exceptional privileges which have been granted to the Russian Commanders of the Order derogating from the fundamental statutes of the same, by which the legitimate heirs were empowered to succeed to the office, were equally annulled. There is ample historical material that Knights of St. John in Russia carried on. It should not be forgotten that it was stipulated that the Russian Orthodox Grand Priory would always have a regulation of its own and would in that sense be independent. At any rate it is recognised here by the Papal Order that the Russian Knights had exceptional privileges, inter alia by which the legitimate heirs were empowered to succeed to the office.

The case of the Grand Priory of Podolia, apparently a judgement from the Rome Tribunal of 28 December 1951, is then presented as proof that in Italy the matter was examined and settled once and for all. Judgments generally only have binding effect between trial parties in involved. If one then reads the motivation which apparently was presented in this judgement, one can immediately see that this is an argumentation which cannot be deemed to be valid from a scientific point of view, because it is too far sweeping.

Interesting in this respect is to note that where various cases were brought to court, it always appeared that the court will only too gladly refrain from a judgement on the various conflicting historical points of view. The court will restrict itself to the safer and clearer ground of name or trademark disputes, governed by the local positive law. See for example the judgment given by the 'Tribunal de Grande Instance de Nanterre' of 14 May 1996 (case nr. B.O.: 9412916), between SMOM and a connected organisation against three

competitive associations. The Court says in English translation: 'Considering that the Court, called to decide the dispute with materials exclusively furnished by the parties, is neither qualified nor competent to judge history, that the Court, not having any power of inquisitorial research, did not receive the task to decide how a certain period of history should be represented and characterised; that under these conditions it cannot impose an historical thesis which would have the value of an official history, let alone even to indicate a preference in trying to decide the particulars of this or that thesis; etc.'

VIII.18. The culmination of the White Book

According to the White Book, no Order styling itself the 'Sovereign Military Hospitaller Order of Saint John of Jerusalem or of Rhodes or of Malta', would ever be in a position to invoke recognition of its legitimacy. This because only the 'Order of Malta', meant is the 'Sovereign Military Order of Malta', can claim to be an original Catholic religious institution, whose religious rule is operating because it was approved in 1113 by the Sovereign Pontiff, Pope Paschal II. This means that any other Orders of Saint John, including the Venerable Order and the Balley of Brandenburg and its off-shoots, all newly created or reconstituted parts of the original Order and recognised by the constitution of the 'International Alliance of Orders of Saint John', are not legitimate either. The truth of the matter is that in view of the political and cultural developments in the second half of the 19th century, it was felt appropriate by a number of people in different countries, to revive the early humanistie ideals of the original Order of Saint John. In this framework, they started various reconstitutions and the American and Ecumenical Orders are among those reconstitutions. It should also be noted that it is also explicitly said in the 'White Book', that 'the Order of Malta is a Catholic religious Order'. [698] Later, this point of view is changed again in some publications.

[698] SMOM, *White Book*, p. 29.

VIII.19. Joint Declaration of SMOM and The Most Venerable Order

On 26 November 1963, the Alliance is 'consolidated' with the signing of a joint declaration between the SMOM and the Most Venerable Order. The text of this document reads as follows:

> 'The relationship which exists between the Sovereign Military Hospitaller Order of Jerusalem, of Rhodes and of Malta and the Grand Priory in the British Realm of the Most Venerable Order of the Hospital of St. John of Jerusalem is not always clearly understood, and it is to dispel any misconceptions which may exist that this statement is being made. A dispute, long since relegated to the realms of academic discussion, as to whether the Most Venerable Order was the lineal descendant of the old Grand Priory of the Sovereign Order, at one time caused division amongst those concerned with such questions. Certain it is that the Most Venerable Order acquired a completely independent existence when it was granted a Royal Charter by Her Majesty Queen Victoria, who became its Sovereign Head. Since this time the Most Venerable Order has pursued the same high ideals of charity, especially to the poor and sick, which were the very cause of the foundation of the Sovereign Order nearly one thousand years ago. It will be easy to understand, therefore, why two great Orders, representing the same traditions, pursuing the same ideals, serving the same cause and wearing the same famous eight pointed cross, should have the greatest respect and esteem for each other. It is our great happiness to declare that such a relationship does truly exist, and that it is the dearest wish of both Orders, to seek ever more ways in which they can collaborate, to promote God's glory and to alleviate the sufferings and miseries of mankind.'

In itself, the coming into being of this Alliance, whatever it may be, is rather surprising because SMOM always took the point of view that SMOM is the only legitimate and the direct continuation of the original Order of St. John, as it existed and continued to exist in its view before and after the Surrender of Malta. Furthermore, leaving aside the truth of the in our view unfounded opinion SMOM apparently has of itself, it can hardly be disputed that at any rate all other Orders of St. John mentioned above, are organisations which were constituted in the 19th, respectively 20th century (The 'Johanniter Orde in Nederland and the 'Johanniter Order i Sverige' were formed in the 20th century, as new organisations). That these organisations, apparently and in a doubtful way, invoke the old traditions and history for themselves only, is something else.

The Papal Order allies with four Protestant Orders with alleged common historical roots. The Grand Bailiwick of Brandenburg, reconstituted in 1852, the Johanniter Order in the Netherlands, started in 1909, the Johanniter Order in Sweden started in 1946 and the Most Venerable Order of St. John

started in 1888. These are all supposed to have been constituted as 'Orders of Chivalry' and all are supposed to be 'recognised' by their own governments and the Papal Order as legitimate. But did this really happen and under application of what criteria? Would discrimination [699] of others be illegal, if they could prove to also have common historical roots and/or to also have been constituted and to be functioning as chivalric organisations? How then in this context, SMOM can recognise and accept as equal partners a number of Protestant organisations which were only recently formed, is the question. Perhaps the answer is that in Germany and England respectively, the respective two organisations had grown rather fast and the Most Venerable Order through the size of the British Commonwealth, was as international or supranational as SMOM alleges to be, or really is. In size, the Most Venerable Order easily beats SMOM. But on 6 April 1995, the 'Secretaire d'Etat' of the Vatican unambiguously stated in a letter

> 'Aux Missions Diplomatiques accreditées près le Saint-Siège': 'que le Saint – Siège, outre ses propres Ordres équêstres…….. ….ne reconnait que deux Ordres de chevalerie: l'Ordre souverain militaire de Saint- Jean-de-Jérusalem, dit Ordre de Malte, et l'Ordre équêstre du Saint-Sépulcre de Jérusalem (cf. note publiée par L'Osservatore Romano du 23 novembre 1976, page 2).' [700]

Note the names used for the Papal Order and note that the Anglican Venerable Order or the Protestant Balley of Brandenburg and the Protestant Johanniter Orders of The Netherlands and Sweden, are not mentioned. The above is confirmed in a letter from the same 'Secretariat' of 23 May 1995 to the 'Höchstwürdigsten Herrn Praelat Dr Norbert Feldhoff, Generalvikar der Erzdiozese Köln', [701] in which according to the letter, a binding point of view is laid down in connection with the case of an Order called 'Patriarchalischer Orden vom Heiligen Kreuz zu Jerusalem', which popped up in Cologne, Germany. Once again, it was stressed by the Vatican that only the SMOM and the Order of the Holy Sepulcher were 'recognised' by the Vatican, but this time it was also said that 'den Deutschen Orden' was also recognised. With this, obviously the reconstituted Teutonic Order was mentioned.

Another aspect is that SMOM, contrary (or not?) to the usual attitude of the old feudal Knights, apparently seems more than happy to closely

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[699] Many countries enacted laws against discrimination, for example the Dutch 'Algemene wet gelijke behandeling', effective 1 September 1994. See also article 1 Grondwet 1987 (Constitution) and article 90 quater Wetboek van Strafrecht (Criminal Code).

[700] N.369.671.

[701] N.370.951.

associate itself with what it thinks is the central power in a State, or preferably with Royalty. The fact that Royalty is involved with the Most Venerable Order and also with the two organisations in respectively The Netherlands and Sweden, will not be a stranger to this. Finally, the other organisations than SMOM, with the exception of the Most Venerable Order, only have territorial reach and do not have global aspirations such as SMOM or as The Ecumenical Order. It is also very important to note in the above quoted text, that 'The relationship which exists between the Sovereign Military Hospitaller Order of Jerusalem, of Rhodes and of Malta and the Grand Priory in the British Realm of the Most Venerable Order of the Hospital of St. John of Jerusalem is not always clearly understood, and it is to dispel any misconceptions which may exist that this statement is being made'. Apparently not everybody was and is able to understand this relationship. We have seen above why. How quickly one then is in relegating a very important matter to 'the realms of academic discussion'. This dispute apparently was, as to 'whether the Most Venerable Order was the lineal descendant of the old Grand Priory of the Sovereign Order'. Apparenly it is not. It is an entirely new organisation created in the 1860's. One may also wonder what exactly is meant with 'lineal descendant'. It is therefore quite understandable that this problem at one time caused division amongst those concerned with such questions. But it still does. The statement 'that the Most Venerable Order acquired a completely independent existence when it was granted a Royal Charter by Her Majesty Queen Victoria, who became its Sovereign Head.' seems to be a contradictory one. What does matter then seems to be that 'the Most Venerable Order has pursued the same high ideals of charity, especially to the poor and sick, which were the very cause of the foundation of the Sovereign Order nearly one thousand years ago.' Then it is said:

> 'It will be easy to understand, therefore, why two great Orders, representing the same traditions, pursuing the same ideals, serving the same cause and wearing the same famous eight pointed cross, should have the greatest respect and esteem for each other. It is our great happiness to declare that such a relationship does truly exist, and that it is the dearest wish of both Orders, to seek ever more ways in which they can collaborate, to promote God's glory and to alleviate the sufferings and miseries of mankind.'

According to this text, historical roots are not important. Also note that nothing was said about the alleged need to be 'recognised'. Important according to this text, are three criteria, i.e. a) being independent; b) representing the same traditions and wearing the same cross and c) pursuing the original high ideals of charity, especially to the poor and sick.

VIII.20. A Royal Charter for the King Peter Order

On 19 March 1964, King Peter II gave 'his' new Order a Royal Charter. It became a Dynastic Order in accordance with the criteria laid down by the International Commission for Orders of Chivalry. [702] In 1964, The American Order started a Tongue of Malta, which later developed into a Grand Priory of Malta. During the years 1965 till 1977 (?), King Peter II was the 73rd (sic) Grandmaster of the first split-off. From 1966-1973, Crolian Edelen De Burgh was the 72nd (sic) Grandmaster of The Ecumenical Order. In 1966, the Papal Order's 'Code' was issued and in 1969 appeared the work of (Fra's) Sherbowitz-Wetzor and Toumanoff, 'The Order of Malta and the Russian Empire', a publication by SMOM. Supposedly this is the last word of SMOM on the subject of the Russian and the American Orders and the latter's pretentions. This work is usually cited by SMOM as the only authoritative and decisive work. In June June 1970, King Peter II withdraws his Protection from the first split-off. From 1974-1993, H.R.H. Prince Roberto Paternò of Aragon allegedly was the 73rd Grandmaster of the American Order. [703]

VIII.21. The False Orders Committee

As said, in 1974 the False Orders Committee was formed by the Members of the Alliance of Orders of St. John. How do its constitution and statutes read and what criteria are applied by it – we have just seen that historical roots are not important, but being independent, representing the same traditions and wearing the same cross and pursuing the original high ideals of charity, especially to the poor and sick, is – and does this happen in the open or behind closed doors?

From a communication of uncertain date, it appears that SMOM (or the False Orders Committee) said that starting from 1917, the activities of different 'unrecognised associations' (ANR) [704] 'launched'. First of all, unrecognised seems to mean 'not recognised by us'. Secondly, the communication is factually incorrect at this point, at least in sofar as the American Order would be concerned. If it can be said to have ever stopped, because it claims never to have stopped its activities from its foundation by Czar Paul I, respectively from his election as Prince Grandmaster, this Order finished formalising its reconstitution in New York around 1911. The

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[702] Gaston Tonna-Barthet, *Constitution of the Order of St. John of Jerusalem, given by H.M. King Peter II of Yugoslavia*, 19th March 1964 (Malta 1974).

[703] According to Stair Sainty, he resigned from this Order in 1977.

[704] Probably the abbreviation of 'Associazione Non-Riconosciute', which shows the influence of the Italian speakers in this.

activities were anyway not launched starting from 1917, but were going on already before. They intensified in the period between the two World Wars and more so thereafter. This is demonstrated by the various available historical facts. The reaction of SMOM and other 'recognised' Orders apparently came only since 1961 or since 1951 and therefore can be deemed to be too late. All this time, the American Order had used its name and logo's all over the world, since at least 1911.

According to the communication, these associations assume 'finalities alike those of the Sovereign Military Order of Malta, making an inappropriate use of the Order's terminology, symbols, uniforms and coats of arms, which can easily lead to confusion'. Can it be said, if this is true at all, that an organisation has an exclusive right to use a certain terminology or certain uniforms? Terms like master, council, almoner, chancellor, chancery, bailiff, provost, seneschal, constable, marshal, etc., can be deemed to be rather general and were in use in spiritual and worldly organisations. An organisation or natural person may have an exclusive right to a certain symbol or a certain coat of arms. But surely this has to be interpreted in a restrictive way, to avoid massive congestion of social and economic life. Surely the decisive element here can only be whether or not indeed a certain confusion is possible or indeed present. It can then be remarked that such confusion danger or presence will have to be proved and that it can easily be alleged for the wrong reasons. For example, to maintain a monopoly on things which legally or morally cannot and should not be monopolised, like religious beliefs or religious ideals, a form of a cross, names of saints, chivalric ideals and the alleged history of Europe, West and East. Such allegations can also easily encroach on people's fundamental right to religious freedom and the equally fundamental right to freedom of organisation. This right is also recognised in the Roman Catholic church. [705] There can even be a relation with the fact that the socalled 'unrecognised' Orders of St. John as a rule are ecumenical, althought there are also various 'unrecognised' Orders of St. John who admit only Roman Catholics. There can also be a relation to deep rooted feelings of, or a need for, exclusivity or superiority, perceived as being under fire. The chivalric aspect sometimes seems to acquire overriding importance with the 'recognised 'Orders of St.

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[705] Coriden, *The Code of canon law 1983*, Canon 215, on association and assembly ('-The Christian faithful are at liberty freely to found and to govern associations for charitable and religious purposes or for the promotion of the Christian vocation in the world; they are free to hold meetings to pursue these purposes in common.'). See also Canon 298, on definition and Canon 299, on right to establish private associations. See also Canon 303, on third Orders. Finally, see Canon 116 on public and private juridical persons and Canon 312 on the competent establishing authority for public associations.

John, but this can also be the case where an 'unrecognised' Order of St. John is concerned; witness the various lenghty discussions about titles one can encounter there. The idealistic side of things often seems to be overshadowed by the formal side of things. On the other hand, where possible, reasonable people should avoid confusion, or at least try this and be willing to make decisive alterations, where needed and possible, to avoid confusion from arising at all. In this sense the decision of The Ecumenical Order dating from 2001, to add the qualification '(The Ecumenical Order)' distiguishing it from other Orders of St. John, should be applauded. But they already distinguishes themselves from the 'recognised' Orders of St. John by the use of the word 'Hospitallers'. [706] The Papal Order distinguished itself by using the word 'Military'. The other 'recognised' Orders of St. John each also use a clearly distinctive name or component of a name. The alleged confusion therefore cannot really be deemed present.

'To study and familiarise with the activities of the 'unrecognised' Orders of St. John, or determined as such', thus the communication goes on, 'and to consider the proper legal actions for protecting the Order from eventual speculations', the False Orders Committe was formed. Inextricably already, such 'unrecognised' Orders are called 'Orders of St. John or determined a such'. The communication then ends with the pro domo statement that 'The unquestionable legitimacy of the Sovereign Military Order of Malta is fully based on the historical continuity of the Order in its nine centuries of life, and on the recognition by the International community'.

Apart from the vague terminology used in the communication, such as for example 'unrecognised', 'finalities', and 'speculations', there is no uninterrupted historical continuity of the Papal Order SMOM and even if there would be, there is no material continuity in various respects. It is also certain that speaking from the point of view of public international law, recognition in itself does not say anything decisive about legality, i.e. the righteousness or justice of the recognition involved. Such recognition is often an expedient way to solve certain political problems or delay or postpone their solution. Let alone that recognition says something about legitimacy, a word often used by the Papal Order. Outdated or unjustified recognitions under international law should be subject to review and should be able to be changed. 'Legitimacy' is often used where legality is meant or should be used and if legitimacy is supposed to mean what the majority of civilised people are thinking, then this thought process is often manipulated.

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[706] In a letter dated 5 July 2000 to the Grand Prior Benelux of the Ecumenical Order, the Grand Chancellor of the Belgian Association of SMOM, is using this word to designate the Ecumenical Order, while he also declares in this letter that the Ecumenical Order has a valid Fons Honorum and therefore enjoys chivalric status.

The result of it can at any rate not automatically be equalled to what they reasonably should think, from a normative legal point of view.

In itself, the formation of a False Orders Committee, is not a bad idea and useful to create more uniformity. On the other hand, the name alone already arouses irritation with Orders investigated by it. It is to be preferred to give such an organisation another, more neutral name, be clearer about its legal form and the criteria used by it, provide it with a more independent composition and invite Orders investigated to join or support it, provided they accept its objects, which have to be wider than just looking at 'unrecognised' Orders – i.e other Orders than the Alliance Orders – and really should be the creation and monitoring of uniformally applied criteria for the legitimacy of all Orders of St. John, including the Alliance Orders. The problem of 'false Orders' can probably be solved only by voluntary co-operation. Those who, being invited, nevertheless would not co-operate with the majority would thereby isolate themselves and condemn themselves in advance.

VIII.22. Further developments with regard to the American Order

In 1976, the Constitution of the American Order changed again. In what way is not clear. In this year also appeared statements in the 'Osservatore Romano', stating that the American Order has nothing to do with the Papal Order. In 1977, Grand Duke Vladimir, son of Grand Duke Cyrill, appointed a representative with the Papal Order to help in acting against false Orders claiming to be of Russian Imperial origin. [707] In February 1977, Colonel Pichel became Grand Chancellor-Emeritus of the American Order. On 1 June 1977, Prince Andrej of Yugoslavia was elected the 74th Grandmaster of the first split-off, but withdrew his Protection on 14 August 1979. On 9 Sepember 1979, Pope John Paul II gave the American Order his apostolic blessing, as a sign of divine grace and affection. [708]

On 29 May 1980, a preliminary injunction was obtained against Pichel by his successors in the American Order, to stop holding out as still authorised to act for the American Order, pending a court case to settle the matter. [709]

On 25 March 1981, Salvatore T. Messineo was a Lt. Grandmaster of the

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[707] He received a Grand Cross from the Papal Order in 1961. But according to Smith/Storace, *Order of St. John of Jerusalem*, p. 67, he was 'the Protector of the Association and Grand Prior in exile in Paris.' Supra p. 238, *VII.26. The foundation of the Association of Hereditary Descendants of the Knights of St. John in Paris*.

[708] Another occasion was 8 January 1996 (a 'Chev. William Mileiko').

[709] Sovereign Order of St. John of Jerusalem et al. vs Pichel, US District Court (Middle District of Pennsylvania, Civil no CV 80-0501.

American Order and a Prince Aleksey Nicholaevich Romanov, was Imperial Protector. In 1982, Pichel died.

VIII.23. Another agreement between SMOM and The Most Venerable Order

In 1983, another agreement was signed between SMOM and the Venerable Order. After their statement of 26 November 1963 ('Joint Declaration concerning the relationship between the Sovereign Military Order of Malta and the Most Venerable Order of St. John'), a further agreement was signed between SMOM and the Venerable Order, reading as follows:

> 'Twenty years have passed since the signing of the Joint Declaration concerning the relationship between the Sovereign Military Order of Malta and the Most Venerable Order of St. John, during which the relationship between our two Orders has grown ever closer.
> In it the common ideal of the struggle in the defense of our suffering brethren was affirmed and the amity between the signatory Orders was acclaimed especially the common wearing of the eight-pointed Cross of St. John.
> The last two decades have seen an increase in the world-wide suffering of our brethren, our response has likewise expanded. The banner of our eight-pointed Cross has been flown increasingly where-ever in the world sickness or distress has made demands upon us. Our ties are strong and our purpose to help Our Lords the Sick identical. We are pleased to record our joint efforts to help the elderly who have already seen the creation of Alms Houses in Sussex and Wales.
> We are also united in one fight against False Orders, those self constituted and self styled groups which lack both authenticity or legitimacy of origin but variously describe themselves as an 'Order of St. John' or an 'Order of Malta'. However the Johanniter Orden in Germany, Sweden and the Netherlands is a legitimate and honoured ally.
> We pledge ourselves anew to carry into the 21st century the historical aims and obligations of our Orders.'

Here we see 'one fight against False Orders, those self constituted and self-styled groups which would lack both authenticity or legitimacy of origin but variously describe themselves as an 'Order of St. John' or an 'Order of Malta'.' Are they the new heretics? We see the use of the terminology 'selfconstituted' and 'selfstyled'. This terminology does not say much. Even the original Order of St. John was self-constituted and self-styled. We also see the use of the terminology 'lack of authenticity' and 'lack of legitimacy of origin'. We are not told what authenticity is required and what legitimacy of origin is. At the same time it is felt necessary by the signatories to say that the Johanniter Orden in Germany, Sweden and the Netherlands are

legitimate and honoured allies. We fail to see why organisations might not describe themselves as 'an Order of St. John' or as 'an 'Order of Malta'.

VIII.24. The Hereditary Order appears on the scene

In 1984, Don Vella Haber, Malta, issued an 'Act of Revendication', claiming the 'Chivalric Heirloom' of the American Order on the basis of 'Testaments' by Colonel Charles Louis Thourot Pichel and Paternò, a former Grandmaster, established a 'Grand Priory of Canada'. Colonel Pichel and Don Vella Haber thus created another split-off, with headquarters in Malta ('The Hereditary Order'). Don Vella Haber previously was with the American Order as Grand Prior of Malta. It seems that his Order has no Royal Protection and a 'Testament' of Pichel and an Act of Revendication, claiming the Chivalric Heirloom [710] of the American Order, obviously is not a valid way to transfer an Order, if an Order can be transferred at all. It is also striking in all these cases that the membership, the Knights of the American Order, never seem to have been asked what they felt about it all.

VIII.25. The Paternò Order formed in Canada

When yet another Order was formed in Canada by Paternò, in the form of the 'Grand Priory of Canada', Paternò was not with the American Order at that time. This new Order in Canada therefore seems to have been totally newly formed. Smith Storace mentions a theory purporting that 'although the Langue in England was suppressed in Tudor times, a branch of it in Scotland was absorbed in Masonic circles and moved with migrations to Canada and thence down into the United States.' [711] But it seems to be the origin of The Ecumenical Order (or less respectful, the Cumbo Order). A Priory of Canada was chartered in 1974 with Frendo Cumbo as its first Prior. 1990 was the 16th anniversary. [712]

Involved from the start here, were names which are familiar to those now in The Ecumenical Order, such as Bishop Borecky (Grand Prelate), Count Wiklund, Crolian Edelen de Burgh, Eric de Leuwenhaupt and Marquis and Count Joseph Frendo Cumbo himself. Its history therefore in principle only

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[710] Compare 'the spiritual heritage', in the Nieder-Weisel Convention of 1961.

[711] E. Edmonds, *Short History of the Order of St. John in Canada* (1986). Smith Storace, *Order of St. John of Jerusalem*, p. 68. George William Welsh, *A history of the ancient and illustrious order of Knights Hospitallers of St .John of Jerusalem, Palestine, Rhodes and Malta 1048-1923*, Pennsylvania 1923.

[712] 'Solemn Investiture, 28th October 2001, Toronto, Canada', program. One of the members was the late Hon. John Diefenbaker, former Prime Minister of Canada.

runs as of 1974. There are no historical roots, except that Knights were involved, who were previously with other Orders of St. John. Crolian Edelen de Burgh was the '72nd' Grandmaster of the American Order from 1966-1973, as we have seen. Paternò was the '73rd' Grandmaster of the American Order from 1974-1993 and Frendo Cumbo came from the Tonna-Barthet Order and now is the '75th' (sic) Grandmaster of The Ecumenical Order. But as in all these Orders of St. John, the entire history of the American, the Russian and the original Order, is absorbed and made into their own. It appears that when Pichel died, the American Order also went down. Several people with a background of (mainly American Order) Knights of St. John, then obviously scrambled to take position, filled the void and formed a new Order. But this happened quite often. A strong example is, when after the Second World War, the Dutch Johanniter cut themselves loose from the Balley of Brandenburg. They were an association which statutes said it was a division of this Balley. They then cut themselves loose and altered their statutes accordingly. Formally speaking, here the original association was continued, but materially it was a new Order. Why would they be entitled to do this and others not? The response might be that nothing changed, except that the branch made itself independent from the main body. But this means starting a new Order. The Ecumenical Order will say that although a new entity was started, nothing changed, because old wine was put into new bags. The same argument is used by adepts of the uninterrupted continuation of the Balley of Brandenburg, for example. They claim that because eight then still alive, old knights, were made the Chapter after the Decree of 15 October 1852 by King Friedrich Wilhelm IV, to re-vive the Balley, the Order therefore legally and spiritually continued uninterruptedly till the present day. [713]

The Ecumenical Order also feel they are direct descendants of the Orthodox Russian Grand Priory, as it was formed on 29 November 1798 by Czar Paul I. They hark back to the events of 1890, when the first Chapter General was held in the USA and to 1908, when it was allegedly decided to move the seat of the Order to New York and say this was done in accordance with the express desires of Czar Nicholas II, thus forming an American Grand Priory of the Sovereign Order of St. John of Jerusalem and thereby establishing also the legal continuity of the Order and that Grand Duke Alexander, cousin and brother in law of Czar Nicholas II, whom he was representing and all others involved, acted by virtue of the authority exercised by the qualified Knights and Hereditary Knights, whose ancestors had received Letters Patent of Hereditary Rights conferred by Czar Paul I and others.

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[713] Decree of 8 August 1853 by King Friedrich Wilhelm IV.

Against this the arguments that 1) the Orthodox Russian Grand Priory had been illegally formed; 2) that Paul I was an illegal Grandmaster; 3) that the Supreme Council at Petersburg validly handed over to Catania in 1803; 4) there were no Hereditary Knights; 5) that a title connected to a territory automatically falls away when the territory falls away; 6) that the Orthodox Russian Grand Priory was legally suppressed and factually did not continue; 7) that the events of 1890 and 1908 did not take place and were invented; 8) that The Ecumenical Order is not the same as the American Order and is a new organisation.

VIII.26. The Common Declaration of Mutual Recognition of SMOM, the Venerable Order, the Dutch Johanniter, the Balley of Brandenburg and Sweden (1987)

On 15 April 1987, the American Association of Master Knights of the Sovereign Military Order of Malta and Western USA and the Association of the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta withdrew a petition for cancellation of The Ecumenical Order's (?) trademarks. On 14 October 1987, a 'Common Declaration of Mutual Recognition' of SMOM, the Venerable Order, the Dutch Johanniter, The Balley of Brandenburg and Sweden, was issued. This declaration was signed in Rome by the Prince Grandmaster of SMOM, by the Herrenmeister des Johanniter Ordens, by the Land Commander of the Johanniter Orde in Nederland and by the Lord Prior of the most Venerable Order of Saint John. This declaration merits closer attention and follows below in its entirety.

> 'THE ORDERS OF ST. JOHN'
>
> 'With the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta which is Roman Catholic, the four non-Catholic Orders of St. John of Jerusalem provide a Christian answer to the problems of a troubled and materialistic world. They have a common devotion to a historical tradition and an unique vocation: the lordship of the sick and the poor. They strive to realize their aim by mutual collaboration as well as by their own works. They are the only Orders of St. John of Jerusalem which can legitimately use that name.'

We note that 'a Christian answer' is provided and not 'the Christian answer'. As to the 'common devotion to historical tradition and an unique vocation', it should be mentioned that such a common devotion to historical tradition cannot be monopolised and the vocation referred to as unique, is not unique. There are many organisations which take the fate of the sick and the poor to heart. The following statement then is that they are the only Orders of Saint

John of Jerusalem which can legitimately use that name, but no evidence therefor of a convincing nature, is provided.

> 'The Order of the Hospital of St. John of Jerusalem had its origins in Jerusalem in the late 11th century and was recognized as an Order by Pope Paschal II in 1113. From that date it was a religious Order. Its members took monastic vows and lived according to a religious rule.'

The interesting part here is that it is said that the Order of the Hospital of Saint John of Jerusalem was recognised as an Order by Pope Paschal II in 1113. This means that it was already an Order, before he recognised it. He did not recognise it as an Order, he took this Order under his 'Protection'and gave it tax exemption. With regard to the second sentence of this paragraph, we have amply argued above that it takes more than taking monastic vows and living according to a religious rule, to be a real religious Order. Furthermore, not all its members took monastic vows and it can be doubted whether those who took monastic vows, lived according to a religious rule. There is ample evidence that generally they did not.

> 'In the course of its history, it developed a class for Knights who took no vows, while Knights belonging to the first class continued to be professed religious. The Order, therefore, uniquely combined and still combines within itself the nature of a religious Order and an Order of chivalry. In the former capacity it was and still is subject to the laws of the Church. The Sovereign Military and Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta (generally known as the Sovereign Military Order of Malta) is this Order. It is widely recognized as a sovereign subject of the International Public Law. It has 5 Grand Priories, 3 Sub-Priories and 37 National Associations throughout catholic Christendom. Since 1834 its extraterritorial headquarters have been in Rome. Its Grandmaster is H.M.E.H. Fra Angelo de Mojana di Cologna'.

With regard to this paragraph, it is reiterated that from the beginning there were also members of the original Order who took no vows. Furthermore, that suddenly 'Knights' are popping up here and the militarisation development which took from 1050/1090 till 1154, is left out of consideration. It is interesting to note that this paragraph inter alia states that 'the Order was and still is subject to the laws of the Church'. We do believe that this is correct, in so far as SMOM is concerned, which is a religious Order of the Roman Catholic Church since 1962, at any rate. It may have a special status, but it is a religious Order of the Roman Catholic Church. However, we have to refute that the original Order was subject to the laws of

the Church. It was not, or not unconditionally. It moved in the community and in the community of nations and therefore adapted itself constantly to that always changing situation. [714] The fact that it was allowed to always appoint its own Grandmaster in the Bull of 1113, clearly means that it was independent from the Church. By appointing Czar Paul I as Protector, it severed its bond with the Pope. In this connection it should also be remarked that it cannot automatically be assumed that SMOM is the same as the original Order was. SMOM is a reconstitution of a part of the original Order. We also note that the common name is described here as 'Sovereign Military Order of Malta'. That is the name under which it generally acts. It is therefore not possible for SMOM to change the use of the name to its liking. It is not correct that SMOM is widely recognised as a sovereign subject of the international public law. SMOM is recognosed by about 95 of about 190 States. It is recognised inside the Roman Catholic Church in a limited way, to be sovereign in so far as is functional. From the point of view of international community, it is an international legal person being part of the Roman Catholic Church organisation.

> 'Four non-catholic Orders of St. John of Jerusalem are recognized by the sovereign authorities in the countries in which they are based. They are:
>
> Die Balley Brandenburg des Ritterlichen Ordens Sankt Johannis vom Spital zu Jerusalem (generally known as Der Johanniterorden). Besides 17 associations in the Federal Republic of Germany, it has five associations outside Germany, the Austrian, Finnish, French and Swiss (which are officially recognized in their respective countries) and the Hungarian in exile. Its headquarters are in Bonn. Its head, styled Der Herrenmeister, is H.R.H. Prince Wilhelm Karl of Prussia.
>
> Johanniter Orde in Nederland. It was founded as an independent Order in 1946. Its headquarters are in The Hague. Its head is H.R.H. Prince Bernhard of the Netherlands.
>
> Johanniterorden i Sverige. It was embodied by a royal charter in 1946. Its headquarters are in Stockholm and The High Patron is H.M. King Carl XVI Gustaf.
>
> The Grand Priory of the Most Venerable Order of the Hospital of St. John of Jerusalem (generally known as The Order of St. John). It has 6 Priories, 2 Commanderies and 40 St. John Councils throughout the

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[714] Sutherland, *Achievements I*, p. 163, quoting Mills, vol.i., p. 335: 'the general principles of the religious societies of knighthood, fitted themselves to the times like the chain-mail, which was flexible to all the motions of the body '.

> English-speaking world. Its headquarters are in London. Its Sovereign Head is H.M. Queen Elizabeth II.'

We see here the use of the word 'recognized' again and it is said that the recognition took place by the sovereign authorities in the countries in which they are based. This only seems to be correct for the Venerable Order. Involvement of a Royal House, does not automatically mean that the State recognises these Orders. The State is the lawgiver which in a constitutional monarchy is the Queen (or King) in Parliament and any recognition should be based on a law which law can then be tested in the courts, either the national courts or where the national courts are not competent because of constitutional hindrances in higher, supranational courts.
As to the Johanniter Orde in Nederland, it is interesting to note, that according to this declaration, it was founded as an independent Order in 1946. We shall see infra it was founded as a private law association under Dutch Law. [715] It has no historical ties whatsoever. Same goes for the other two Protestant Orders mentioned, i.e. the Johanniterorden i Sverige and the Grand Priory of the Most Venerable Order, etc. They were all non-existent in their respective countries since the Reformation and have been reconstituted only in the late 19th century as far as the Venerable Order is concerned and as far as the Johanniter Orde in Nederland and the Johanniterorden i Sverige are concerned, only in the 20th century. They invoke historical ties, but these ties are only there in an indirect and a very remote way. These ties are also too weak to be qualified as genuine historical ties.

> 'The four non-catholic Orders are associated with one another in the International Alliance of the Order of St. John of Jerusalem. They are Orders of Chivalry, but they are to be distinguished from most national Orders because of their Christian Faith and their traditions as religious confraternities of Christian laymen.'

This International Alliance of the Order of St. John of Jerusalem came about at a time when the Roman Catholic Church did not recognise any other Orders than SMOM or the Order of the Holy Sepulcher. These Orders also distinguish themselves because of their pretentions and their attachment to certain forms.

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[715] Infra p. 317, *XII.1. Johanniter Orde in Nederland an association under Dutch private law.*

> ‘In all these Orders are fostered such ideals of the medieval Order as are applicable to their circumstances, essentially the care of the sick and other service to fellow men.
> October 14th, 1987’

It is true that in all these Orders the ideals mentioned are being fostered, but it is also true that fostering such ideals cannot and should not be deemed to be a monopoly. Traditions can also not be monopolised. Chivalric traditions are the property of the entire society.

VIII.27. Developments from 1989-2004

In 1989, after about about seventy years, the communist system collapsed and the Cold War ended. On 21 June 1991, a lease to a part of Fort Sant’Angelo, Valletta, Malta, was acquired by the Papal Order. In 1992, the ‘Sovereign Order of the Orthodox Knights Hospitaller of Saint John of Jerusalem’ received the blessing of His Holiness Aleksej II, Patriarch of Moscow and all Russia. A condition was, according to the text of the Blessing, that the Order was not involved with Roman Catholics or Freemasons. In the years 1993-1997, ‘Prince’ George Korey Krzeczowski was ‘74th’ Grandmaster of The Ecumenical Order. In 1993, its Constitution changed again.

VIII.28. Protection of the Ecumenical Order by King Michael I of Romania

On 19 August 1993, King Michael I of Romania (in exile) accepted to be the Royal Protector of The Ecumenical Order. There can be no doubt about this, because he accepted this in writing, in a letter dated 19 August 1993 to the then Prince Grandmaster of The Ecumenical Order Korey Krzeczowski. His father Crown Prince Carol II was excluded from the royal succession. Michael became King on the death of his grandfather Ferdinand, on 20 July 1927. His father Carol, who had gone into exile, came back in June 1930. Michael was then made the Crown prince. King Carol II abdicated in September 1940 and Michael then became King again, but he was in fact a prisoner of the military dictator Ilon Antonescu. King Michael arrested Antonescu on 23 August 1944 and severed Romania’s connection with Nazi Germany. He was then forced to abdicate by the Communists on 30 December 1947 with a gun to his head, went into exile and settled in Switzerland, but still is a pretender.

VIII.29. Protection of the Ecumenical Order by Alexander II, Patriarch of Antioch.

On 28 February 1994, His Beatitude Alexander II, Patriarch of Antioch, Syria, Lebanon, Silesia, the Hellenes, Anatolia, Illyria, took The Ecumenical Order under his 'Patriarchal Spiritual Protection', within the 'hierarchy and nobility of Our Church'. On 20 April 1994, His Beatitude recognised The Ecumenical Order as a chivalric Order and its Grandmaster as a Prince, within the 'hierarchy and nobility of Our Church'. Originating from the 1st century, when Antioch was the third city of the Roman Empire. In 325, the Council of Nicea recognised the exceptional authority of Rome, Alexandria and Antioch. Reference has been made to the Syrian Orthodox Patriarch of Antioch. But which one? [716] It is unclear where 'His Beatitude Alexander II, Patriarch of Antioch, Syria, Lebanon, Silesia, the Hellenes, Anatolia, Illyria' is based and whether his Church does really exist. [717]

On 17 September 1994, Prince Henri Constantine Paléologue was elected as 74th Grandmaster of a third selfstyled split-off, founded by Chevalier Louis Montaldo, former Deputy Grand Chancellor of and allegedly expelled by The Ecumenical Order. No Royal Protection, unless one would consider the Paleologues still as Sovereigns, Rulers of Constantinople, who never voluntarily abdicated. In 1994, Dr. John L. Grady was elected as 74th Grandmaster of a fourth selfstyled split-off, with headquarters in Tennessee and apparently joined by Edelen de Burgh. No Royal Protection. Since 1994, the Papal Order is a Permanent Observer at the UN.

On 27 January 1995, King Michael I was appointed Bailiff Grand Cross of Justice and his wife Queen Anne and his daughter Princess Margarita, were appointed Dames Grand Cross of Justice of The Ecumenical Order.

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[716] According to the World Council of Churches, the details of this Patriarch are as follows: His Holiness Moran Mor Ugnatius Zakka I Iwas, Patriarch of the Syrian Orthodox Patriarchate of Antioch and All the East: Bab Toma, P.O.Box 22260 - Damascus-Syria Tel. +963 11 543 5918 Fax. +963 11 5432 400 and + 963 11 544 3443. According to the World Council of Churches, this Patriarch is not to be confused with the Greek Orthodox Patriarch of Antioch and All the East, whose details are as follows: 'His Beatitude Ignatios IV (Hazim)-Greek Orthodox Patriarchate of Antioch, P.O.Box 9, Damascus, Syria, Fax +963 11 54 24 404.' (The details the World Council of Churches had available in May 2002).

[717] According to Stair Sainty, *The Orders of St. John*, this is a self-styled organisation, based on the Isle of Man.

VIII.30. Declaration on the Occasion of the SMOM/Alliance Meeting in Malta 1996 by the False Orders Committee

In September 1996, followed a Declaration on the Occasion of the SMOM/Alliance Meeting in Malta 1996 from the False Orders Committee. It re-iterates certain points of view and gives certain warnings. Basically it is preaching for its own parish here, i.e. reminding the participants of its existence and its alleged use, as well as of its persistent activities and warnings against other 'un-recognised' or 'self-styled' Orders of St. John, whose activities according to the Committee, are also persisting. It seems that the policy pursued by SMOM and the Alliance/The False Orders Committee created by it, only antagonised and criminalised other Orders of St. John, also where this was and is not necessary at all (and even in cases where the Pope himself gave his Apostolical Blessing to such organisations). Instead of instigating strife, they could have taken the opportunity to unite all who genuinely want to stand for the traditional chivalric Christian Hospitaller ideals – there are still quite a lot of such people – under one banner, on a footing of equality. That seems to be a problem, but should in our view not be so anymore, in modern times.

VIII.31. Count Joseph Frendo Cumbo '75th' Grandmaster of The Ecumenical Order

On 15 December 1996, Count Joseph Frendo Cumbo was appointed as Lt. Grandmaster of The Ecumenical Order and in 1997, 'elected' as '75th' Grandmaster of The Ecumenical Order. As we saw, this Order has its origins in 1984. Their 72nd (so they claim) Grandmaster was Crolian Edelen De Burgh (1). Their 73rd Grandmaster was H.R.H. Prince Roberto II (2). Their 74th Grandmaster was a Dr. George Korey Krzeczowski, or Prince Korczak- Krzeczowski (3). They mention as their 75th Grandmaster since 1 June 1997, Count Joseph Frendo Cumbo (4), as they say he is the first Prince Grandmaster of Maltese origin. [718] He can also be seen as their fourth Grandmaster.

On 14 July 1997, a case between a Dr. Grady and Sovereign Order of Saint John Of Jerusalem, Inc. was decided by the United State Courts of

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[718] Vertot, *History II*, *The old and new statutes*, p. 139: 'such of the Malteze as have been received into any of the languages by virtue of a particular dispensation of the popes, are not allowed to give their votes in the election, much less to be competitors for it'.

Appeals. Trademarks of The Sovereign Order of St. John of Jerusalem Inc. seem to have became incontestable in the USA [719]

VIII.32. A new Constitutional Charter of SMOM becoming effective; the Concordat of 1999

On 27 January 1998, the new Constitutional Charter of SMOM became effective. On 9 February 2002, the Constitution of The Ecumenical Order was amended again in Malta. Inter alia, the words *'(*The Ecumenical Order)', were added to the name, so that confusion with SMOM, a Roman Catholic Order, or with its affiliated Anglican and Protestant Orders, was in principle not or less possible. On 22 August 2002, this Constitution was amended again on Rhodes. On 8 September 2002, the new Statutes and By-Laws of The Ecumenical Order were promulgated. Basically this was a process of a total restatement of the previous Statutes and By-Laws, of about a year. On 30 October 1999, a Concordat providing for mutual recognition of the constitutions, traditions and investitures of the subscribed Orders, mutual help and assistance and work for a reunion, open to other Orders of St. John by unanimous consent, was signed between four non Alliance Orders of St. John, but The Ecumenical Order not being one of them.

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[719] ELECTRONIC CITATION: 1997 FED Ap. 0209P (6th Cir.) File Name: 97a0209p.06; Coleman v. Sov. Order of St. John of Jerusalem, Inc, Cancellation No. 14,308, June 14, 1990.

IX. SOME CHIVALRIC DEFINITIONS

IX.1. Definition of chivalry

In the previous chapters, we referred quite a number of times to chivalry and chivalric. It is opportune to expand here a little on the meaning of these terms.

Chivalry is inter alia defined as the system, spirit or customs of medieval knighthood. This presupposes there were indeed such system [720] and common spirit. Certainly there were common customs. Knighthood is then defined as the qualities befitting a knight and chivalry is also defined as Knights as a class or body. Nobility is defined as the quality or state of being noble in character, quality or rank and as the body of persons forming the noble class in a country or State. The prerequisite for nobility is virtue. Virtue is defined as a particular moral excellence. This presupposes an upward social mobility which might not really exist. Any way, Knights were those nobles who were deemed to defend the poor, sick and defenceless.

IX.2. Attempts to define chivalric Orders; first category

In the course of history, several Orders originated. These were defined by Stair Sainty [721] as:

> 1. Orders which historically had an international membership, were founded as Confraternal Religious Military Orders, have had a continual and unbroken existence since their original foundation by Papal Bull or by act of a reigning Sovereign, and whose legal existence is acknowledged by the State in which their headquarters are based'.

As examples of these Orders were given: A: The Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta; B: The Bailiwick of Brandenburg of the Hospital of St. John of Jerusalem (Johanniter Order); C: The Most Venerable Order of the Hospital of St. John of Jerusalem (the British Order of St. John); D: The Order of Saint Mary of the Teutons (the Teutonic Order); E: The Equestrian Order of the Holy Sepulcher of Jerusalem and F: The Sacred Military Constantinian Order of St. George.
It can be established that the Orders mentioned above sub A through D were not founded as Confraternal Religious Military Orders. The Orders

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[720] Infra p. 390, *XVII.3. Some differences/similarities of the Order involved with service clubs.*
[721] Stair Sainty, *Orders of St. John.*

mentioned above sub A through C are all a relatively recent reconstitution of the original Order founded before 1090 by the Blessed Gerard (as is assumed), while the Order sub D, The Order of St. Mary of the Teutons, is a recent reconstitution of the Order founded in 1198, independently of the Order founded by the Blessed Gerard and originally not as a Military Order. The Order founded by the Blessed Gerard also was not founded as a Millitary Order. These Orders were originally founded as charitys which later militarised. They were therefore not founded as Confraternal Religious Military Orders. Neither have the Orders sub A through D had a continual and unbroken existence since their original foundation. The original Order allegedly founded by the Blessed Gerard experienced its first split-off when the Balley of Brandenburg made itself independent and later became Protestant in the 16th century. The Most Venerable Order of St. John of Jerusalem was suppressed by King Henry VIII in 1540 and then reconstituted by Queen Mary in the year 1557 and then suppressed again in the year 1564 by Queen Elisabeth I. The Order of St. Mary of the Teutons was suppressed in the year 1525 and a later reconstitution was suppressed by Napoleon I in 1809. The original Order was founded by the Blessed Gerard and confirmed, not founded by Papal Bull or by act of a reigning Sovereign. The Sovereign Military Order was constituted in 1803, died out since 1814, reconstituted in 1879 and slowly became a complete reconstitution of the Roman Catholic former parts of the original Order. The Protestant Balley of Brandenburg was reconstituted in the year 1852 by the King of Prussia, Friedrich Wilhelm IV. The Anglican Most Venerable Order of the Hospital of St. John of Jerusalem was reconstituted in the year 1888. The Roman Catholic Order of St. Mary of the Teutons was reconstituted in the year 1929.

The conclusion is that neither of these Orders comply with the above definition.

IX.3. Second category

Stair Sainty then defines a second category as follows:

> 'Orders founded as a Confraternal Religious Military Order, who have had a continual and unbroken existence since their original foundation by Papal Bull or by Act of a reigning Sovereign and whose Grand Magistry or Protectorship is the hereditary prerogative of a Sovereign or Head of a Royal Dynasty which has reigned in Europe since 1800, including particularly the members of the Alliance of the Orders of St. John: A. The Order of the Hospital of St. John of Jerusalem in Sweden; B. The Order of the Hospital of St. John in the Netherlands; C. The four Spanish Military Orders; D. The Royal Orders of St. Maurice and St. Lazarus; E. The Sacred Military Order of St. Stephen of Tuscany.'

The Protestant Swedish Johanniter Order was founded only in 1945. There did exist a branch of the Order of St. John in The Netherlands before the year 1909. However, all the Order's possessions in the Netherlands had been sequestrated by the Republic of the Seven United Netherlands in 1649. These were situated in Utrecht, Haarlem and Nijmegen and in Zeeland, Friesland and Gelderland. The claims the Order had out of this sequestration were agreed between the Order and the Dutch Republic at 150.000 guilders, in a Treaty of 1667. After that, the Order had at any rate no presence or existence in the Netherlands anymore. The Teutonic Order did have a branch there, in Utrecht. [722] The Protestant Order of the Hospital of St. John in the Netherlands was constituted in the year 1909, therefore as an entirely new organisation, by Prince Heinrich von Mecklenburg-Schwerin, the German Prince Consort of Queen Wilhelmina of the Netherlands, therefore not a Sovereign of The Netherlands.

The four Spanish Military Orders and the Royal Orders of St. Maurice and Lazarus and the Sacred Military Order of St. Stephen of Tuscany, are not discussed here for the purpose of this study. The conclusion is that the Orders mentioned sub 2 A and B have not had a continual and unbroken existence since their original foundation, were not founded by Papal Bull or by Act of a Reigning Sovereign and therefore do not comply with the above definition sub 2.

IX.4. Third category

A third category is defined by Stair Sainty as follows:

> 'Orders founded by the Pope or a Reigning Sovereign whose award conferred special privileges, whose Grand Magistry or Headship is the hereditary prerogative of a Sovereign or Head of a Royal Dynasty which has reigned in Europe since 1800 and whose members are distinguished by the right to wear the badge of the Order suspended from a collar.'

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[722] Fabius, *De Duitse Orde*, for the history of this Balley and the history of the Teutonic Order in general.

IX.5. Fourth category

A fourth category is then defined by Stair Sainty as follows:

> '4. Orders founded by the Pope or a Reigning Sovereign, whose award conferred special privileges, whose Grand Magistry or Headship is the prerogative of a Sovereign or Head of a Royal Dynasty, which has ruled in Europe since 1800, and which may not be characterised as State Merit Orders, including the Papal Orders**.'**

These are probably the Dynastic Orders mentioned below. It will be noted that The Ecumenical Order may not comply with this definition. The word reigning may be preventing this. King Michael I is not reigning in Romania, at least not de facto.

IX.6. Fifth category

Stair Sainty then closes with the fifth category:

> 'Selfstyled Orders are defined as those institutions which are described by themselves as Orders of chivalry but which are not awarded by the Head of a Royal Dynasty reigning since 1900 or which have not had a continual existence since their nominal foundation.'

It can immediately be seen that all above discussed Orders did not have a continual existence since their nominal foundation and accordingly should therefore probably all be described as Dynastic or self-styled. It is submitted in view of the above comments, that the above definitions are confusing and have no validity.

For other attempts of classification inter alia François Velde. [723] Velde distinguishes between military-monastic Orders (c.1100-c. 1300), monarchical Orders (c.1300-c. 1580) and honorific Orders (c.1580-present). Velde in our view took a correct approach to the question of historical continuity and what constitutes a same identity and what constitutes a revival. He inter alia remarks 'Of course, one can well imagine a contemporary nobiliary association committed to some pious or charitable activity, perhaps placed under the invocation of some saint, using badges, mantles, holding ceremonies, and so forth. As I have argued, it would be anachronistic to call them orders of knighthood (and they would not have been called so in medieval times either), but otherwise there seems to be

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[723] Velde, *Legitimacy and orders of knighthood* and the literature cited there.

nothing to dispute about their nature. They are what they are. Some may also be revivals of historical institutions, and as long as they do not claim to be more than revivals, there is no sense in which they are not legitimate associations. Whether they are 'the same' in some substantial (as opposed to historical) sense depends on how one views the importance of the context in defining the substance of such associations. In my mind, the context is paramount, but it is a matter of judgment.' [724]

IX.7. The International Commission for Orders of Chivalry

An organisation which issued criteria in its 'Report of the Commission (1960-1963)', is 'The International Commission for Orders of Chivalry (ICOC)', established 1960. The relevant parts of this report [725] are reproduced below:

> 'PRINCIPLES INVOLVED IN ASSESSING THE VALIDITY OF ORDERS OF CHIVALRY.
>
> 1) Every independent State has the right to create its own Orders or Decorations of Merit and lay down, at will, their particular rules. But it must be made clear that only the higher degrees of these modern State Orders can be deemed of knightly rank, provided that they are conferred by the Crown or by the 'pro tempore' ruler of some traditional State.
>
> 2) The Dynastic (or Family or House) Orders belonging 'jure sanguinis' to a Sovereign House (that is to those ruling or ex-ruling Houses whose sovereign rank was internationally recognised at the time of the Congress of Vienna in 1814 or later) retain their full historical chivalric, nobiliary and social validity, notwithstanding all political changes. It is therefore considered 'ultra vires' of any republican State to interfere, by legislation or administrative practice, with the Princely Dynastic Family or House Orders. That they may not be officially recognised by the new government does not affect their traditional validity or their accepted status in international heraldic, chivalric and nobiliary circles.
>
> 3) It is generally admitted by jurists that such ex-sovereigns who have not abdicated have positions different from that of pretenders and that in their lifetime they retain their full rights as 'Fons Honorum' in respect even of

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[724] Velde, *Legitimacy and orders of knighthood*.

[725] International Commission for Orders of Chivalry (ICOC), Register of orders of chivalry (Edinburgh, 1978). A provisional list of authentic Orders was published in 1963. The Register was published in 1976. A new edition of the Register was published in 1996, but is not materially different.

those Orders of which they remain Grandmasters which would be classed, otherwise, as State and Merit Orders.

4) Although, at one time-many centuries ago- private people of high standing could and did create some independent Orders of Knighthood, some among which came, in due course, to gain considerable prestige and obtained formal validity from the Church and the Crown, such rights of creation of Orders have long since fallen into desuetude and, nowadays, Orders of Chivalry as we understand the term must always stem from or be - by longstanding un - interrupted tradition - under the protection of Chiefs or of Houses of recognised sovereign rank.

5) The recognition of Orders by States or supernational organisations which themselves do not have chivalric Orders of their own, and in whose Constitutions no provisions are made for the recognition of knightly and nobiliary institutions, cannot be accepted as constituting validation by sovereignties, since these particular sovereignties have renounced the exercise of heraldic jurisdiction. The international 'status' of an Order of Knighthood rests, in fact, on the rights of 'Fons Honorum' which, according to tradition, must belong to the Authority by which this particular Order is granted protected or recognised.

6) The only recognised Order with the style of 'Sovereign' existing nowadays is that of St. John of Jerusalem, called of Rhodes, called of Malta, whose international headquarters were transferred to Rome in 1834, and whose international diplomatic 'status' as an independent non-territorial power is recognised officially by the Holy See and by many other Governments.'

That every independent State has the right to create its own Orders or Decorations of Merit and may lay down, at will, their particular rules, may be precisely the root of the problems, but it will be hard to create more uniformity, although a certain, historically developed harmonisation can be discerned. Velde [726] also rightly remarks 'It should also be clear that, whereas national laws aim to provide clear-cut definitions or criteria, their validity extends only to their own borders. One country may well be indifferent to, or even recognize, what another calls bogus. A case in point is the various orders of Saint John recognized by their national governments (Britain, Germany, Netherlands) but not by others (France) or, until the early 1960's, by the Catholic Order itself.'

Cardinale defines Dynastic Orders as follows: 'Dynastic Orders of Knighthood are a category of Orders belonging to the heraldic patrimony of a dynasty, often held by ancient right. They are sometimes called Family

[726] Velde, *Legitimacy and orders of knighthood*, p. 13.

Orders, in that they are strictly related to a Royal Family or House. They differ from the early military and religious Orders and from the later Orders of Merit belonging to a particular State, having been instituted to reward personal services rendered to a dynasty or an ancient Family of princely rank'. He further observed that 'Dynastic Orders of Knighthood are the exclusive property of a Sovereign, and they remain such even if he goes into exile, and are transmissible to his legitimate successor and Head of the Family. Jurists generally believe that even if a Sovereign abdicates of his own free will, he does not renounce his right to the Grand Mastership of an existing Dynastic Order belonging to his Family, unless he does so explicitly. But even then his renunciation will be of a personal character and such as not to involve his successors who have an inborn right to the Grand Mastership and cannot be deprived of it. A Sovereign in exile and his legitimate successor and Head of the Family continue to enjoy the *ius collationis* (the right to confer honours) and therefore may bestow honours in full legitimacy, provided the Order has not become extinct. They cannot however found new Dynastic Orders. No authority can deprive them of the right to confer honours, since this prerogative belongs to them as a lawful personal property *iure sanguinis* (by right of blood), and both its possession and exercise are inviolable.'and 'This is especially true when the Orders in question have been solemnly recognised by the Supreme Authority of the Holy See. No political authority has the right to suppress this recognition, declared by highly official documents, such as Papal Bulls by a merely unilateral act of abolition. So long as the recognition is not revoked by the Holy See itself, the Order cannot be considered canonically extinct. This does not mean however, that the new political authority is not entitled to forbid the public use of the insignia and titles of such Orders according to its own rules in the matter of decorations.' [727]

Note that in the sixth principle the Commision says with the 'style of Sovereign' and 'whose international diplomatic 'status' as an independent non-territorial power is recognised officially by the Holy See', which will be no big surprise 'and by many other Governments.' The Commission says nothing else. In particular it does not say that no other organisation is entitled to the style 'Sovereign ' and they also do not say that SMOM, which is meant here, is indeed an independent non-territorial power, which in our view it is not. In so far as The Ecumenical Order is concerned, we draw special attention to principles 2, 3 and 5 above. King Michael I of Romania abdicated with a

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[727] Hyginus Eugene Cardinale, *Orders of Knighthood Awards and the Holy See- A historical, juridical and practical Compendium* (1983), p. 119.

gun to his head and therefore has retained in his lifetime his full rights as fons honorum. This means that The Ecumenical Order has to be qualified as a chivalric Order.

The Commission distinguishes 'Independent Orders'and as such mentioned the Sovereign Military Order of St. John of Jerusalem, called of Rhodes, called of Malta and distinguishes further 'Semi-independent Orders', among which the Venerable Order of St. John in Prussia, the Most Venerable Order of St. John of Jerusalem in the British Realm, the Venerable Order of St. John in the Netherlands, the Venerable Order of St. John of Sweden and the Bailiwick of Utrecht of the Teutonic Order in the Netherlands. Furthermore, a number of Dynastic Orders are mentioned, among which the Knights Hospitaller of the Order of St. John of Jerusalem formerly under the Protection of the Royal House of Yugoslavia. This was King Peter II. [728]

IX.8. The value of the ICOC report

What value can be attributed to this report? Did this report provide generally accepted criteria for chivalric Orders? A statement made on 10 October 1999 by Pier Felice degli Uberti, the then Chairman, acting also as President, reveals a lot of problems inside this organisation, but which according to the renewed edition of a similar Register published in 1996, were apparently overcome, or no hindrance therefor. He did not want to consider the *Register* an official text, or a bible for scholars and could not be in agreement with all of the organizations included, but accepted these in a spirit of democracy, in that they had already been accepted before his membership and, nevertheless, only for the edition of 1998. He also felt it necessary to check the principles involved in assessing the validity of Orders of Chivalry. Noel Cox discussed the criteria laid down by the ICOC in a relatively recent article. [729]

The first principle is found satisfactory overall, barring some uncertainty of definition.

The second principle, referring to Dynastic Orders, the definition of which is unclear, provides problems in that is is a far reaching assertion of the divine right of kings. Commonwealth constitutional law holds that sovereignty rests with Parliament. This principle of parliamentary supremacy, which is by no means unknown in European and other legal

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[728] The list appended to the Report is a provisional list of Orders which have been scrutinised by the Commission and pronounced to be found valid, according to the principles developed in the Edinburgh report. The appended list does not include the names of Orders of reigning royal houses (1963).

[729] Noel Cox, '*The sovereign authority for the creation of Orders of Chivalry*', first published (1999-2000) 5 (2) Arma, the Journal of the Heraldy Society of Southern Africa 317-329

traditions, is completely at odds with this contention.

As to the third principle Cox holds that 'Firstly, a Sovereign has control of an Order whether or not they are Grand Master, those is merely an officer of the Order. Secondly, this is an assertion that an exiled sovereign remains de facto sovereign for life. The question of loss of de facto authority has been the subject of a number of studies, and no one definitive position can be asserted.(37) Whilst it is likely that an exiled sovereign may retain de facto sovereignty, this is by no means certain in every case.'

Cox deems the fourth principle unquestionable, but 'under protection' must be clearly defined and it is clearly anticipated that it is more than mere registration.

According to Cox, the fifth priciple goes too far. Cox holds it is by no means clear that States have 'renounced the exercise of heraldic jurisdiction', merely by having no provisions for the recognition of knightly and nobiliary institutions in their constitutions. Nor should heraldry and Orders of Chivalry be combined in such a way, since they are distinct matters. Supranational organisations, unless themselves recognised as sovereign, cannot create Orders.

As to the sixth principle, Cox holds this principle is probably true, as the Sovereign Military Order of Malta is generally regarded as sovereign, though its entitlement to this status is questionable, and best explained by the peculiar history and standing of the Order. Suffice it to say that no other Order, however keen its proponent may be, would ever be in a position to lawfully assert a sovereign status. Any existing Orders of Chivalry must be dependent upon a sovereign prince, or be themselves sovereign.

The final conclusions according to Cox are as follows. 1) Every sovereign prince (or president or other official in a republican State) has the right to confer honours. 2) An exiled sovereign retains the right to bestow honours, dynastic, state or however styled, which right extends to their lawful successors. Appointments may continue to be made, unless this has been expressly prohibited by the successor authorities, or the Order has become obsolete. Whilst an exiled sovereign may in some circumstances establish a new Order of Chivalry, he may only do so whilst he remains generally recognised by the international community as the de jure ruler of his country. His successors will never have this right to create new Orders. According to Cox, only de jure sovereigns (including their republican equivalents) may create Orders of Chivalry. 3) The international status of an Order of Chivalry depends upon the municipal law of the country in which it was created. There can be no international Orders as such, shorn of dependence upon the municipal laws of a State. [730] According to Cox, the only exception is the

[730] Infra p. 375, XVI.16. Is The Ecumenical Order an association sans loi?

Order of Malta, which depends upon its own unique history, and, at least in part, its recognition by the Holy See and secular princes.

IX.9. The nobility concept applied by The Ecumenical Order

In the self portrayal of The Ecumenical Order in Annex 1 hereto, some paragraphs are devoted to nobility. This seems to express some uncertainty about their chivalric character, but if this is the case, it is unfounded. Indeed they are not a continuation of the Order as it existed on Malta before the Surrender of Malta. Secondly, they are not a continuation of an Order founded by Czar Paul I, in the event he should be deemed not to have continued the original Order as it existed before the Surrender of Malta. In this last case, fons honorum was abundantly present. Reference also has to be made to 'Burke's Peerage' and the equally authoritative 'Debretts Peerage'. The only organisation mentioned or recognised by Debrett as 'Order of Malta' or 'of St. John' in the issues of Debrett of 1807, 1817, 1819, 1825 and still in later issues (1858), is the organisation under the patronage of the Czars of Russia. Debrett produced 'A list of persons who have received the honour of Knighthood, of such as have advanced to the Peerage and of British subjects holding foreign Orders of Knighthood'. As such foreign Order was also mentioned the organisation under the patronage of the Czars of Russia. Reference is in this context also made to the works of Brière, [731] de Magny and Loumeyer. [732] Brière says that the Russian Grand Priories are false Orders of Malta, just as the German Order (Johanniter) and the British (Venerable) Order of St. John. But in making this statement, he confirms that the Russian Grand Priories existed during his time. The Ecumenical Order cannot avail itself thereof in our view, but it has already been demonstrated above, that The Ecumenical Order can be classified as a Dynastic Order under the criteria of the International Commission on Orders of Chivalry, because of the fons honorum they derive from the Protection of King Michael I and the Protection derived from the Syrian Orthodox Patriarch. Then there is then no need for a separate definition of nobility by the Order, whatever its value. Finally, the chivalric aspect of The Ecumenical Order was, in view of this royal Protection, confirmed by the Grand Chancellor of the Papal Order himself. [733]

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[731] Brière, *L'Ordre de Malte*.
[732] Pichel, *History*, p. 160 f.f.
[733] Letter dated 5 July 2000 by the Grand Chancellor of the Belgian SMOM Association, to the Grand Prior, Grand Priory Benelux of The Ecumenical Order.

IX.10. The Paternò cases

Fons honorum and the power to grant nobility played a role in the various Paternò cases in Italy. It is interesting in this context to illustrate the power of the concept fons honorum by these cases which occurred in Italy in the year 1952, respectively the years 1962 and 1964. On 1 April 1952, the 'Pretura Unificata di Bari', evidently a court of first instance in criminal cases, had to decide a criminal case against a certain Umberto Z., a resident of Bari, who had publicly presented himself as Count of St. Ilarico. Z. was prosecuted for violating article 496 of the Italian Penal Code, as he was denounced by an anonymous person for having committed this crime. His decisive defense was inter alia that this title had been validly conferred upon him by the 'Prince Emanuel Francesco Mario Paternò Castello di Caraci'. It appeared after a full investigation of all relevant documents by the Court, that this Prince belonged to one of the first families of Sicily, a family who are descendants of William I, the Conqueror, descendants of the Counts of Gascogne, the Kings of Navarre and Castil and that the Prince was a direct descendant of the Kings of Mallorca and the Baleares and was still Pretender to this throne. The Court found that on these grounds, he had retained his full rights of fons honorum, which meant according to the Court, that he had the power to nobilitate, to grant and confirm coats of arms and to award predicates, taken from places in which his ancestors in fact had exercised sovereign powers, not to mention his right to constitute, resuscitate, reform and exercise the 'Grand Magistry' of the chivalric Orders of the dynasty, which are passed from father to son as an insupprimable heredity of birth, which in the ascendants of the Prince had found in fact also a confirmation by Francesco II of Bourbon, King of the Two Sicilies, in 1860. Z. was acquitted. [734]

Then it was the Prince's own turn. He was denounced on 14 July 1958 and prosecuted, as a resident of Brunate, before and condemned on 29 May 1962 by the 'Pretore of Monsummano Terme', the competent judge in first instance, to 4 months and 15 days imprisonment for having allegedly conferred false titles to a number of persons, [735] but he was acquitted of several connected alleged counts, [736] for lack of evidence. He appealed with the 'Tribunale di Pistoia' and on 5 June 1964, this court of appeals confirmed his acquittal in first instance and annulled his condemnation in first instance. Basically, the Court said that the conferment to and acceptance of foreign honours, the honours conferred being foreign, by Italian citizens,

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[734] Judgement pronounced and deposited on 1 April 1952 in the case 485/52.
[735] Article 81 of the Penal Code and article 8 of Law 3.3.51 N.178.
[736] Articles 81cpv 640, 56, 640 of the Penal Code.

was legal, while only the public use of these honours by Italian citizens was subject to authorisation by the President of the Republic, to properly safeguard the merits reserved to and represented by the honours bestowed by the Italian State. The Court had also investigated the fons honorum of the Prince and had found that he was the legitimate possessor of this faculty, which according to the Court was an expression of the honorific power of his house, which had been conserved by family tradition and had not suffered 'debellatio', the forced surrender of power. He was therefore entitled to grant the honours given by him, because the Court deemed that he had the legitimate power to grant these honours. [737] The Public Prosecutor did not institute cassation and it was therefore definitively established between the Italian State and the Prince that the Prince or his direct descendants, by using their fons honorum, can validly confer noble titles. [738] It is of course an entirely different matter whether those who have been awarded with these noble titles are or have to be recognised by a State which has a law on nobility, as belonging to the nobility of this State or as having a right to be taken up in the nobility of this State.

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[737] The following quote from the website of 'Corpo della Nobiltà Italiana Circolo Giovanile', <www.cnig.net/cilane.asp>, section 'Alcune domanda sulla nobiltà', dated 24 December 2004, may further elucidate this point:
'*Si senti spesso parlare di Capo di antiche dinastie spodestate che concedono titoli ed onori, sono validi ?*
L'argomento è complicato e –come sempre- è opportune agire con la massima prudenza onde evitare truffe e raggiri che, purtroppo, sono molto frequenti. Bisogna innanzitutto essere certi che il concedente discenda realmente e per via legittima da una persona che abbia effettivamente regnato su di un territorio ed abbia esercicato il diritto di concedere onori, ed il quali forme; si deve poi guardare alle cause che hanno determinato il venir meno di tale regno; infine è opportuno accertarsi del livello tenuto dai discendenti del sovrano spodestato, onde essere sicuri che non siano ″decaduti″.
Cosi –per esempio- chi vanta discendenze dagli Imperatori Bizantini non dovrebbe avere alcun valido diritto, dal momento che i Troni romani di Oriente erano elettivi e non si trasmettevano di padre in figlio. In linea di massima è significativa la presenza della famiglia nell'Almanacco del Gotha.'

[738] The titles Marquis and Count of the present Grandmaster of The Ecumenical Order, Marquis and Count Joseph Frendo Cumbo, seem to have been awarded by the same Prince. See also R. de Francesco, *La Legittimità e validità degli ordini cavallereschi "non nazionali" secondo gli insegnamenti della Corte di Cassazione* - Con prefazione del prof. Luigi Gianetti (Napoli, 1959).

IX.11. The right to accept and wear decorations and the local law

As far as the right to wear decorations is concerned, everything depends on the local law. Does this law know a statutory or case-law definition of the notion of decoration? Does this law make a distinction between officially recognised and not-officially recognised decorations? What criteria are applied in this connection? How are officially recognised decorations sub-divided? Is it allowed under the local law to wear decorations which are awarded by private national or private foreign parties? Is it allowed under the local law to wear decorations awarded by foreign public law organisations? Does the local law contain criminal stipulations with regard to the wearing of not-officially recognised decorations? Does the local law contain any other than criminal law stipulations which forbid or hamper the wearing of not-officially recognised decorations? The answers to these questions cannot be provided here.

For the Dutch situation, we refer to article 435 of the Dutch Criminal Code, [739] a misdemeanor ('overtreding'), not a crime ('misdrijf'). Article 435 sub 1° (translated) refers to 'He, who without being entitled thereto, uses a Dutch noble title or a Dutch decoration'. Sub 2° refers to 'He, who without the King's leave, where this is required, accepts a foreign decoration, title, rank or dignity'. It will be clear this terminology raises questions which cannot easily be answered and the elements of the misdemeanour are not easily fulfilled. [740] Oud held that as foreign order signs and titles in the sense of the constitution, only had to be regarded those granted by a foreign state authority. Decorations granted by special corporations were not covered by this article. [741] Van Heerdt is of the same opinion and adds that remarkably article 435 sub 2, only punishes the acceptance without approval, not the wearing of the decoration. [742]

Article 74, paragraph 1 of the 'Grondwet' (Constitution) as amended in 1963, said that the King grants nobility. Paragraph 2 of this article said that foreign nobility cannot be accepted by any Dutchman. Article 76, paragraph 1 said that foreign orders to which no obligations are tied, may be accepted by the King and, with his approval, by the Princes of his House. Paragraph 2 of this article said that in no event other Dutchmen, or the strangers, who are

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[739] Art. 435 Sr. Met geldboete van de tweede categorie wordt gestraft:
1° hij die zonder daartoe gerechtigd te zijn een Nederlandse adellijke titel voert of een Nederlands ordeteken draagt;
2° hij die zonder 's Konings verlof waar dit vereist wordt, een vreemd ordeteken, titel, rang of waardigheid aanneemt;

[740] C.P.M. Cleiren (red), *Tekst en commentaar strafrecht* (Deventer 2004), p. 1338.

[741] P. J. Oud, *Het constitutioneel recht van het Koninkrijk der Nederlanden, deel II*, p. 338 (Zwolle 1947/1948).

[742] Heerdt, *Nederlandse en buitenlandse ridderorden*, p. 62.

in Dutch State service, may accept foreign order signs, titles, rank or dignity, without special leave from the King. Compare the original Constitution of 1814, articles 63-66. [743] Articles 74-76 disappeared from the Constitution in 1983. They were not deemed necessary anymore by Government and the Parliament. The Government was not familiar with cases of granting foreign nobility to still living Dutch. The government in principle had no objection to acceptance by Dutch of foreign decorations. [744] An additional article XXV to the Constitution, which came into being against the will of the Government, [745] then said that till a provision had been made by the law, article 74, paragraph 1 of the Constitution remained intact according to the wording of the text of 1972. [746] On 1 August 1994, the 'Wet op de adeldom' became effective. [747] The penal sanctions in article 435 sub 1 and 2 Dutch Criminal Code are obsolete, respectively not effective.

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[743] Artikel 63. De Koning verheft in den adelstand; al wie door den Koning in den adelstand verheven wordt, brengt de brieven van adeldom ter kennis van de Staten zijner Provincie, en deelt aanstonds in al de voorregten daaraan verbonden, bijzonderlijk in de bevoegdheid om beschreven te worden in de ridderschap, mits voldoende aan de vereischten voor dezelve bepaald.
Artikel 64. Ridderorden worden door eene wet, op het voorstel des Konings, ingesteld.
Artikel 65. Vreemde orden, waaraan geene verpligtingen verbonden zijn, mogen worden aangenomen door den Koning en met zijne toestemming door de Prinsen van zijn Huis. In geen geval mogen de overige onderdanen des Konings vreemde orden aannemen, zonder deszelfs bijzonder verlof.
Artikel 66. Insgelijks wordt tot het aannemen van vreemde titels, waardigheden en charges, het bijzonder verlof van den Koning vereischt.
Het is in het vervolg geen Nederlander geoorloofd vreemden adeldom aan te nemen.

[744] C.A.J.M. Kortmann, *De grondwetsherziening 1983 en 1987* (Deventer 1987)

[745] Amendment van der Burg-Nijpels, TK 1979-1980, 15883 (R 1129), nr. 14.

[746] 'Artikel XXV. Totdat ter zake bij de wet een voorziening zal zijn getroffen, blijft artikel 74, eerste lid, van de Grondwet naar de tekst van 1972 van kracht.'

[747] Stb. 1994, 360; Bruin, *Kroon op het werk*, p. 151-176.

X. THE ORGANISATION OF THE ORIGINAL ORDER

X.1. Main lines of the constitutional developments

Before we proceed to Chapter XI (Discussion of some contemporary Orders of St. John)**,** we will give some comments on the rather complex and perhaps even chaotic organisation of the original Order. [748] The organisation of the original Order can be looked at from different angles and from different points in time. It seems best to start with an attempt to describe the main lines of the historical constitutional developments.

The Order started in the Holy Land as a private and relatively democratical organisation. Relatively, because the way it chose to set itself up, not long after its formation, was through the instrument of a religious Order. Religious Orders are moderately democratic or mildly autocratic. For example, St. Bernard of Clairvaux set up the Cistercian Order with a powerful Prior. From private and relatively democratic, the Order changed and developed into a quasi-religious, military Order and into a public law organisation. This happened on the one hand as a consequence of the general historical developments, but on the other hand also because of the specific local needs at the time.But as inter alia Gibbon taught us, the system of feudalism was also pervaded with a sense of liberty. The feudal aspect therefore does not necessarily cause a lack of democracy among equals.

The Crusades were also part of a rather large early European colonialist movement. In Palestine, the Order of St. John had been a colonialist power and a feudal lord, but also had to cope with other feudal lords and ultimately was subject to the (weak) King. It was exempt from the Latin Patriarch of Jerusalem. In Palestine, it had been fiercely competing with the other great Knightly Order, the Templars. The Order then further developed, because of its possession of Rhodes, into a sovereign, naval or buccaneering organisation, a State. Its occupation of Rhodes (1309) more or less coincided with the downfall of the Templars (1307) and the takeover and integration of the larger parts of the latters' substantial European estates into the Order of St. John.

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[748] The original Order's organisation is inter alia described in Fra Commander Christian Osterhausen's work *Was zu einer vollkommenen Erkanntniss und Wissenschaft des Hochadligen/Ritterlichen Ordens S. Johannis von Jerusalem zu Malta/vonnoethen* (Frankfurt, 1664, 1650; Secunda Editio, Anno M.DC.L, Augsburg and also 1702) and *Statuta, Ordnungen und Gebräuche des Ordens S. Johannis von Jerusalem*, (Frankfurth 1664) and *Trattato sopra gli Statuti della Religione di S. Gio. Gerosol. Ms in folios.* See also King, *The rule, statutes and customs.* See also the *Libri conciliorum*, Royal Malta Library.

After its eviction from Rhodes by the Turks and its establishment on Malta, the same sitation as on Rhodes, but even more so, developed on Malta. Theoretically, the Order remained an ecclesiastical community, 'whose function was fighting the Infidels', [749] a concept indeed difficult to grasp for many. This situation was then terminated by Napoleon's occupation of the island(s) in 1798. Due to the Turkish Sieges of Rhodes and of Malta, the position of the Grandmaster, as the chief executive organ, appointed for life, had already been considerably strenghtened. Particularly on Malta, the Order developed into an oligarchical, theocratical system and the Grandmaster into an enlightened despot. This inter alia becomes evident by the fact that the second last Chapter General was held in 1631 and it took till 1776 before another, also the last, Chapter General was held.

X.2. Three important factors in these developments

Three important factors in these developments were the constant attempts of the major European powers and the Pope to induce the Order to grant lucrative positions to their favourites; the ongoing investiture conflicts between the Order and the Pope and the King of Sicily about the appointment of the Bishop of Malta and last but not least, the Order's constant conflicts with the local Inquisition. A second important aspect was that the Order on the one hand worked closely with the local population (as the local population worked closely with the Order), but on the other hand always stayed aloof from them. A third important aspect was the coming and going of the manpower recruited in the West, 'essential to sustain the Order's purposes'. Its resilience, esprit de corps and continuity were remarkable also in view of its long communication lines. The Order was always outnumbered. It was practically always in the defensive position. On the other hand, it was always falling out of its harbours. It was also always trying to secure its position in Europe (Papal indulgences, ecclesiastical and Royal tax exemptions), through a show of activity in Infidel territory.

Luttrell says that the Order as a military Order had to direct a society organized for war. [750] In principle, this was true for the major part of its history on Rhodes and on Malta. But we should not forget this was the spearhead. Local institutions on Rhodes/Malta had to be so arranged that the inhabitants could be mobilized for armed service and that the local economy generated the surplus wealth needed to support the overall military operation. This surplus wealth was generated by the Corso, the local economy and the responsions. The vital extra manpower and wealth indeed

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[749] Luttrell in Mallia-Milanes, *Hospitaller Malta*, p. 257.
[750] Luttrell in Mallia-Milanes, *Hospitaller Malta*, p. 270, Koster *Knight's state*, p. 2.

came from the West and had to continue coming therefrom. The Order's internal affairs and finances also had to function in such a way that its military Brethren were prepared both to serve for a number of years in the Convent and also to send there the responsions and other dues from the commanderies they 'managed' in the West. A symbiotic relationship again.

Luttrell says the 'Hospital's retention and enjoyment of these Western properties, incomes and privileges depended on a second factor, the continued support of popes, princes, and public opinion in general. This meant that its programme of military and naval activities and expenditures in the Convent had to be arranged in ways which fulfilled the propaganda function of demonstrating to the Western public that the Order was indeed performing the warlike role against the Infidels which justified the continued possession of its European endowments and advantages.'

X.3. The objects of the original Order and their implementation

The Order occupied strategic positions in Palestine and on Rhodes and then on Malta, both from a military and a commercial point of view. The objects of the Order in theory were threefold, i.e. praying, caring for the sick and fighting the Infidels, on land and sea. [751] What had to be done in this context and in the context of the more realistic practical objectives (getting money and making a living and surviving as independents for the good of all connected to it) of the Order? We attempt to give an enumeration.

Foreign relations and relations with the Popes had to be managed. For this, Grandmaster de Paule [752] had set up a special Council of State. Then, on Rhodes and on Malta, local government had to be carried out. Law had to be given. Tribunals had to be operated. Disputes between the Order and the local Università of Malta and the one of Gozo, had to be settled. There was a 'Consiglio Populare' and there was a separate merchant administrative organ at Birgu. Although government had of course not yet developed so much as in the present times, there still was a lot of governing to do. Taxes, more particularly excises and customs, had to be levied and collected. Supplies had to be taken care of. The Order had to be governed. The European possessions, formally owned by the Order, had to be managed. The flow of responsions originating therefrom, had to be secured, and responsions had to be collected. Commanderies and Priories had to be attributed. Manpower had to come and go. New Knights had to be and were attracted. Admittance,

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[751] Smith/Storace, *Sovereign Order of St. John of Jerusalem*, p. XXII: 'The protection of trading, the hunting down of corsairs, the defense of the islands, the raising of a great navy, were all tasks to which the knights attached themselves with zeal and diligence.'

[752] 1622-1636.

after full militarisation of the Order, as Knight of Justice, or as Knight of Grace, Chaplain or Serving Brother (or Sergeant at Arms), had to be regulated and controlled. Passage fees had to be determined and collected. Auberges had to be set up and run. Morals had to be corrected. Duelling had to be prevented. Mercenaries had to be hired and paid. A hospital and other health services had to be set up, run and administrated. Medical supplies had to be bought. A 'Conventual Church' and a 'Magisterial Palace' had to be built, maintained and run. The local religious (Roman Catholic and also Greek Orthodox) had to be controlled. Relations with the local Inquisition had to be sorted out. Fortifications had to be constructed, manned and maintained. Last but not least, galleys and other vessels had to be constructed or bought, equipped, manned and maintained and to be put into constant action, to continue to obtain the vital Corso income. The spoils had to be divided and disputes had to be settled. Finally, a laborious ceremonial and pompous protocol was maintained and financed to 'épater les bourgeois'. Funds were derived from at least five sources, i.e. the passage fees; the responsions; the sale of offices; the vacancies and mortuaries; [753] the excises and customs duties and last but not least, the Corso income.

X.4. The institutional framework

The institutional framework to cope with the above, was as follows in main lines. Some would say that the Pope (the Protector), was the Chief of the Order. In a way, this was the case. In a way, because the Order was independent and it was a religious Order for the sake of mutual convenience. The Convent was the Order's central administrative organ. It consisted of Grandmaster, the chief officials and the Knights present on Rhodes or Malta on duty, taken together. These chief officials were Knights Grand Cross (who were also Conventual Bailiffs). Each of the ultimately eighth Langues provided one of the Conventual Bailiffs. The Langues were divided into Priories and the Priories into Commanderies. The Order was administered provincially by Grand Priories, subordinate Priories (originally called 'obedientiae'or 'domus'or 'mansio') and within these, the subordinate Commanderies (or 'preceptories'). According to the Catholic Encyclopedia, there were 8 Tongues, 24 Priories and 656 Commanderies. [754] The Commandery's main building was the Convent. This often used to be the original manorial lord's building. Commandery size varied. A shire, a diocese or even a Kingdom, like in Scotland. There were 'Commanderies of

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[753] Compare *Regalienrecht* (right of the Throne of the Holy Roman Empire to the income of a vacant bishopric) and *Spolienrecht* (right of this Throne to the movables of a deceased bishop).

[754] See also Vertot, *History II*, *Dissertation*, p. 124.

grace', bestowed for life. There were 'Camerae' in the personal possession of high officials. Commanderies were usually falling under a Priory. The chief of the Priory was the Prior (who was a 'Capitular Bailiff') and appointable in theory by the Chapter General, but in practice by the Grandmaster. The Prior appointed the Commanders and received Brothers into the Order. He transmitted responsions and had a local Treasurer as well as his own Archives. At times he visited headquarters to report and to attend a Chapter General.

As mentioned, the responsions did not pay for everything. The main activities on Malta were cotton trade, building and privateering. From the Corso prizes, ten per cent went to the Grandmaster or to the Order, depending on whose flag was flown. Other income was based on customs, excises, passage fees, 'vacancies and mortuaries' and the sale of offices (simony). The Grandmaster's income in 1716 was a handsome annual 100.000 Scudi, about 1.200 times the annual income of a carpenter. [755] It should be noted that in the first half of the 18th century prices were moving in an upward direction.

X.5. The Langues and Priories

We provide the following usual overview of Langues (Tongues) and Priories:

France:	Priories of France, Aquitaine, and Champagne;
Provence:	Priories of St. Gilles and Toulouse;
Auvergne:	Priory of Auvergne;
Italy:	The Priories of Lombardy, Venice, Pisa, Rome, Capua, Barletta and Messina;
Aragon:	The Castellany of Amposta (= Aragon) and the Priories of Navarre and Catalonia;
Castile:	The Priories of Castile-Leon and Portugal;
England:	The Priories of England, Scotland and Wales included and Ireland;
Germany:	Priories of Germany, Bohemia and Dacia (Denmark). [756]

In 1301 already, seven national Langues or Tongues were formed. Then there were seven 'Piliers' or leaders of each Langue and seven Great Offices. Later eight Tongues and eight Great Offices. It is important to note here that the Langue of France had precedence – in Russia in the time of

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[755] Mallia-Milanes, *Hospitaller Malta*, p. 33.
[756] Denmark, not the classical Dacia (= Romania, more or less).

Czar Paul I, the Russian Catholic Grand Priory allegedly also had this precedence – and that these offices were more or less equally important and there was no supremacy anymore of Grand Commander and Marshal. The Pillars presided over the Auberges, built on Rhodes and Malta. A good deal of the conflicts in the Order seems to have been over conflicting conceptions of nationalism and internationalism. It was more of a federation of national associations than a unified Order.

X.6. The law

The law basically consisted of the Bull Piae, the Rule, the Statutes and the Customs and Egards. [757] The Statutes originated from the Chapter General. It was in principle supposed to meet every five years, but more often than not did not convene, except for a series of important Chapters in the 16th and early 17th century. Sometimes it was ordered to meet at request of the Pope, but more often at the Grandmaster's or the Order's own initiative. Usually about 70 to 75 Knights attended. Voting was restricted to Knights of Justice. It is not the intention to set out here and comment on the entire legal and other organisation of the original Order. One of the difficulties is at which point in time to describe this organisation. But it seems appropriate at least to try to give the highlights of the legal organisation of the original Order.

We already saw the development from a fraternal, nursing organisation, into a military organisation. We saw the development from a land oriented organisation into a sea oriented, a maritime organisation. We also saw the development of the Grandmaster into an enlightened despot, a sovereign Prince. This had consequences for the legal organisation.

The Order started as a lay fraternity and was an initiative of Amalfi merchants. Originally, there were ‘fratres’ and ‘confratres’. In 1191, the Pope sanctioned the military aspect which had in the meantime strongly developed. In 1206, there were three classes, Knights (milites), Chaplains (capellani) and Sergeants (servientes). Compare the Teutonic Order. In the Teutonic Order, there were Knight Brothers, Sarjeant Brothers, Priests Brothers, Half Brothers, Fellow Brothers and Secret Brothers, Half Sisters and Fellow Sisters.

There were a number of different vows until 1216. In 1230, Knights received precedence over Chaplains and in 1262, the Master could only be a Knight. In 1270, all High Offices were reserved for Knights only. The Order distinguished between Knights of Justice, Chaplains, who could also become Priors or Bishops of the Order, Serving Brothers, among whom Servants (Sergeants) at Arms, Honorary Magisterial Knights and Honorary Knights of

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[757] King, *The rule, statutes and customs*.

Grace. Knights of Grace could not vote. Based on this, some Orders of St. John make it impossible for members who are Knights of Grace to have a say in the organisation. The question is whether this is valid. The essence of membership in an association is the right to vote. The members involved would not be real members in the sense of the law. The basis of their relationship with the association would not be the membership relationship, which is sui generis, but a contractual relationship. This distinction also furthers a quest for noble titles, necessary to become 'of Justice' and to be able thereby to have some say in the organisation.

X.7. The governing system

The Chapter General would be held every three to five and then every ten years, but became obsolete after 1631. Theoretically, the Chapter was competent to elect a Grandmaster for life and to deal with all ecclesiastical, military or civil matters, also deciding on responsions, building a hospital and fortifications and morals. In practice, this was delegated. Attending were all those who were dignitaries of the Order. [758] The Chapter could not be held without the Capitular Bailiffs present. In itself this is indicative of where the real power was situate, i.e. in Western Europe. One had to be a Conventual or Capitular Bailiff to become a Knight Grand Cross. The title of Grand Cross became a honorary title later. [759] There were also Capitular Bailiffs by courtesy and 'ad honores'. [760] A Bailiwick grouped together a number of Commanderies, also cross border.

Sixteen Commissioners (Commanders), as a provisional council, would be elected by the attendants of the Chapter in an intricate way, in which the divison of Langues played a role. These Commisioners would then theoretically in secret decide everything referred to them by the Chapter, without appeal, but in the presence of the Grandmaster, his Procurator, the Vice Chancellor and the Secretary of the Treasury, who did not have the right to vote.

Furthermore, four standing councils could be distinguished. These were the Ordinary Council, the Complete Council ('Consiglio Compito'), the Secret Council and the Criminal Council. The Grandmaster or his Lieutenant were the President of all these councils. The Grandmaster also had the exclusive right to propose any matter for discussion and had two votes and a casting vote. The Ordinary Council consisted of Grandmaster, Lieutenant Grandmaster, Conventual Bailiffs, the Grand Crosses who happened to be at

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[758] Vertot, *History II*, *Dissertation*, p. 130, provides a list of 54 dignitaries.
[759] Vertot, ibidem, p. 132.
[760] Vertot, ibidem, p. 126 and 129.

the Convent at the time, the Procurators of the Langues, two per Langue and the most ancient Knight for the Langue of England. The ordinary Council would decide all disputes of receptions, pensions, commanderies, dignities and other matters relating to bulls granted by the Order. The Complete Council additionally had two ancient Knights of each Langue, who had to have been resident in the Convent for at least five years. It was competent to handle appeals from the sentences of the Ordinary as well as the Criminal Council. The Criminal Council dealt with weighty complaints against a Knight or a religious. The Grandmaster had the exclusive right to file such complaint. The Secret Council dealt with affairs of State and all matters of urgency. Informal appeals were made to the Papal Court at Rome which would also be involved with dispensations and granting titles of Knights of Minority, Knights by Courtesy, Bailiffs and Grand Crosses by Courtesy, a host of honorary titles.

The Chamber of Treasury, which membership was changed every two years, was presided over by the Grand Commander, the head of the Langue of Provence or his Lieutenant. Its members were two Procurators of the Treasury, chosen from among the Grand Crosses and a Procurator of the Grandmaster, named by him, with voting right. It dealt with responsions, passage fees, mortuaries and vacancies and prizes taken from the Infidels. The Grand Commander had a casting vote.

Chapters were announced a year in advance. There were seventeen of them in the period between 1533 and 1631. From 1631, under Perella, to 1776, under Rohan, there was only one Chapter General, called in 1776 by Rohan. [761] In this period of 145 years, fourteen Grandmasters have been elected, starting with Lascaris and ending with Rohan. This shows a Chapter General was not necessary to elect a Grandmaster. A Grandmaster, who ruled the Order directly and personally, was originally elected for life, by simple majority of an electoral college, composed again by sixteen persons, all appointed via an indirect vote of the Brethren, in which connection the division of Langues as well as their ranking, played a role. [762] A Grandmaster had to be elected within three days of the decease of his predecessor. The power of the Grandmaster was supposedly limited by Custom, Statutes and the Chapter General, which he however rarely called. Most of the Grandmasters were French, Aragonese, Italian or Portugese and none was a priest. Grandmasters were and could not be ordained. On election, he took an 'Oath of Office'.

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[761] The States-General in France were not summoned from 1614 till 1789, about 175 years.

[762] Vertot, *History II*, p. 138-143.

The governing system as developed on Rhodes, ultimately in the Malta period, resulted in the following. The Grandmaster ruled autocratically with a 'Venerable Council' which consisted of:

1) Grandmaster (having a double and a casting vote);
2) Grand Commander (or second in command, the Pillar of Provence, finance, with the Treasury under him, originally in charge of the Eastern properties, also in charge of the provisioning of the Convent);
3) Marshal (the Pillar of Auvergne, chief military official, overall command and especially army);
4) Grand Hospitaller (the Pillar of France, Hospital);
5) Conservator (the Pillar of Aragon, forage);
6) Chancellor (the Pillar of Spain, [763] Chancery, foreign affairs);
7) Admiral (the Pillar of Italy, naval forces);
8) Turcopolier [764] (the Pillar of England, originally in charge of mercenaries, coast watch);
9) Grand Bailiff (the Pillar of Germany, fortifications), therefore 9 persons.

The appropriation of positions to particular Langues dates from 1466 under Grandmaster Zacosta (1464-1467). The Piliers or Conventual Bailiffs also had the right to demand dignities that became vacant. The Conventual and Capitular dignities, i.e. certain vacant Grand Priories, Bailiwicks, Commanderies, were reserved to certain Langues and divided within these Langues, by methods differing per Langue. [765]

X.8. Positions

A great number of positions can be distinguished. In practice these were held for life, although formally a rotation system was applicable. We just give the major positions here. Vertot provides a much longer, dazzling list. [766]

A. Primarily, one can mention the following:
- Bailiff;
- Capitular Bailiffs, in charge of provincial administration in Europe;
- Conventual Bailiffs (who became the Grand Officers, enumerated above in *X.7*);

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[763] Spain was divided in 1462 in Aragon and Castile.
[764] From 'turcopoles', i.e. light cavalry in Palestine during the Crusades.
[765] Vertot, *History II*, *Dissertation*, p. 133-134. Different Ann Williams in Mallia-Milanes, *Hospitaller Malta*, p. 286, who is of the opinion this already happened in the 14th century.
[766] Vertot, *ibidem*, p. 130 and p. 135-138.

- Grand Prior; [767] a Grand Prior position could be combined with other, formally strictly religious positions, such as Cardinal. A Grand Prior according to the Statutes had to have been a Knight for at least fifteen years, of which at least ten years in Malta. He should also have participated in at least four military actions of the Fleet of the Order. Finally, he should have correctly administrated the Commanderies entrusted to him;
- Co-Adjutor to the Grand Prior;
- Prior;
- Commander, or Preceptor, the supervisor of a Commandery (it was possible to be Commander of more than one Commandery at the same time and one could be a Commander at 30 and it was said that a Commander had a better income than most brigadiers and lieutenant-colonels in the army.
- Grand Commander, co-ordinating Commanderies over several countries (this was abolished in the early 14th century). Grand Crosses were usually holding about three Commanderies since the 17th century.

B. Lower positions in Malta were inter alia:
- Drapier (in charge of clothing store);
- Conventual Prior, chief Chaplain at the Convent.

C. In the Fleet, as an important instrument of the Order: [768]
- Captain-General of the Galleys.
- Congregation of the Galleys, responsible for an efficient management of the fleet;
- Captain of the 'Capitana' (flagship);
- Captain of the 'Galera Magistrale' (the galley of the Grandmaster);

D. Admission:
- Tribunal for Nobility, dealing with admittance to the Order. Although the Statutes of 1533 of L'Isle Adam said that to become a Knight, one had to be at least 18 years old and well educated to bear the life of a soldier and to undergo an education of one year to become familiar with virtues such as humility, obedience, discipline and charity, people became Knights already at the age of six or seven. [769] In that case the admission fee or 'Passagium' could be raised to around 1,300 Thaler. The earlier one had been admitted, the higher one's seniority. Seniority played an important role as criterion to achieve a high position in the Order.

E. Control over Knights:
- Castellano, dealing with jurisdiction over travelling Knights;

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[767] Title recognised in 1548 by Grandmaster Luis Mendes de Vasconcellos (1622-1623).
[768] Joseph M. Wismayer, *The fleet of the Order of St. John* (Valletta Malta 1997).
[769] Galea, *Die Deutschen Ordensritter*, passim.

- Conservator of the Convent;

F. Financial:
- Revisor of a Tongue;
- Secretary of the Chamber of Treasury;
- Procurators of the Grand Commander and the Grandmaster for the Chamber of Treasury;

G. Special Commissions:
- Special Reform Commission for the Fleet;
- Health Commission;
- Commission to prepare official visits of foreign dignitaries;
- Commission to settle labour disputes in the hospital;
- Drafting commission;
- Commission of the 'Limosina' or 'Frumentaria', dealing with the division of alms among the poor and indigents.

X.9. The role of simony

Simony, a species of greed (avaritia, usura being the other species) is more particularly the term for the sale of formally strictly religious offices for money or other forms of material compensation. This was already combatted from at least around A.D. 1000. There were hereditary lay abbots. Parish churches were built as investments by their founders. They were bought and sold. Generally, it was and remained the custom to trade in offices, not only religious ones. Pinto owed his election as Grandmaster partly to simony. To become Captain-General of the galleys, a lucrative position, for two years of office, 12.000 scudi had to be paid at one time in the 17th century, but 100.000 scudi, about one year income, were paid by Rohan to get this office, via a loan provided to him by King Louis XIV. A Brother Sergeant earned 4 scudi and 6 tari per month in 1732. [770]

X.10. The Commandery jus patronatus

A Hereditary or Family Commander or a Commander jus patronatus primarily was a person, who, when a Commandery was brought into the Order by him, or when a Commandery was created by the Order, or later, was appointed as Commander and had been able to obtain or was awarded then, or later, the hereditary right of in practice automatic succession to that position by a person, named by his heirs. Commanders could be named by certain heirs of the deceased Commander and those named would then

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[770] Mallia-Milanes, *Hospitaller Malta*, p. 23.

automatically become the subsequent Commanders, by fulfilling certain standard requirements. In the normal case these would be fulfilled as a matter of course and would not produce any impediment to their succession as Hereditary Commanders. Five years of residence at the Convent and three 'Caravans', naval expeditions, of at least six months, were needed to be able to become a Commander, but the practice of replacements seems to have been wide spread. Later, one could be a Hereditary Commander without any connection to real property. Hereditary Commanderies can also be defined as those Commanderies whose founding families retained the right to nominate the successors. The rule also was that if one was able to recover a lost Commandery for the Order, one was able to hold it for life on behalf of the Order.

X.11. The vow of sine proprio

Another important aspect of the clever organisation of the Order, is the notion of the 'Quint'. The vow of sine proprio means without individual property, not without common property. One was entitled to bring a property into the Order or receive a property from the Order. This property would in principle then become entirely tax free. It could be a Hereditary Commandery, or not. The Hereditary Commandery was of course much better than the non-Hereditary Commandery. One was allowed to always keep one fifth of what one had acquired in function and to testate this to one's heirs. The remainder or four fifth, should go to the Order. But if one had a Hereditary Commandery, one's relatives would be Commander again and could carry on in the same way and so on.

Suppose a Commandery would in present financial terms be worth around USD 60 million. Suppose it would bring an annual net profit of five per cent or USD 3 million. Part of this had to go as responsions to the Order and this would theoretically be one third, or USD 1 million. [771] For running the Commandery, one could annually keep USD 2 million. Suppose one would be appointed as Commander at the age of thirty and would remain alive till the age of seventy. Apart from the capital increase of the property, which theoretically belonged to the Order, one would then have earned 40 x USD 2 million = USD 80 million, not to mention any increase in profits and interest, or returns on investments made with the funds. We can probably say that our Commander would end up with USD 120 million, but of course not reckoning with wars, or decreases in the value of money and investments

[771] In case of a Commandery jus patronatus under article XII of the Regulation governing the establishment of family or jus patronatus commanderies in Russia, promulgated by Paul I on 21 July/1 August 1799, the annual responsions were only one tenth of the annual revenue of such Commandery.

or losses on investments. Therefore, if we correctly understand the theory of the system, upon decease one fifth, or USD 24 million was left to his heirs, and so on, in the case of a Hereditary Commandery.

If this was the theory of the system, one may wonder whether this theory was often observed in practice. But as we saw, already under Grandmaster de Revel, it was decided in a Chapter General, that each Commandery should contribute a fixed sum annually, styled responsions, payable in money or troops, to avoid fluctuating income and to cope with the problem that 'sometimes' the expenses of the Commandery were equivalent to their revenues.

Although it was also said that the responsions 'might be augmented or dimished according to the occasions of the Order pursuant to the regulations and decrees of the Chapter', [772] they were in practice seldom changed, in spite of inflation, except under Grandmaster de Rohan (1775-1797). On the other hand, the feudal lords always had to cope with the same problem themselves, as they were also dependent on fixed income themselves, while farm proceeds increased, due to agricultural improvements. [773]

The 14th century was a time of plague and crisis. From about 1550, Europe was swamped with silver from Spanish America. Except in Spain, there was a slow inflation of around one per cent. Under Philips II, Spain had started to create its own high inflation by minting inferior copper money. After the 16th century religious wars, France experienced a strong economic growth during Richelieu (1616-1642) and Colbert (1661-1683), although dampened by the many wars of Louis XIV. Around 1620, the stream of silver diminished, because of exhaustion of mines. Then followed an economic downturn, but not in The Netherlands and not severely in Portugal. The Thirty Years War (1613-1648) also hit the Northern Italian economy, since the Swedes ravaged Bavaria. Since around 1620, Venice really suffered from the new sea routes to the East. After the Thirty Years War, Germany and Austria soon saw an economic upturn. End 17th century, gold was found in Brazil and silver mines in Peru and Mexico increased production. This caused a new long wave of economic growth. Before the French Revolution, income from ground rents had sharply increased.

We will be able to understand why the position of Commander was a coveted one. We will also be able to understand why he had to donate funds to build a chapel or a church in Malta. [774] We will be able to understand why

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[772] Sutherland, *Achievements I*, p. 215.

[773] J.Ph. de Monté ver Loren, *Grondbezit en standen in het oosten des lands voor de feodalisering* (Utrecht,1949), note 19.

[774] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title III*, p. 23, items 26-29 and Vertot, *History II*, *Dissertation*, p. 123.

religious as well as temporal authorities were involved with this and why the two were inextricably intertwined. When for example Charles of Anjou had conquered Naples in 1265, the Commanderies in the Kingdom of Naples began to be distributed among the French. In Lombardy, the Priory was controlled by a club of great families.

X.12. The number of Knights

The number of Knights varied. There are supposed to have been only 300 before 1291 and between 250 and 450 on Rhodes. There were 540 Knights during the Great Siege on Malta. In 1631 there were 261 Knights on Malta. In 1631, there were in total about 1.755 Knights, 148 Chaplains and 1.555 sergeants, of whom 995 from the three French langues. In 1740, there were 240 Knights and in 1798, there were 322 Knights on Malta. In 1789, there were 671 Commanderies in Europe, of which 254 French.

'The total military membership of the Hospital was small and there were seldom more than a few hundred Knights and a few Sergeants on active service in the Convent or elsewhere in the East; the Order employed mercenaries but they were always expensive. There may have been 200 to 300 Brethren, including a small number of priests, in the east during the 14th century; the total on Malta in the 18th century was roughly similar'. [775] They remained predominantly French. Malta was in fact a French colony. The official language first was French, then Italian. This probably because of the vicinity to Italy and because of the fact that the Fleet was run by Italians.

XI.13. The organisation according to Vertot, arranged by subject matter

If we look at Vertot, [776] we establish that in 1676, Vertot arranged his description of the organisation which he in turn had derived from the Edition of Borgoforte, as follows:

Title I Of the Rule, about 2 ½ pages;
Title II Of the Reception of Brothers, about 9 ¼ pages;
Title III Of the Church, about 5 ¾ pages;
Title IV Of Hospitality, about 5 pages;
Title V Of the Common Treasury, about 16 ¼ pages;
Title VI Of the Chapter, as well general as provincial, about 7 ¾ pages;
Title VII Of the Council and Judges, about 8 pages;
Title VIII Of the Egard, about 3 ¼ pages;
Title IX Of the Master, about 3 ¾ pages;

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[775] Luttrell, in Mallia- Milanes, *Hospitaller Malta*, p. 262.
[776] Vertot, *History of the Knights of Malta II*.

Title X Of the Bailiffs, about 8 ¾ pages;
Title XI Of the Priors, about 3 pages;
Title XII Of the Duty of the Brothers, about 1 ½ pages;
Title XIII Of Elections, about 5 ¾ pages;
Title XIV Of the Commandries and Administrations, about 8 ½ pages;
Title XV Of Visitations, about 2 ½ pages;
Title XVI Of Bargains and Alienations, about 2 ¾ pages;
Title XVII Of Leases and Farms, about 2 pages;
Title XVIII Of Prohibitions and Penalties, about 12 pages;
Title XIX Of the Meaning of Terms, about 2 pages.

For a detailed text of the above, refer to Vertot. [777] Unfortunately, time does not permit a detailed discussion of the interesting contents of many of the clauses quoted there. A closer look at these clauses is enlightening, as it shows the real nature of the original Order. It was essentially a community of common interests of nobles. The headings are not always covering the contents they are supposed to cover. For example, under a title 'Of the worship of divine things', we find a clause which could be qualified as a confidentiality or a non compete clause. [778]

At any rate, the above remarks will hopefully have served to demonstrate the very complex and vague organisation of the original Order, giving many possibilities for favoritism. [779]At the same time, it will be clear that no contemporary Order of St. John can and will be organised in the same way, already alone not for the fact they do not have a territory and do not operate a fleet. But nevertheless and understandably, many contemporary Orders of St. John cling on to the above terminology, some stronger than others.

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[777] Vertot, ibidem.
[778] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title III*, p. 20, item 7.
[779] Mallia-Milanes, *Hospitaller Malta*, p. 291.

XI. DISCUSSION OF SOME IMPORTANT CONTEMPORARY ORDERS OF ST. JOHN

On the basis of the previous chapters in this study, we will now look at some important contemporary Orders of St. John, then at The Ecumenical Order. We want to analyse their legal organisation and draw conclusions therefrom. Of course we realise legal texts are only part of the picture, though an important part, because they form the basis.

We look at The Netherlands, the Protestant Johanniter Orde there, as an example of a Protestant Order of St. John, limited to a small European country (XII); Germany, the Evangelical Johaniter Orden, basically limited to one big European country (XIII); the UK, the Anglican Venerable Order, as an example of a large Anglican Order of St. John, globally active because of the connections in the British Commonwealth, but also with a branch in the USA (XIV); the Roman Catholic SMOM, globally active (XV) and then at The Ecumenical Order (XVI).

The Johanniter Orde in The Netherlands is not a global organisation and formally speaking one might say neither is the Venerable Order. The Venerable Order spread throughout the British Empire which comes close to being a global organisation. The SMOM and The Ecumenical Order are intended and set up as global organisations, but not nearly as big as the Most Venerable Order.

Looking at the Johanniter Orde in Nederland, at the Balley of Brandenburg (Germany), at The Most Venerable Order (UK and other Commonwealth countries) and at the SMOM (global), is looking at the socalled 'recognised' or Alliance Orders of St. John. Looking at the Ecumenical Order is looking at the most important representative of the 'unrecognised' Orders of St. John. These unrecognised Orders are mostly Ecumenical, althought there are also Orders of St. John who are not recognised and at the same time are strictly Roman Catholic. [780] One might also say one is looking at Protestant, Evangelical, Anglican, Roman Catholic and Ecumenical.

Where the Alliance Orders are concerned, we will see that we are looking at mildly democratic or presbyterian (Johanniter Orde in Nederland, Balley of Brandenburg and SMOM) and autocratic or episcopalist (Most Venerable Order). The Ecumenical Order is also autocratic. Of the Alliance Orders, the Johanniter Orde in Nederland does not seem to have a real official status, while the Balley of Brandenburg has some official status. But the fons honorum of these two Orders seems questionable. The Most Venerable Order has a specific public law status and a valid fons honorum. SMOM is

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[780] For example in Belgium.

part of the Roman Catholic Church and of course recognised by the Vatican. It also has (disputed) international public law personality. But one might even question its fons honorum. Within the non Alliance Orders, only the Ecumenical Order seems to have a valid fons honorum, through H.M. King Michael I. As far as we know, it has no official other or State recognition.

XII. THE JOHANNITER ORDE IN NEDERLAND

XII.1. Johanniter Orde in Nederland an assocation under Dutch private law

The present Statutes of the 'Johanniter Orde in Nederland' (Johanniter Order in The Netherlands), as it is officially called, having its seat at The Hague, date from 02 November 2004. They are relatively modern and democratic. The statutes are contained in a Dutch notarial deed. It is a Dutch private law association. This Order was formed on 30 April 1909, at the instigation of Prince Heinrich von Mecklenburg-Schwerin, Prince Consort, as an association under Dutch law by the Prince himself, originally a German and six other Dutch nobles. Therefore not as a public law organisation. Its statutory name then was 'Commenderij Nederland der Johanniter-Orde ('Commandery Netherlands of the Johanniter-Order').

XII.2. Separate legal personality, but was a division of the Balley of Brandenburg

According to article 1 of the original Statutes of 10 July 1909, the Order was a division of the revived Balley of Brandenburg. In 1958 and presently, the statutory name reads 'Johanniter Orde in Nederland'. The fact that the name is written as 'Johanniter', instead of as 'Johannieter', shows its German origin still.

Since 1992, Dutch associations come into being by notarial deed or without notarial deed. Every association is under the obligation to register itself with the Trade Register. The act of registering is carried out by filling out a form, duly signing it and sending it to the competent Register. The Register then issues a trade register excerpt. Every association now has legal personality, but only those formed by Dutch notarial deed or whose statutes are laid down in a Dutch notarial deed, are in possession of full legal capacity, i.e. can acquire real property and can be heirs.

XII.3. The meaning of its Royal Approval

According to the statutes of 2004, the Johanniter Order was formed by Royal Decree of 31 July 1909. This is not correct, respectively creates a wrong impression. Indeed, in the past it was required to obtain Royal approval on forming an association. This was a form of supervision on the formation of an association, abolished 1976. This supervision did not have the same meaning as the present 'Royal Approval'. In the past every association was 'royal', in the sense that to be able to form it, Royal approval, i.e. approval by the Ministry of Justice, which approval was called 'Royal Approval', had

to be obtained. This approval dates in this case from 31 July 1909 and because of the system of parliamentary or constitutional monarchy, it was signed by the then Queen H.R.M. Wilhelmina together with the then Minister of Justice. A copy was sent to the Ministry of War.

Several Dutch associations carry the prefix 'Royal'. This should be based on a right to do so granted by the Queen. In the event an association calls itself 'Royal' without having received the right thereto, this is not sanctioned by any particular criminal law stipulation. However, it might be unlawful towards the grantor of the prefix in the sense of article 6:162 Dutch Civil Code, which is the general article on tort. Furthermore, it might be possible to qualify this as misleading advertising under article 6:194 BW, f. There is no criminal law sanction. If a forged document is used, this might however constitute forgery.

Relevant for the attribution of the prefix 'Royal', are the 'Richtlijnen toekenningen recht tot het voeren van het predikaat 'Koninklijk' aan ondernemingen, verenigingen en instellingen'. [781] (Guidelines with regard to the attribution of the right to carry the prefix 'Royal', to businesses, associations and institutions). Furthermore are relevant the 'Bijzondere voorwaarden welke aan een gerechtigde tot het voeren van het predikaat 'Koninklijk' worden gesteld'. [782] (Special conditions put to a person entitled to carry the prefix 'Royal). The prefix 'Royal' can only be granted by the Queen to Dutch companies and associations and is not awarded to foreign organisations. The execution of this legislation has been attributed to the 'Grootmeester van het Huis van H.M. de Koningin (the Grandmaster of the House of Her Majesty the Queen). There is an 'Algemeen Organisatiebesluit Buitenlandse Zaken 1996' (General Organisation Decree Foreign Affairs 1996). Article 3 thereof deals with those central department parts which are falling under the Secretary - General/Deputy Secretary-General. One of these department parts is the 'Directie Kabinet en Protocol' (Direction Cabinet and Protocol). The Director Cabinet and Protocol is charged with affairs regarding the Royal House, the care for diplomatic and consular representations and international organisations in The Netherlands, incoming and outgoing visits, ceremonial and decorations.

We establish that the Johanniter Order is not carrying the prefix 'Royal' and is not in possession of the relevant approval, although it might in principle be entitled thereto. This prefix can be granted to associations or businesses which in The Netherlands take the first or a primary place in their field, are of national importance and in principle exist at least already a hundred years. However, irrespective of the fulfilment of these criteria, there

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[781] Koninklijke Beschikking 15 August 1988, nr. 33.
[782] Idem, 15 August 1988, nr. 34.

might be a conflict, because the Queen would then award Royal Aproval to an organisation of which she personally is a member.

XII.4. The Johanniter Orde a new phenomenon in The Netherlands

Under article 1 of the statutes of the Order, it is said that the Order is the Protestant branch of the ancient chivalric Order of the Hospital of Saint John at Jerusalem and when it was formed, carried the name 'Commenderij Nederland der Johanniter Orde, afdeling van de 'Balije Brandenburg' der Ridderlijke Orde van het Hospitaal van Sint Jan te Jeruzalem' (Commandery Netherlands of the Johanniter Order, division of the 'Balley Brandenburg of the Chivalric Order of the Hospital of Saint John at Jerusalem). As we saw above, this is not correct. Its statutory name was 'Commenderij Nederland der Johanniter-Orde' (Commandery Netherlands of the Johanniter-Order). The Order made itself independent from this Balley after the Second World War under the name 'Order of Saint John' and this name was changed in 1958 in 'Johanniter Orde in Nederland'.

After the Reformation and except for the settlement of a claim for damages for expropriation of certain estates against the Republic of the Seven United Netherlands in 1667, for centuries nothing was heard of Knights of St. John in The Netherlands. [783] The Republic (1579-1798) deemed the founding of chivalric Orders the privilege of a ruling monarch. [784] A number of ordinances were proclaimed by the Republic in the 17th century, to prevent the use of honorary titles acquired abroad, such as squire, baron, count or prince. [785] It was only until the importation of the obviously German institution of the Balley of Brandenburg in 1909, by a German Prince-Consort, that one heard about Knights of St. John there again. The Teutonic Order, Balley of Utrecht, was popular with King Willem I. Two of his ancestors had headed this Balley as Land Commanders. We conclude that in 1909 this organisation was an entirely new dependent organisation of the Balley of Brandenburg.

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[783] Galea, *Die deutschen Ordensritter*, p. 92-98; Johanna Maria van Winter, *Sources concerning the Hospitallers of St John in the Netherlands, 14th-18th centuries, Studies in the History of Christian Thought, 80* (Leiden - Boston 1997); H. PH. Boddaert, 'A short history of the Order of St. John in the Netherlands', in Scicluna, Sir Hannibal Publius, *The Order of St John of Jerusalem and Places of Interest in Malta and Gozo* (Floriana, Malta. 1969), Appendix IV, p. 81-84; J.W. Jongedijk, *Ridderlijke orden in Nederland* (Zaltbommel, 1965); Beresteyn, *Geschiedenis der Johanniter-Orde in Nederland tot 1795*, Van Gorcum & Comp NV – Uitgevers, Assen, 1934.

[784] Bruin, *Kroon op het werk*, p. 14 and 18, referring to a hunt for elevation to a foreign chivalric Order by many rich merchants.

[785] Steenkamp, *Ridderorden*, p. 111.

It was not an independent association, but an association which was a Commandery of the Balley of Brandenburg and as such was falling under its control. As such it was not independent. That this is so, also results from article 4 of the original statutes, saying that every Knight of the Johanniter Order can join the association. This means that the assumption was that there were Knights of St. John belonging to the association and Knights of St. John not belonging to this association. The latter could join the association. We wonder where they would be originating from then, if not Dutch, because there were no Dutch Knights of St. John in The Netherlands before, unles they would be members of another Order of St. John. Interesting is also that one referred to 'the Johanniter Order'. Which one then? Or would the Johanniter Order in Germany have been meant here? This would then mean there were Protestant Dutch or other Knights who were members of the Johanniter Order in Germany, who could join the Dutch division, not the association, because they were already a member of the association.

That it was not independent also results from article 2 which inter alia said that the choice of a Commendator by the Knights Day, requires prior approval by the 'illustrious Herrenmeister' (Master of the Lords), obviously the leader of the German Balley of Brandenburg and from article 14, which said that amendments of the statutes had to be approved by the same Herrenmeister. Furthermore, the association was also not independent, because the choice of a Commendator, according to article 2, was also subject to approval by the Dutch Queen.

Because of the fact that the organisation quickly made itself independent from the Balley of Brandenburg after the Second World War, it only then became more of an independent association. It deliberately cut its relations with this Balley, for reasons known to it. Also the Teutonic Order, Balley of Utrecht, severed its ties with Germany after the Second World War. The Johanniter Order then cannot invoke anymore that it is a part of this Balley. Therefore it is not entitled to invoke the past of this Balley, assuming this Balley is an uninterrupted formal (which it is not) or material (which is rather doubtful) continuation of the old suppressed Balley. Let alone that it may be doubted the old Balley was a valid part of the original Order.

Therefore, the above statement of article 1 seems to be without any foundation. It may also be questioned whether the Commandery even had the right to make itself independent from the Balley. It originally was formed as a division thereof and thereby subject to the Balley. Then this subordinate division cut itself loose. From the point of view of the Balley, this may have been illegal. This illegality may have been healed somehow later, but in what way then and could and did this have retro-active effect or not? The statutes then entirely subject the organisation in its activities to the

general control of the Red Cross. In sofar it can also be qualified as not being independent.

XII.6. Knights and Dames

Article 2, 1990 statutes still distinguished between two divisions, a Knights convent and a Dames convent'. The use of the word 'Convent' is another word for 'divisions' and is just lip service. One may question whether it is permissible to apply such a division between males and females nowadays.[786] Each Convent had its own Chapter, headed by a Commander, to preserve the identity of each Chapter. The 2004 statutes abolished this. There was a Joint Assembly of Convent Chapters. Voting is now jointly and by absolute majority and on the basis one person, one vote. Only in case of amendment of the statutes, or dissolution, a qualified majority is required.

Article 4, paragraph 5 mentions a number of persons who can be connected to the Order to fulfil its obligations, without becoming a Knight or Dame. This can be said to correspond with the original Order which had a large body of helpers, but 'serjeants' (servants) were part of the original Order with some indirect vote and the persons mentioned here have nothing to say in the Johanniter Order, in theory. Johanniter nurses fall under separate By-laws. Other collaborators also fall under separate By-laws. Without them, the Order would be helpless. It seems that in practice, the activities of the Order are carried out by others than its Knights and Dames.

XII.7. Objects

The objects are to unite members of the Dutch nobility who are sincerely adhering to the Protestant Christian faith and to serve humanity by rendering aid to wounded, sick and other persons in need and by co-operating with measures to alleviate and mitigate human suffering. It is therefore neither a religious organisation or primarily a charity, but primarily an organisation to unite Dutch Protestant nobles and a charity of a certain nature, i.e of Dutch Protestant nobility. Article 1 of the original statutes said the objects were to nurse wounded in times of war and to form hospitals and similar institutions within the realm and to take care of the management of those institutions which were put in custody of the association. Does this not prolong war? For example, in the Great War (1914-1918), the Teutonic Order in Austria made available to the Austrian army 4 big field hospitals and 6 hospitals in the Hinterland with 15 modernised transport colonnes. Article 3 original statutes declared that to combat – note the word combat – disbelief and to

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[786] Wet gelijke behandeling mannen en vrouwen, 1980 (Stb. 1998, 86).

nurse the sick, is the main object of the Johanniter Order. The original statutes probably were more in line with the old ideals than the present one. The means thereto are then worked out in Article 4.

XII.8. Does the Johanniter Orde have recognition?

A number of Royal Decrees of the Dutch Government are mentioned, by which the Johanniter Order was recognised as an organisation allowed to render aid in times of war to wounded and sick persons or other persons in need, belonging to the armed forces of powers at war. This is not a recognition that the Order is a Dutch State Order, a House Order or a chivalric Order. [787] The only thing that looks like a recognition which we have been able to find so far is the following. Van Heerdt [788] gives an overview of the Dutch civil and military decorations and commemoration medals and of decorations which are not granted by the Government, but allegedly are recognised by it. This list was derived from 'Legerorder 1952, nr. 112; Ministeriële Beschikking van 15 april 1952' (Army Order 1952, nr. 112; Ministerial Disposition of 15 April 1952). Category IV thereof was the following:
'Decorations, crosses, medals and badges of honour granted by a private institution' and among these were mentioned 'Ridderlijke Duitse Orde, Balije van Utrecht' (Chivalric Teutonic Order, Balley of Utrecht) and 'Johanniter Orde in Nederland' (Johanniter Order in The Netherlands). SMOM was not mentioned.

However, on 15 August 2002, the 'Kanselarij der Nederlandse Orden' (Chancellery of the Dutch Decorations) issued a 'Besluit' (Decree) in which it laid down 'the order in which decorations are to be worn'. [789] This is a decree of one of the eight Dutch 'Hoge Colleges van Staat' (High Colleges of State), falling under the 'Algemene Wet bestuursrecht' (General Administrative Law Act), [790] so that its decrees are subject to formal objection. One may wonder whether this opportunity was granted and the general principles of proper administration laid down in this act, have been observed. The Decree mentions that the 'Minister of the Interior and of Affairs of the Realm' and the 'Minister of Defense' both had given their consent to the Decree. The decree distinguishes between A) State

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[787] Compare Brownlie, *Principles*, p. 64, with regard to SMOM, rejecting that such references mean more than they say.
[788] Heerdt, *Nederlandse en buitenlandse ridderorden*, p. 23-26. For a recent study on Dutch decorations, Steenkamp, *Ridderorden*.
[789] KNO/2002/1494, of 15 August 2002.
[790] Algemene wet bestuursrecht, wet van 4 juni 1992, Stb. 315.

decorations and comparable distinctions; [791] B) House decorations; C) Other distinctions for services and commemorative distinctions and D) Recognised (chivalric) Orders (among these the SMOM, the Johanniter Orde in Nederland and the Teutonic Order, Balley of Utrecht and the Order of the Golden Ark); E) Distinctions of Dutch private organisations, like the medal of the Carnegie Heroes Fund and the Four Days Cross ; F) Distinctions of international organisations such as the United Nations and G) Foreign distinctions.

We see that there was a change in policy because this decree now suddenly refers to 'E) Recognised (chivalric) Orders'. We wonder how this is possible and why this was done and what the basis in the Law for this decision is and whether it is legal or illegal, or could be called discriminatory or contrary to general principles of proper administration. [792]

One of the most fundamental elements of the 'Rechtsstaat' is the requirement of legality of the administration, the rule of law. The executive only possesses those powers which have been expressly attributed to it by the Constitution or by another law. It is an unwritten legal rule that on the one hand the citizen may legally do everything which is not forbidden by a positive legal rule, while on the other hand government bodies only possess powers insofar as these are attributed to them by or by virtue of the law, or possibly by treaty stipulations with direct effect. This legality requirement generally is valid for burdening government action, such as taxation or the imposition of prohibitions or prescriptions. Next to this, government is also acting factually, for example in constructing roads or water works. In principle, this requirement does not apply to this factual action. However, where they also involve a burdening government action, the legality requirement is absolutely applicable. [793]

The Order of the Golden Ark was instituted in 1971 by H.R.H. the late Prince Bernhard himself. It is a distinction for those who have shown excellence in the field of international nature protection. It is hard to follow that this Order is called a chivalric Order. It is hard to follow that it can be and is called a 'recognised' chivalric Order. The Decree gives an order of

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[791] 'Ridderorden' has been translated as 'State decorations'. Contrary to the Dutch terminology, one does not become a 'Ridder' (Knight), i.e. one is not dubbed, by receiving such a 'ridderorde' or State decoration. See also the terminology used sub D in the Decree (ridderlijk =chivalric). But elevation to the higher grades in the 18th century still meant a noble rank: Bruin, *Kroon op het werk*, p. 29.

[792] Article 1 Grondwet 1987 and the Algemene wet gelijke behandeling 1994, forbidding discrimination on the basis of religion, philosophy of life, political conviction, race, sex, hetero or homo sexuality, or civil status.

[793] H.D. Van Wijk, W. Konijnenbelt and R.M. van Male, *Hoofdstukken van bestuursrecht*, (Den Haag 1999), p. 69-72; P. Nicolaï (a.o.), *Bestuursrecht* (1997), p. 13. See also CoJ EU 30 May 2006 in joined cases C-317/04 and C-318/04.

how decorations are to be worn, but also adds to this, in our view incorrectly, by mentioning certain Orders as 'Recognised (chivalric) Orders'. Distinction should not have been made.

The present Dutch Constitution [794] states in article 111 – significantly moved from the Second Chapter, Van de Koning (About the King, sixth part - About the power of the King) to Chapter 5, Wetgeving en bestuur (Legislation and administration) – that 'Ridderorden', meaning 'State decorations', are instituted by law only, meaning the formal law, i.e. the statute. By analogy, but also per se, because of the rule of law, a principle accepted in The Netherlands, recognition of a chivalric Order by the State can only take place by law.

The system of Dutch State decorations was changed in 1994, to make it more democratic. The acts on both civil Orders (the Act of 29 September 1815, regarding the institution of the 'Order of the Dutch Lion' [795] and the Act of 4 April 1892, regarding the institution of the 'Order of Orange-Nassau', [796] were amended by Rijkswet of 15 April 1994. [797] The departure points of the Act can be found in Steenkamp. [798] The main theme is democratisation and public criteria in granting royal decorations, on the basis of demonstrable special services to society. Also that a decoration is not a right but a recognition by the State. This may well be a root of the wrong idea that a chivalric Order has to be recognised by a State to be legitimate. A State decoration can indeed only be awarded by a State. But a State cannot declare that a chivalric Order is recognised if there is no act on which to base this. [799] It is even doubtful if a State, even if its constitution would allow this [800] and this would not be against supranational law, can create a valid chivalric Order. The old adagium and principle 'Adel ist Adel des Fürsten und nicht des Landes' [801] emphasises the power and necessary presence of the fons honorum.

The Rijkswet specifically deals only with the Dutch decoration system. The Rijkswet also instituted the 'Kapittel voor de civiele Orden' (Chapter

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[794] Artikel 111 Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815, Stb. 44, as amended 1983: Ridderorden worden bij de wet ingesteld. (State decorations are instituted by law.)

[795] Stb. 33.

[796] Stb. 47.

[797] Rijkswet tot het wijzigen van de wetten op de Orde van de Nederlandse Leeuw en de Orde van Oranje-Nassau, Stb. 1995, 264.

[798] Steenkamp, *Ridderorden*, p. 200.

[799] Bruin, *Kroon op het werk*, p. 15, translated: 'in the constitutional system, princes could no longer dispose over these decorations in a discretionary way'.

[800] See for The Netherlands however Article 1 Grondwet (Dutch constitution) and article 90 quater Penal Code which seem to forbid this.

[801] Bruin, *Kroon op het werk*, p. 26.

for the civil Orders), to be distinguished from the 'Kanselier der Nederlandse Orden' (Chancellor of the Dutch Orders). The Act of 1815 had instituted the Chancellor of the Order of the Dutch Lion. The Act of 1892 had instituted the Chancellor of the Order of Orange-Nassau. Since 1918, it is usual that one and the same person fulfils both functions. Formally, there is no statutory room for an advisory function. The function is limited to executive tasks. [802] The function of the Chapter under the Rijkswet is to advise the Minister concerned about granting decorations in one of the civil orders, meaning the two Dutch decorations mentioned.

It cannot be that a chivalric Order can be deemed to have been recognised in a covert and unclear way and thus acquires a monopoly outside the law. [803] We conclude that 'recognition' is at best only indirect and has a weak basis.

XII.9. Links of the Johanniter Orde with the Dutch Royal House

In the event the Land Commander belongs to the Royal House, he shall be appointed for life. H.R.H. the late Prince Bernard, who was the husband of H.R.H. the Queen Mother, the late Princess Juliana, was the Land Commander and was also Bailiff Grand Cross of SMOM. The present Queen, H.R.H. Queen Beatrix, is an Honorary Land Commander and also a Dame Grand Cross of Honour and Devotion of SMOM. The Crown Prince, H.R.H. Prince Willem Alexander, is Knight of Justice of the Johanniter Order. Obviously there are close links between the Johanniter Order and the Dutch Royal House and between the Johanniter Order and SMOM. Informal Royal recognition might be said to be present due to the fact that the Queen is the Honorary Land Commander. The Queen is not the Protector. The same goes for the late H.R.H Prince Bernhard, who was the Land Commander. [804]

The Johanniter Order in The Netherlands therefore seems to have no formal Royal Protectors, but indeed has Royal Members. [805] Furthermore, even if these Royal Members have to be deemed to be Royal Protectors, the fact remains that there is no explicit official and legal recognition by the Dutch State of this Order as a chivalric Order of St. John, or as a State Order, or by the Royal House as a Royal Order. The question even is whether under the Dutch Constitution, the Queen can institute a House Order without Cabinet

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[802] Steenkamp, *Ridderorden*, p. 197.

[803] Ernst Koenigsberger, *Titel und Orden in der demokratischen Republik* (Breslau 1932), p. 73: ' der Staat darf den Besitz, bzw. Nichtbesitz von Titel und Orden – ebensowenig wie die Zugehörigkeit zu einem Stand, einer Klasse oder sozialen Schicht nicht zum Ausgangspunkt von Unterscheidungen machen'.

[804] Still registered as such in the Traderegister at The Hague on 15 February 2004.

[805] King Michael I is a member of The Ecumenical Order, but is also the Protector.

approval. [806]

XII.10. The Johanniter Order formally chivalric

Membership is confined to male and female members of Dutch nobility [807] of the Protestant- Christian faith, over 18 years of age, who are prepared to make a vow and furthermore are deemed fit because of their way of life, to obtain a place in the Order. Dutch nobility is factually and legally a closed nobility. Only in very rare cases and under very strict requirements, new or foreign nobility is admitted (inlijving=incorporation), respectively recognised (erkenning=recognition). [808] Only in the case of unanimity of the Knights of the Johanniter Order, members of foreign nobility can be admitted, among whom spouses and widows of foreign noble families. As such, the Order is in principle formally chivalric, in the sense of being only open to nobles, a requirement which only after 150 years of the formation of the original Order came into being, when the Knights took over, but was then more or less maintained. In sofar the Order is following the old noble rule, that nobility alone does not create a Knight and only a noble is eligible to become a Knight.

Some may question whether this is not discrimination. [809] Maeijer claims there is no discrimination prohibition for Dutch associations. The association would be able to require any desired quality for the admission of members. [810] Also Nieuwenhuis is of this opinion, but based on Maeijer. [811] The

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[806] Bruin, *Kroon op het werk*, p. 80 and p. 251, note 25, in connection with the 'Huisorde van Oranje'.

[807] But see article 1 Grondwet 1987 (Dutch constitution).

[808] XII.16. Some remarks about Dutch nobility.

[809] Internationale Verdrag inzake Burgerrechten en Politieke rechten, article 26, Verdrag tot Bescherming van de Rechten van de Mens en de Fundamentele Vrijheden, article 14 and Grondwet 1987 (Dutch constitution), Article 1: 'Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, politieke gezindheid, ras, geslacht, of op welke grond dan ook, is niet toegestaan.' (All those who find themselves in The Netherlands, are treated equally in equal cases. Discrimination on account of religion, political conviction, race, gender, or on whatsoever ground, is not allowed.

[810] Asser-van der Grinten-Maeijer 2-II, p. 319-320, with reference to Hof Den Haag 30 November 1995, NJ 1996, 324. Article 8 Grondwet 1987 reads: 'Het recht tot vereniging wordt erkend. Bij de wet kan dit recht worden beperkt in het belang van de openbare orde' (The right of association is recognised. This right can be limited by law in the interest of public order). See also article 1 Grondwet 1987 and articles 90 quater, 137 f and 429quater Wetboek van Strafrecht (Criminal Code). Article 90 quater reads: 'Onder discriminatie of discrimineren wordt verstaan elke vorm van onderscheid, elke uitsluiting, beperking of voorkeur, die ten doel heeft of ten gevolge kan hebben dat erkenning, het genot of de uitoefening

question which human right prevails in a concrete case is not easy to solve. There is no general rule of preference. Legislation may offer clear indications for certain categories of conflicts between human rights how to respond to the question which right has to prevail in a concrete case. But many conflicts of human rights are not specifically regulated in the legislation. In that case, the judge will have to find a solution in the light of the concrete circumstances of the case via the rules for tort. [812] The outcome of the weighing of interests is hard to predict. [813] The contention that there is no discrimination prohibition for Dutch associations has to be nuanced.

XII.11. The Land Commander

The Chapter can propose a member of the Royal House to be appointed by the Land Commander as Knight of Justice or Dame of Justice and members of the Royal House can be appointed by the Knights Day, the general assembly, as Honorary Commander of the Order. The Land Commander will in principle dub the postulant Knight or Dame. The Order only knows Knights or Dames of Justice and does not know Knights of Grace or Chaplains, Prelates or Grand Prelates, but has a Johanniter Pastor since 2004. This deviates quite substantially from the original Order. The original Order also knew Knights of Grace. In principle only after 5 years, a 'helper' can become a Knight (or Dame) of Justice and will then be appointed as such by the Land Commander and will receive the Order decoration and cloak and a Knight's diploma.

XII.12. Vows

The postulant will declare to have understood the objects and statutes of the Order and will vow that he will practise his Christian faith in the Protestant sense now, since 2004, in word and deed and will participate in effect in the

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op voet van gelijkheid van rechten van de mens en de fundamentele vrijheden op politiek, economisch, sociaal of cultureel terrein of op andere terreinen van maatschappelijk leven, wordt teniet gedaan of aangetast.' (Discrimination is understood as any form of distinction, any exclusion, limitation or preference, having as purpose or which may result therein, that recognition, the enjoyment or the exercise on the footing of equality of human rights and fundamental freedoms in the political, economic, social or cultural field or in other fields of societal life, is annulled or impaired.

811 J.H. Nieuwenhuis (red.), *Tekst & Commentaar Burgerlijk wetboek Boeken 1, 2, 3 en 5* (Deventer 2001), p. 607-608.

812 Article 6:162 Burgerlijk wetboek (Civil Code).

813 Nota 'Grondrechten in de pluriforme samenleving' of 18 May 2004; LJN: AU2091 (defendant SGP), LJN: AU2088 (defendant the State), both Rechtbank Den Haag 7 September 2005 (discrimination of women by a political party resticted to men) and LJN: AD4745 (KNVB), Rechtbank Utrecht 23 October 2001 (age discrimination).

nursing of the wounded, sick and others in need, the primary objective of the Order, as is said here (somewhat in contradiction), in co-operation with his brothers and sisters connected to the Order and to 'other organisations related to it'. The vows at any rate do not require celibacy and poverty, but do require obedience to the Order. There are theoretically no professed Knights in this Order.

Loss of membership takes place in certain cases and those who loose their membership, have to return their Order decoration and Knight's diploma and are no longer Knight or Dame. This is an issue in various Orders of St. John. Some Knights claim, that the rule is 'Once a Knight, always a Knight' and that leaving an Order of St. John does not mean giving up one's chivalric status, unless specifically renounced, but even then. These people also tenaciously cling to their decorations.

XII.13. Other organisations related to it

One wonders what 'other organisations related to it' are and what qualifies such related organisation. Would this be only those other Orders of St. John deemed legitimate by this Order, or would it be any other Order of St. John, as well as other organisations of a charitable nature? If this Order would only want to work with other Orders of St. John deemed legitimate by it, the question then is what criteria it applies thereto and which criterion would carry what weight. A difficulty thereby could be that this Order itself is without any common direct or indirect historical roots with the original Order. It has just declared itself to be a continuation of an alleged part of the alleged original Balley, from which it made itself independent. It may be chivalric, as far as two aspects of chivalry are concerned (being composed by nobles and being charitable in the old chivalric Hospitaller sense).

XII.14. The fons honorum of the Johanniter Orde

It is allegedly having fons honorum through its Land Commander. Is this a real fons honorum? According to the writers on fons honorum, the accolade has to be given on behalf or by a reigning Sovereign, or a Sovereign who has not voluntarily abdicated. H.R.H. Prince Bernhard was not such a Sovereign. 'Ad militarem honorem nullus accedat, qui non sit de genere militum', was the old rule, but even if one would hold that all prospective members of the Johanniter Orde are noble and therefore can acquire the status of 'miles', this status still has to be awarded by or on behalf of someone in possession of fons honorum. This problem does not arise with the Venerable Order. There the reigning monarch is its Sovereign Head. The problem arises also in the Balley of Brandenburg.

According to the International Commission for Orders of Chivalry, the international status of an Order of Knighthood rests in fact on the rights of Fons Honorum which, according to tradition, must belong to the Authority by which this particular Order is granted, protected or recognised. [814] This Order is not granted by The Netherlands or by Prince Bernhard, if he was the 'Authority' meant. Evidently the Order was somehow protected by Prince Bernhard, but could he be regarded as the Authority meant? This Order was not recognised expressly by The Netherlands. It was recognised by Prince Bernhard, but was he the (competent) Authority meant?

Nevertheless, the Commission classified 'The Venerable Order of St. John, founded 1909/ 1946, Source of High Protecting Authority (the historic and traditional High Protecting Authority of the Order) The Crown of The Netherlands, Grand Master H.R.H. Prince Bernhard' as a Semi-Independent Order. This was the wrong name, the right date of foundation (1909), but the wrong 'Source of High Protecting Authority', because there is no formal link with 'The Crown of The Netherlands' and the wrong title (Grand Master instead of Land Commander). This could be different with the Teutonic Order, Balley of Utrecht. On 8 August 1815, King Willem I of the Netherlands approved a law restoring the Teutonic Order in The Netherlands. Its decorations could be worn as usual. It remained dependent on the Sovereign.

Article 18 says that the Chapter can charge a Knight of the Order, under supervision by the Chancellor, with the care for the good relations with another Order originating from the ancient chivalric Order of St. John and appoint him thereto as liaison Knight. The decisive criterion seems to be to have originated from this original Order, but the Johanniter Orde does not comply therewith itself. There are Honorary Chapter Members and then there is the Knights Day, on or about 24 June, the day of St. John the Baptist. A general assembly. The original statutes knew the same organ and this organ basically had the decisive say, as presently is the case. The old statutes, like the present ones, also said that the Commendator, respectively the Land Commander holds tenure for life. This is understandable because of the fact that the organisation would otherwise be threatened with the loss

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[814] 'The recognition of Orders by States or supernational organisations which themselves do not have chivalric Orders of their own, and in whose Constitutions no provisions are made for the recognition of knightly and nobiliary institutions, cannot be accepted as constituting validation by sovereignties, since these particular sovereignties have renounced the exercise of heraldic jurisdiction. The international 'status' of an Order of Knighthood rests, in fact, on the rights of 'Fons Honorum' which, according to tradition, must belong to the Authority by which this particular Order is granted protected or recognised.' (Principle 5, supra p. 290, *IX.7. The International Commission for Orders of Chivalry*).

of its (weak) fons honorum. A propos of this fons honorum, we note that here an organisation was after the Second World War self-styled and nevertheless it claims to be a chivalric Order.

XII.15. The Chapter the managing board

The Chapter is the managing board and inter alia has to take care of good relationships with the other Orders of St. John in the Kingdom of The Netherlands or abroad, as Orders originating from the ancient chivalric Order of the Hospital of St. John. We note the plural here. The criterion here is originating from the original Order. Again, the question is what criteria are applied in this context and again we note that this is said by an Order which obviously does not have its origins in the original Order, or at least not anymore.

The Chapter is consisting at least of the Landcommander, the Co-Adjutor, the Work Master, the Work Mistress, the Chancellor, the Treasurer and a Knight without statutory function, called Chapter Knight.

According to the statutes, the Land Commander is the Chairman of the Chapter, the highest governing board of the Association. The Coadjutor is a kind of Vice-President. Work Master and Work Mistress are charged with carrying out articles 3 and 4 and will strive to involve the members in the work. This seems to underline a mere ceremonial nature of the membership. The Land Commander and the other Chapter members are elected by the Knights' Day. A Dutch Royal House Land Commander is appointed for life.

The financial means are inter alia annual subscriptions, entry fees and fees payable on promotion.

XII.16. Some remarks on Dutch nobility

Basically, these are the statutes of the Johanniter Order in The Netherlands. We have seen it is questionable whether it is independent, due to close ties with the Dutch Royal House and express subordination to the Red Cross. It has no or a weak fons honorum. It is named by the Government, for certain specific purposes, but is not a State Order and not an Order of the Royal House. It is composed by nobles, although many of them were created by King Willem I, who, in need of new nobility, appointed or confirmed a lot of new nobility between 1814 and 1825, which also meant a substantial flow of income.

There are presently about 11.000 noble persons in the Netherlands, belonging to 324 families. About 184 (57 %) of these families, belonging to the bourgeois patriciate, were confirmed as nobles by Willem I between

1814 and 1825. [815] These 184 families received the predicate 'Jonkheer' (abbreviated 'Jhr'), the lowest noble title in The Netherlands. The original number of these families was around 544. There are presently also about 7 'Ridders' (Knights, originally 19 and all these knighthoods are based on foreign nobility patents), 103 Barons, 27 Counts, one Marquis of Heusden, Lord Clancarty, one Duchess, the Queen, who is also Duchess of Limburg and a number of Princes, among whom the Duke of Wellington, who is also Prince of Waterloo and Princesses. We may consider Dutch nobility to be an extremely closed system. [816]

The Dutch Nobility Act says that incorporation into Dutch nobility (granting Dutch nobility to a family who are noble abroad) can only take place of those persons, whose family belongs to the legally recognised nobility of a State having (since 1994, it may not be abolished) a 'nobility statute' comparable to that of The Netherlands. The nobility statute is deemed to be the whole of rules by which one acquires, passes on and possibly looses nobility. The nobility statute of Great Britain is not deemed comparable. The institution of life-peers was rejected in The Netherlands in 1814. To neutralise a potentially dangerous elected representation of the people, reinforcement of Royal superior power was preferred to aristocratical privilegiation. [817] Decoration and nobilitation in The Netherlands became separated. [818]

Incorporation requests could be made prior to 1 August 1999, by any Dutch person or by any other interested party, provided together with a naturalisation request or using an option to Dutch citizenship. Recognition of nobility can happen if a person can prove direct descendency (even, since 1994, illegitimate or natural), but only in the male line, of a Dutch family, who were noble before 1795, while adoption which never happens, is also possible since 1994. Elevation normally cannot take place since 21 November 1953. The 'Hoge Raad van Adel' (High Council of Nobility) is advising the Minister. [819] One can hardly call this a system that provides

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[815] Willem I acquired his sovereignty of King through assignment 'on behalf of the Dutch people', by Kemper and Fannius Scholten, without a popular vote. Röell therefore questioned who had authorised Kemper and Scholten. Tamse, *Monarchie*, p. 21-22.

[816] Keesom, 'Hoofdlijnen van het Nederlands adelsrecht sedert het ontstaan van het koninkrijk' (*Maandblad van het Koninklijk Nederlandsch Genootschap voor Geslacht- en Wapenkunde*, jaargang CIX, nr. 7, juli 1992);
R.P.N. Coenraad, *Het Nederlandse adelsrecht, een staatsrechtelijk overzicht van het vigerende adelsrecht en een commentaar op de Wet op de adeldom met betrekking tot het gelijkheidsbeginsel*, doctoral thesis (Tilburg, 2003)].

[817] Bruin, *Kroon op het werk*, p. 33.

[818] Bruin, ibidem, p. 38.

[819] The Hoge Raad van Adel, The Hague, was instituted by Royal Decree (KB) of 24

adequate social mobility. On the contrary, this system creates a lasting privileged position, based on birth, for those who 'are in', [820] although many of their ancestors bought their title in the 19th century. Bruin refers to a democratisation development which took place under Napoleon I in France in connection with the Légion d'Honneur. Those taken up in the ranks of the Legion as 'chevalier''would validly become part of the Imperial nobility if disposing over a high enough income. This nobilitation was taken over by King Louis XVIII, when he adopted the Legion. [821] Non-Alliance Orders of St. John might be deemed subsconscious democratisation attempts, particularly in countries where upward mobilisation between the social classes is not working smoothly. This requires further sociological study. Dronkers inter alia published on sociological aspects of Dutch nobility and the proven 'constant noble advantage'. [822]

XII.17. The combat aspect of the Johanniter Orde

The Johanniter Orde is charitable, but nothing relates to physical combat. It has no professed Knights, as the original Order had. It has vows, but not as the original Order. It has some Hospitaller traditions. It is not organised as the original Order or as a division thereof. But most importantly, it has no direct or indirect roots, or only very remotely, from before the Reformation, with the original Order. It seems to be just an invention, hooking itself on to

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June 1814, nr. 10 and functions under the 'Wet op de adeldom' (Act on nobility), of 1 August 1994, Stb. 360.

820 Dronkers, *Maatschappelijke relevantie.* In this context, it is interesting to note that under Dutch law, nobility does not entail any political rights or freedoms since 1848. This circumstance was used by the Ministry of the Interior in the case of Taets van Amerongen vs. the Minister of the Interior, Afd. Bestuursrechtspraak RvS, 21 February 1995 (AB 1996/222), as an argument to state that it is justified to maintain nobility as an historical institute and to also state that the fact that the noble title only passes along the male line, is not an unjustified distinction between man and woman. The 'Afd. bestuursrechtspraak RvS' [Dep. Administrative Adjudication, a department of the 'Raad van State' (Council of State)], followed this reasoning. Nobility is well organised. European nobility associations are assembled in the 'Commission d' Information et de Liaison des Associations Nobles d' Europe' CILANE).

821 Bruin, *Kroon op het werk*, p. 30.

822 J. Dronkers and H. Schijf, 'Marriages between nobility and high bourgeoisie as a way to maintain their elite positions in modern Dutch society (paper presented at the session of the ESA network "Biographical perspectives on European societies" of the 6th Conference of the European Sociological Association, Lisbon, Portugal, 18-20 September 2003) and H. Schijf, J. Dronkers and J. Van den Broeke-George, 'The transmission of elite positions within Dutch noble and high bourgeois families during the 20th century", paper presented at the XV World Congress of Sociology (Brisbane, 7-13 July 2002). Bruin, *Kroon op het werk*, p. 272, nt. 19, does not exclude that heroic behaviour is dependent on class or social status.

the reputation of the original Order and to foreign (German) traditions. These were alien to The Netherlands for hundreds of years. It is clothed in a veil of respectability by its association with the Dutch Royal House and with the International Alliance of Orders of St. John.

XII.18. How there can be two equallly legitimate Princes of Orange

Finally, we would like to mention an interesting story here, which is entirely true but not well known. The reason it is mentioned here is to show that even those who are supposed to enjoy the highest titles, which are being used for that reason, may have titles which are shared with others.

Frederik Hendrik, Prince of Orange, Stadtholder of the Netherlands, granted a letter of marque [823] as Prince of Orange, a sovereign prince, [824] to the VOC captain Piet Hein. In 1628, Hein took a Spanish Silver Fleet, off the Cuban coast. Frederik received quite a lot of money. The booty was around 7 million guilders which was enormous. From this booty, Hein received 7.000 guilders and Frederik Hendrik 700.000 guilders, because he had issued the required document as Prince of Orange. The VOC was able to distribute 50 % dividend. [825]

Frederik Hendrik was now addressed by the King of France as 'Altesse', instead of as 'Excellence'. His son Willem II was his sole heir, but with a fideicommissary stipulation that in the event his stirps would die out, Frederik's daughter Louise Henriette or her legitimate descendants would be entitled to Frederik's inheritance. When the son of Willem II, William III, King of England, fell from his horse and died without child, the stirps of Willem II had become extinct. King William III had designated Johan Willem Friso of Nassau-Dietz as his heir. He was a grandson of Frederik's younger daughter Albertine Agnes. This will of William III did however not cover the vast estate originating from Frederik Hendrik. This estate fell to the son of Louise Henriette, being Friedrich Wilhelm van Hohenzollern, Elector of Brandenburg and also King Friedrich I of Prussia. The King wanted to take possession and partly did, but trials instituted by the Frisian branch followed. The fight lasted thirty years. A number of assets were then awarded to the King by the Estates General and the status quo was confirmed in 1732. [826]In 1754, King Friedrich II ceded his Dutch estate to the Frisian branch against a lump sum payment of 700.000 guilders. The title

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[823] A written authority granted to a private person by a government to seize the subjects of a foreign state or their goods, or a license granted to a private person to fit out an armed ship to plunder the enemy.

[824] Steenkamp, *Ridderorden*, p. 93.

[825] Van Winden, *Rijk zijn en blijven* (Amsterdam 2000), p. 41.

[826] Tractaat van Partage.

'Prince of Orange' legally remained with the Prussian Royal House. The King of Prussia declared not to resist the simultaneous use by the Frisian branch of this title. [827] Presently there are two Princes of Orange, i.e. His Imperial Highness Georg Friedrich, Prince of Prussia and the Crown Prince of The Netherlands, His Royal Highness Prince Willem Alexander, a descendant of the Frisian branch. In The Netherlands, the title is reserved to the Crown Prince only and not to be used by his brothers. If there can be two persons carrying the same title of Prince of Orange, there can also be various Orders with the same or a similar name, it would seem. The Princedom Orange [828] was already lost in 1660. The town became an independent countship in the 11th century. It later passed to the House of Nassau. King Louis XIV captured the town in 1660. Orange was then formally ceded to France in 1713 by the Treaty of Utrecht. The loss of territory does not prevent the continued use of the title derived from it.

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[827] L. van Heijningen, 'Het trouwverlaet' (*Advocatenblad 21*, 17 november 2000), p. 905-906. See also G.J. Rive, *Schets der staatkundige betrekkingen tusschen de Republiek der Vereenigde Nederlanden en het Koninkrijk Pruissen, tot het huwelijk van Prins Willem V (1701–1767)*, Amsterdam 1873.

[828] Vaucluse département, Provence-Alpes-Côte d'Azur, north of Avignon.

XIII. THE BALLEY OF BRANDENBURG

XIII.1. Introduction

The Balley of Brandenburg was repeatedly mentioned above. [829] They were suppressed by their own Sovereign, King Friedrich Wilhelm III. By Edict of 30 October 1810, all ecclesiastical property was secularised. Then by Decree of 23 January 1811, all their property was confiscated and they were dissolved. Nevertheless their decorations were still used. On 23 May 1812, these became official State decorations. Then the 'Romantic on the throne', King Friedrich Wilhelm IV, constituted the 'Balley Brandenburg des Ritterlichen Ordens St. Johannis vom Spital zu Jerusalem', by Cabinet Order of 15 October 1852. We already referred to 1848, the 'Year of Revolution', all over Europe, starting in Sicily and the reactionary character of the movement of reconstitution which then followed. Interesting in this respect the vow of the Knight that he would fight anywhere a good and chivalric fight against the enemies of Christ and the destroyers of divine and human order and to the best of his ability favour and expand the Christian care for the sick. But then the organisation took off, inter alia because of hooking on to the original and strong Hospitaller charitable ideals of the 11th century and its charitable activities.

The Second World War meant the severance of the Balley with its previous branches in The Netherlands and in Sweden. Only in 1949, the Balley could re-start. Since 1918, Germany had already stopped granting nobility and since 1948 it is not a pre-requisite of membership anymore that one is noble ('nobilis'). They use precisely the same criteria for membership as The Ecumenical Order in its self portrayal, i.e. character and spiritual potency. As there are still enough Princes in Germany, it is obviously not difficult to find (alleged) fons honorum. Various important charities were started by the Balley in 1952, an ambulance service 'Johanniter-Unfall-Hilfe' and a generally charitably active organisation, the 'Johanniter-Hilfsgemeinschaft ', as well as the 'Johanniter-Schwesterschaft', an organisation of nurses. The Balley is concentrating on hospitals and hospital work.

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[829] Supra p. 247, *VIII.6. Dropping nobility as a criterion for membership after1945*. For a detailed, flattering description of the Balley, refer inter alia to Klimek, *Im Zeichen des Kreuzes*, p. 29-41.

XII.2. The main recognition point

Here, the main recognition point seems to be that the 'Bundespräsident' took a decision on 15 June 1959 to allow the attribution of the Balley decorations to outsiders. [830] This would then be an officially approved decoration of a private organisation. The law in Germany is different from The Netherlands, in that it is evidently not allowed under German Law to wear decorations which are not officially approved by the German State. [831] How this may be, officially approved decorations carry more clout anyway and therefore this explicit approval was deemed necessary by the Balley. In theory, other similar organisations might apply for the same approval. According to a 'Schutzbrief' of the German 'Evangelische Kirche' of 2 May 1947, the Balley is also part ('Bestandteil') of this Church. But is this Church something other than a private law organisation? However, being (also) an ecclesiastical community, is relevant in the discussion about criteria for the legitimacy of an Order of St. John.

XIII.3. The Satzung of 27 June 1993

The latest version of the Satzung or Statutes of the Balley, was laid down in a document of 27 June 1993, which is refreshingly succinct and clear. We will discuss the most important clauses.

Paragraph 1, Vorspruch, contains the usual historical oratio pro domo.

Paragraph 2, Gliederung, Sitz, says there are 'Genossenschaften' and 'Kommenden' (Societies and Commanderies) and as such mentions Genossenschaften in Germany, Finland, France, Austria, Switzerland and Hungary. The seat of the Balley still is in Bonn.

Paragraph 3, Aufgabe des Ordens, refers only to its charitable purposes and not to any ulterior motive or only covertly.

Paragraph 4, Gemeinnützigkeit, expressly renounces any other than charitable purposes and any self interest.

Paragraph 5, Ritterpflichten, inter alia lays down who can belong to the Balley. This can only be he, who knows himself bound to the Christian knightly tradition and is willing to conduct his life in accordance with the Order Rule. The second part of this pararagraph inter alia says, he shall faithfully adhere to the Confession of the Evangelical Church. It has already been mentioned above that since a resolution of 1948, the requirement of

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[830] 'Zweiter Erlass über die Genehmigung der Stiftung und Verleihung von Orden und Ehrenzeichen', vom 15 Juni 1959 (BGBI. 293).

[831] *Gesetz über Titel,Orden und Ehrenzeichen*, vom 26. Juli 1957 (BGBI. I S. 844, *Bundesgesetzes gegen das unbefugte Tragen von Uniformen, Orden und Ehrenzeichen*).

nobility has been given up. [832] In the third paragraph the familiar old obedience rule is popping up again.

Paragraphs 6 through 14 lay down the rules for the internal organisation (§ 6 and § 7 dealing with Der Herrenmeister; § 8 with the Ordensstatthalter; § 9 and § 10 with the regierenden Kommendatoren; § 11 with the Ehrenkommendatoren; § 12 with the Ehrenmitglieder; § 13 with the Ordenshauptmann and § 14 with the Ordensregierung. This boils down to elections by indirect vote of a Herrenmeister and his Lieutenant, the Ordensstatthalter, by the 'erweitertem Kapitel'. This expanded Chapter is governed by § 21, Das erweiterte Kapitel.

The normal Kapitel is governed by §19, Das Kapitel. This normal Kapitel is the supreme organ of the Balley and is composed by Herrenmeister, Ordensstatthalter, regierenden Kommendatoren, Ordenshauptmann and the members of the Ordensregierung. Its decisions are valid upon confirmation by the Herrenmeister. The normal Kapitel convenes twice a year.

The expanded Kapitel is the normal Kapitel expanded with the formerly governing Kommendatoren and with the Ehrenkommendatoren. The expanded Kapitel convenes once a year. Votes are oral, except if the Herrenmeister requires otherwise.

The Herrenmeister (under Paragraph 7) appoints the Kommendatoren der Genossenschaften, the Ehrenkommendatoren and the Ehrenmitglieder, the Ordenshauptmann, the subaltern members of the Ordensregierung, the Ritter (among whom the Ehrenritter) and the p.r. persons. The Herrenmeister needs the approval thereto from the normal Kapitel. The expanded Kapitel (under Paragraph 21) appoints the Ordensstatthalter and the Ordenskanzler. It also decides on any amendments of the statutes and on a possible dissolution.

Paragraph 15, is dealing with the Ritter. Paragrah 15.2 says that someone, who is willing to fulfil the obligations laid down in the Order Rule and the statutes, can become an Ehrenritter, if at least 25 years old, with approval from their Kapitel. Paragrah 15.1 says that an Ehrenritter can become a Rechtsritter, if being at least forty years old and having been an Ehrenritter for at least seven years, with approval from their Konvent. The Rechtsritter receives the accolade and the Rechtsritterbrief, the Ehrenritter receives the Ehrenritterbrief.

We draw special attention to Paragraph 29, Ehrenordnung and Paragraph 30, Ausscheiden aus dem Orden.

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[832] *Beschluss*, 14 April 1948.

XIV. THE MOST VENERABLE ORDER

XIV.1. Introduction

Riley-Smith wrote 'Hospitallers, The History of the Order of St. John', with nice pictures. [833] Without wanting to comment on the four preceding chapters, we note that chapter 5 contains a reference to 'The abortive grand priory of Russia (which) has however, continued to haunt the world of orders of St. John, because there are now nearly twenty unrecognized orders of St. John claiming desc ent from it.' [834] We feel it is only natural this happened, because the Russian Grand Priories were legally formed, never formally suppressed until 1917 and the Russian Order appears to have been reconstituted in the USA from about 1890 on.

Riley-Smith describes the coming into being of The Most Venerable Order. This Order came into being because three 'honourable people', i.e. the Duke of Manchester, Sir Edmund Lechmere and Sir John Furley in the 1860's 'turned to work that truly gave them a place in the country's life and rewarded them with royal recognition'. [835] They bought the old priory gatehouse in Clerkenwell and were therefore able to occupy part of the former headquarters of the medieval English Hospitallers. They then hooked on further to the original Order, which was suppressed under Henry VIII and was totally non extant since then in the United Kingdom. They styled themselves 'Knights of St. John', but were a private organisation. Perhaps they could even have been qualified at the time as 'bogus', but at any rate they did good charitable work. Should they have been stopped then, as they were not recognised?

They had no historical ties to the original Order, except they occupied part of the former London headquarters. But it will come as no surprise that others claim because it was revived by Mary Tudor under Letters Patent of 2 April 1557 and never subsequently abolished and titular grand priors were appointed abroad from the 1560s till 1815, it always continued uninterruptedly till the present day. [836]

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[833] Riley-Smith, *Hospitallers.*
[834] Riley-Smith, ibidem, p. 125.
[835] Riley-Smith, ibidem, p. 130.
[836] E. J. King, *The Grand Priory of the Hospital of St John of Jerusalem in England* (London, 1924); Edwin King, *The Knights of St John in the British Realm* (London, 1967);

XIV.2. St. John Ambulance

In 1869, they were represented at an international conference of Red Cross societies in Berlin. In 1872/1873, certain ambulance services were set up and in 1874 an Ambulance department was formed at their headquarters. Voids will be filled and they were among the first to step in to fill this void. In 1877, a St. John Ambulance association was formed. A St. John Ambulance Brigade was formed. This had about 146.000 members in 1965. They started an Ophtalmic Hospital in 1882 in Jerusalem.
The Prince of Wales became involved. Where there is such a huge charitable movement, it is only natural that Royalty is putting itself or is put at its head. The Princess of Wales became a Lady of Justice in 1876. They then received a 'Royal Charter of Incorporation' on 14 May 1888. According to Riley-Smith, this means that the Most Venerable Order is 'an Order of the British Crown, with the Queen as its Sovereign head and the Prince of Wales as its Grand Prior.' [837] Perhaps the phrase should be 'with the Queen, a Sovereign, as its head, etc.'.

At any rate the Most Venerable Order thereby acquired fons honorum since that date. But we may establish that both the Queen and this until then self-styled Order itself just hooked on to the original Order and there are no real direct roots with the original Order, except there were in the Middle Ages also English priories and an English 'Tongue' of St. John.

XIV.3. Global presence

In 1939, the St. John Brigade had about 200.000 personnel. Presently, St. John Ambulance in England has about 60.000 members. They are grouped in 3.000 divisions in 46 counties. St. John Ambulance has over 200.000 volunteers in about 40 countries. The Most Venerable Order itself has 30.000 members worldwide. Since 1907, a Supplemental Royal Charter allowed the establishment of overseas priories. Later also of Commanderies, which could grow into Priories. In that sense the Most Venerable Order is a global or transnational Order, like SMOM and like The Ecumenical Order, but supposed to still be an Order of chivalry of the British Crown.

XIV.4. What is The Most Venerable Order doing itself?

Riley-Smith says it is often hard for the members of the public to understand what the Most Venerable Order itself is doing, next to St. John Ambulance. The trust 'The Most Venerable Order' seems to have a total income of GBP

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[837] Riley-Smith, *Hospitallers*, p. 139.

3.28 m. and administrative costs as a percentage of expenditure of 12, 4 % and 167 employed. Total funds are around GBP 6,11 m. and total investments around GBP 4.71 m. The St John Ambulance, also known as 'Priory of England & Islands of The Most Ven. Order of Hosp of St John; St John Ophthalmic Hospital', is listed in the 'Top 500 Charities by Income'. It seems to have a total income of GBP 56,8 m. and administrative costs as a percentage of total expenditure of 0,88 %; fund raising costs as percentage of total expenditure of 4 % and as percentage of voluntary income of 19,2 %. It has around 1.174 employed. Total funds are around GBP 127 m. and total investments around GBP 29.4 m.

The answer according to him, is that the Order is responsible when something goes wrong and not the foundations and 'One of the main functions of all the recognised orders of St. John is to preserve and publicize the traditions which make the work of their foundations distinctive.' [838] One can of course wonder whether the work of their foundations is so distinctive indeed and note the emphasis on the word 'recognised'. The psychological aspect connected with high placed persons backing some venture or organisation, is important and has a strong appeal. [839]

XIV.5. No Chapter General anymore

In 1999, the Most Venerable Order was reconstituted to give parity to the overseas priories. An interesting feature is the abolishment of the Chapter General which was the backbone of the Statutes / the Constitution of the original Order, at least formally. The Most Venerable Order's central government now seems to be a Grand Council, which is constituted by all Grand Priors or Chancellors of each of its priories in the world.

XIV.6. The Most Venerable Order sharing in the traditions of St. John

We have already discussed the International Alliance of Orders of St. John. It is constituted by the SMOM and by the four non-Catholic Alliance Orders (The Most Venerable Order, The Balley of Brandenburg, The Johanniter Orde in Nederland, and the Johanniter Orden i Sverige). Riley-Smith says the non-Catholic Orders mentioned are 'Christian lay fraternities and orders of chivalry sharing in the traditions of the Order of Malta and legitimized by the recognition of competent authorities, the federal parliament of Germany and the crowns of Sweden, the Netherlands and the United Kingdom.' There

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[838] Riley-Smith, *Hospitallers*, p.149.

[839] A.M. Donner in Tamse, *Monarchie*, p. 218-219, about the effect of a visit by the Dutch Queen, compared to a visit by a Minister.

are other Orders of St. John and all are sharing in the traditions of the original Order and some Orders of St. John are perhaps equally or more entitled to do so than the Johanniter Orde in Nederland or the Most Venerable Order, but may not have fons honorum, or may have such fons honorum, like The Ecumenical Order. To be legitimized as a (chivalric per se) Order of St. John only by the alleged recognition of a parliament or a crowned head, is not enough, according to many. There are more criteria to be fulfilled. A monopoly cannot be claimed.

XIV.7. The membership

Also in the Most Venerable Order, we see a male and female section, like in the Johanniter Orde in Nederland. The American Order did not and The Ecumenical Order does not know such a split. On the other hand, the Most Venerable Order probably cannot be deemed to be purely Anglican, because they seem to also take up persons who belong to a 'Christian' confession. However, they stay national in this sense that they only take up these persons if being British subjects or subjects of Commonwealth nations. But it even is possible, so it seems, to take up as associate members persons, who are subjects of other States and British subjects of a non-Christian confession. They are distinguished by a different Order decoration, but also by not being able to participate in the government of the Order, which might be questioned. This organisation is not an ecclesiastical community.

XIV.8. The Royal Charters

There have been a number of Royal Charters. These are the Charter of 1888 and then the five Supplemental Charters of 1907; 1926; 1936, 1955 and 1974. An Order in Council made on 21 July 1999, amended the Charter of 1974 and the Statutes. The amendment to the Statutes took effect from 24 October 1999. The Charters refer to the Monarch as being also 'Defender of the Faith'. Since King Henry VIII, the Monarch is the temporal as well as the spiritual ruler. The Anglican Church is the State Church. Inter alia in the (amended) Charter of 1974, the organisation is provided with legal personality (Clause 2) and full legal capacity (Clause 6). Modern developments prompted to take up rules for investment of monies and funds (Clause 7) and about indemnity insurance (Clause 7A). Clause 10 provides for the possibility of revocation, amendment or adding to the Charter of 1955 or the Supplemental Charter of 1974 by the Order itself, subject to a Resolution passed by a three quarters majority of the members present and entitled to vote at a meeting of the Grand Council, specially summoned for this purpose and subject to approval by the Monarch.

We conclude that this Order is officially recognised in letters Patent [840] and even derives its legal personality from the Charter. This seems to be a big difference with the Johaniter Orde in Nederland and the Balley of Brandenburg. Officially recognised of the International Alliance Orders, are in our view only The Most Venerable Order and SMOM. Because the regime of The Most Venerable Order is laid down in a special public law document, we deem there is more leeway for a special regime than otherwise would be the case, unless there would be a discrepancy with a higher national or international law.

XIV.9. The Statutes of The Most Venerable Order

The Statutes consist of five parts, Part One, Introductory; Part Two, The Organisation of Grand Priory; Part Three, Members; Part Four, Arms, Insignia, etc.; Part Five, Transitional Provisions.

Statutes, Part One, Introductory, Clause 3, Mottoes of the Order, provides the mottoes, which are 'Pro Fide' and 'Pro Utilitate'. There is a great similarity here with the mottoes of The Ecumenical Order and of SMOM.

Clause 4, Objects and Purposes of the Order, provides a long list of objects, the first of which is strenghtening the Faith, formulated indirectly. We note subclause d) in which it is said that the Order can award medals, etc., for special services in the cause of humanity, which seems to be a useful p.r. tool. Subclauses d) and f) stipulate the maintenance, etc. of the St John Ophthalmic Hospital in Jerusalem and of the St. John Ambulance. Subclause I refers to the maintenance of contact and collaboration with 'kindred Orders and bodies'.

Part Two, The Organisation of Grand Priory, Clause 5, The Sovereign Head, paragraph 1, says that the Queen, her heirs and successors shall be the Sovereign Head of the Order. Paragraph 2 says the Sovereign Head has absolute discretion to make appointments to and within the Order.
Clause 6, The Grand Prior, says he shall be appointed after consultation with the Grand Prior's Advisory Council.

Clause 7, Powers of the Grand Prior, attributes to him 'the supreme direction and administrative and executive control over the Order, its establishments, its other subordinated organisations, and its Members'. He can veto everything anywhere. Reading clause 7, one will inevitably have to conclude that the Grand Prior has discretionary powers.

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[840] Letters Patent are an open letter issued by a Monarch or a Government, granting a right, monopoly, title, or status to someone, or some entity, such as a corporation. Letters Patent can be used for the granting of arms or for the creation of corporations by a monarch.

Clause 8, The Great Officers of the Order, who are ex officio Bailiffs Grand Cross, lists the following: 1) the Lord Prior of St. John, the Lieutenant and Deputy of the Grand Prior; 2) the Prelate, an anglican bishop, adviser to the Grand Prior in ecclesiastical matters; 3) the Deputy Lord Prior, the deputy of the Lord Prior and 4) the Sub - Prior, with special interest in Independent Commanderies and National Councils. According to subclause 2, these Offices may be changed, abolished, etc., by the Grand Prior.

Clause 9, The Principal Officers of the Order, makes clear there is a distinction between them and the Great Officers, the Principal Officers being 1) the Secretary General; 2) the Hospitaller and 3) the Genealogist or other Honorary Officers. Their duties and responsibilities are prescribed by Regulations.

Clause 13, The Grand Council, paragraph 1, says it shall be the governing body of the Order, but it has not only deliberative powers. See paragraph 2 and note clause h) about the Honours and Awards Committee (see also clause 16), which may better secure objectivity.

Clause 14, Membership of the Grand Council, lays down that the members are ex officio the Great Officers and the Prior, or (if he so appoints) the Chancellor of each Priory and such number of appointed members (of the Order) as the Grand Prior shall determine and select (paragraph 2) from time to time.

Clause 18, Establishments of the Order, distinguishes between Distinct Establishments, i.e. Priories and Commanderies (which according to Clause 20, Commanderies, can be dependent or independent Commanderies) and Dependent Establishments. A Priory shal be governed by a Prior and a Priory Chapter and a Commandery by a Knight or Dame and a Commandery Chapter. The Grand Prior shall have power to suspend or to dissolve a Priory or any of its Dependent Establishments.

Clause 21, Grand Prior's Advisory Council, says that this Council has an advisory function and is constituted by ex officio and appointed members. The ex offcio members are the members of the Grand Council and the appointed members, no more than fifty, are appointed by the Grand Prior on the recommendation of Priors.

Clause 22, National St. John Councils, says that a National St. John Council may be properly constituted in any country not being within the territory of an Establishment. Here again, the Grand Prior has a tight control over these Councils (See inter alia paragraph 5).

Clause 24, Foundations, says inter alia that foundations shall be under the entire control of the Grand Prior and the Grand Council.

Remaining clauses of this Part are Clause 25, Visitations, Clause 26, Allocation of Property, Clause 27, Transfers of Property to Establishments, Clause 28, Liabilities, Clause 29, Indemnity Insurance, Clause 30, Financial

Contributions by Establishments, and Clause 31, The Order's Powers of Investment.

Part Three, Members, Clause 32, Grades of the Order, distinguishes in paragraph 2 between Grades I through VI and these grades are, in descending order: Grade I, Baliffs or Dames Grand Cross (G.C.St.J); Grade II, Knights or Dames of Justice or Grace (K.St.J); Grade III a, Chaplains (Ch. St.J) and Grade III b, Commanders (Brothers or Sisters) (C.St.J); Grade IV, Officers (Brothers or Sisters) (O.St.J); Grade V, Serving Brothers or Sisters (S.B.St.J) or (S.S.St.J) (and Grade VI, Esquires (Esq.St.J). According to paragraph 2, these grades do not confer any rank, style, title, dignity, appellation or social precedence.

Clause 33, Qualificatons for Membership of the Order, lays down three requirements, i.e., the 'Declaration' of Clause 34, performed or is willing to perform good services and undertaken to comply with the Royal Charter, Statutes, Regulations and Rules of the Order.

Clause 34, Declaration before Admission to the Order, (some kind of vow), shows the importance of faithfulness and obedience to the Order and its Sovereign Head, but contains a reservation for national obligations if not a UK national. [841] Clause 35, Modified Declarations, leaves room for modified declarations.

Clause 37, Complements and Quotas of the various Grades, says there is no maximum complement for Grades IV and V (Grade IV, Officers, Brothers or Sisters; Grade V, Serving Brothers or Sisters), contrary to the other Grades, except that nothing is said about Grade VI (Esquires), but there is an annual quota for admission or promotion to Grades IV and V.

Clause 38, Appintment to and Promotion to the Order, inter alia says that except for a member of the British Royal Family, all admissions and promotions are sanctioned by the Sovereign Head after recommendation by the Grand Council and approval by the Grand Prior. Admissions shall normally be in Grade V (Serving Brothers or Sisters). A Prior shall automatically become a Knight of Justice, if he was a Knight of Grace. The Grand Prior may at his discretion 'for good cause motu proprio' sanction the reclassification of someone who was of Grace, into someone who is of Justice. Nobody else shall be of Justice on promotion or appointment to Grade II (Knights or Dames of Justice or Grace), unless he is entitled to bear arms.

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[841] 'I do solemnly declare that I will be faithful and obedient to The Order of St. John and its Sovereign Head as far as it is consistent with my duty to my Sovereign/President and to my country; that I will do everything in my power to uphold its dignity and support its charitable works; and that I will endeavour always to uphold the aims of this Christian Order and to conduct myself as a person of honour'.

Clause 39, Personal Esquires and Clause 40, Donats, show where the ‘Nachwuchs’ is coming from, i.e. from Esquires and Donats, while Esquires are a member of the order and Donats not, but Donats will be listed on the List of Donats of the Order.

Clause 43, Termination of Membership, provides the possibility for the Member to resign and for the Grand Prior to terminate the membership, on the recommendation of the Grand Council and where appropriate also of the Priory Chapter concerned and with the sanction of the Sovereign Head and to re-admit such person under the same conditions. Paragraph 4 say that from the date any person ceases to be a member, he shall lose any right to wear or use the Insignia, Augmentation of Arms and any other distinction or privilege of the Order.

Part Four, Arms, Insignia, etc. and Part Five, Transitional Provisions, are very detailed and rather technical and provide no new insight.

XIV.10. The Regulations

The Regulations consist of nine Parts, with Appendices. These parts are Part One, Introductory; Part Two, Duties and Responsibilities of Great Officers; Part Three, Duties and Responsibilities of Principal and Other Officers; Part Four, The Grand Council; Part Five, The Grand Prior's Advisory Council; Part Six, Honours and Awards; Part Seven, Arms, Badge, Great Banner, Insignia, Robes and Medals; Part Eight, Administrative Provisions and Part Nine, General Provisons.

As these are very detailed and rather technical and provide no new insight, we will not discuss these regulations. However, we draw attention to Part Six, Honours and Awards and particularly Clause 29, Forfeiture, which deals with the Honours and Awards Committee and says this Committee shall also be entitled to consider whether any person should forfeit membership of the Order.

XV. THE SOVEREIGN MILITARY ORDER OF MALTA

XV.1. The nature of SMOM

Sire [842] holds that this Papal Order presently is 1) a religious Order of the Roman Catholic Church, with professed members; 2) is still a military or chivalric Order and 3) is an autonomous Order of chivalry and that this Papal Order always was such since the 12th century.

Contention 1 above is correct, since 1962 at least, or maybe already before that, in the 19th century already, when the Papal Order was formed by the appointment of a Grandmaster by the Pope, in 1879. Formally, the Papal Order is an Order of the Roman Catholic Church. [843]

But how many Professed Members, Knights or Chaplains, are needed to be able to materially speak of a religious Order of the Roman Catholic Church and how many are there in reality and how many live up to their vows? How many lead a conventual life? There are presently only about 40 Professed Members, while only about 9 lead a conventual life and there are about 10.000 members in total, so these numbers are negligible in relation to the total. Cox says the great majority of the membership are laymen and says they resemble the lay brothers of a monastery, or perhaps rather the 'corrodians', who obtained lodgings in the monastery in return for the payment of a suitable sum, but still holds SMOM is a religious Order of the Roman Catholic Church. [844] For the time being, we assume that 1 is only formally correct. Furthermore, the original Order, as it existed before the Surrender of Malta, never was a real religious Order of the Roman Catholic Church. The Papal Order wants it to be so, but it was not. At best, it was a quasi-religious and quasi-monastic Order, living in a sort of symbiosis with the Roman Catholic Church.

We have already demonstrated it could well be argued the original Order died as such after the Surrender of Malta or even earlier. Because there was no real resistance then and Malta was surrendered in shame, as most feel and felt then, [845] it then and also before, also lost the essence of its chivalric character. The chivalric character primarily consists of the combat element. Surely nobody can be called a Knight in the old and only correct sense of the

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[842] Sire, *Knights of Malta*, p. 273.

[843] Cox, *Acquisition of sovereignty*, p. 8, refers to the Codex juris canonici, Can. 487 and 488, nn. 1 and 2.

[844] Cox, ibidem and note 74.

[845] Probably the Maltese population will be ever so grateful to von Hompesch, because he was prudent enough not to let Napoleon bombard Valetta to pieces, thus saving it for civilisation, for which von Hompesch really should be thanked and gratefully remembered.

word, if he has not proved his mettle on a battlefield. Precisely this was necessary to be able to be dubbed a Knight. The noble lineage of the members might be deemed to come into the picture also, but the main principle is 'Virtus nobilitat'. Knighthood is not, or at least not entirely automatical, even in the case of a noble birth. At any rate, any Order of St. John now is only partly noble. The majority of the members of the Papal Order and all other Orders are not of noble lineage, let alone in sixteen quarters and are noble by their Knighthood only, in sofar as such nobility is recognised by application of the proper internationally accepted definitions or criteria set out above, or by the State of their residence or domicile, which usually is not the case anymore.

Respect for the weak and the protection thereof and the help provided to them, the other important side of the chivalric medal, but less important than the physical combat aspect, nowadays probably usually is there, but even the presence of this aspect can be doubted sometimes. Contention 2 above is therefore not correct, or only partly correct. After about seven hundred years, the Knigts turned back to the charitable aspect, but the Papal Order nor any Order of St. John presently is wholly chivalric.

Contention 3 above is not correct, in spite of the fact that various members of the international community of States, as well as chivalric experts, have recognised the Papal Order as a sovereign or independent Order of chivalry. This Order nor any Order of St. John using the style of Sovereign, is doing this in conformity with material international law on sovereignty.

The independent character of the Papal Order is in reality not present, because the Papal Order is dependent on and under the control of the Pope. At any rate the Papal Order cannot validly claim to be the legal successor of this independent Order, which was reconstituted in at least five parts after the Surrender of Malta, but it does invoke the – up till the second half of the 19th century, doubtful – humanitarian tradition of the Order, like all other Orders are doing this.

Only Orders of St. John which are 'recognised' within their own States of establishment by their Governments are recognised by SMOM as legitimate. Why is one so attached to this requirement? It means that where in the past a government abolished a valid local organisation of the original Order of St. John, they should always recognise this, but they did not do so in the past. The recognition requirement is a handy but also a legalistic requirement. It is also diametrically opposed to the independence ideal and the later tradition of the original Order, being subject to no-one and also holding itself out as such. No Pope or King, but Sovereign. They only seem to use it to be able to apply the old closed shop idea again. But in the American Order there were nobles also. A Government or Monarch will not quickly want to establish a recognition, because nobility officially is out of fashion already for a long

time. Socially it lost nothing of its appeal, especially not for those, who are already rich. But do they have recognition by *law*? [846] And if so which one? One can also question what is meant with recognition? Recognition as a person under public international law, as a State Order, or a Royal Order, or a genuine Order of St. John or any other recognition, or recognition of the decorations of an Order as decorations which may be worn in the relevant State, which does not say that much. Then the last criterion seems to be to have common traditions and hospitaller aims. What are these traditions? What are the hospitaller aims other than charitable work, just like that of a Service Club? Note that to just to be organised as a religious organisation is not deemed to be a valid criterion here, because it is only a formal criterion. The Catholic Order is called a religious Order. We have seen this is only so in name. Materially, one cannot call an Order with about ten professed persons and a huge number of laymen a religious Order in the material sense. Sire mentions that the original Order, as a religious institute, had professed and laymen. This is true. The Knights can however not be seen as religious, although they made vows and thus were professed. They were religious in form only, not materially. They clothed themselves in a religious form, because it was convenient for quite some time. Also, in the original Order the number of Chaplains was small compared with the number of (professed) Knights. The number of laymen was always huge compared with the number of Knights and Chaplains. The Sergeants were not professed..

SMOM claims to confer knighthood independently (which we question as they derive their fons honorum from the Pope) and that is why it is called an independent Order of Chivalry. But if true, that is not what makes an Order really independent. The measure in which an Order has to listen to its Protector, who in the case of SMOM is not the Pope, but a Cardinal (sic), is relevant here. The Protector or the Pope may have no say in who is knighted or not by SMOM (which we doubt), but SMOM is at any rate subject to the Congregation of Religous and to the Church and thus not independent.

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[846] SMOM Netherlands was, according to Steenkamp, *Ridderorden*, p. 28, recognised in The Netherlands by Koninlijk Besluit (Royal Decree) of 24 April 1911. However, this is the same approval as in the case of the Johanniter Orde.

XV.2. The Constitutional Charter and the Code of SMOM

The 'Constitutional Charter' and the 'Code' of SMOM were 'promulgated' on 27 June 1961 and revised by the 'Extraordinary Chapter General' of 28-30 April 1997. First, we note that the name mentioned on the cover is 'The Sovereign Military Hospitaller Order of St. John, of Jerusalem of Rhodes and of Malta'. Secondly, we note that the official text is the Italian text. [847] This text will according to article 36, paragraph 3 of the Constitutional Charter, prevail in case of interpretation disputes.

The Charter (or Constitution) numbers 55 quarto pages, divided into 4 chapters or titles, which are I - The Order and its nature, counting 7 articles (1-7); II - The Members of the Order, counting 3 articles (8-11); III - Government of the Order, counting 16 articles (12 - 27) and IV - The Organization of the Order, counting 10 articles (28-37). We will not discuss the entire Constitution, but will try to highlight some points which we deem important.

XV.3. The Constitution of SMOM

Article 1, Origin and Nature of the Order, paragraph 1, in the framework of what seems an historical oratio pro domo, gives as name 'The Sovereign Military and Hospitaller Order of St. John, of Jerusalem of Rhodes and of Malta'. Article 1, paragraph 3 refers to 'the Sovereign Military Order of Malta'.

Article 2, Purpose, paragraph 1, says that the objects are the promotion of the glory of God through the sanctification of its members, service to the faith and to the Holy Father, and assistance to one's neighbour, in accordance with its ancient traditions. This is then detailed in paragraphs 2 (to propagate the Christian virtues of charity and brotherhood, charitable works for the sick and needy and refugees, hospitaller works, including social and health assistance, aiding victims of exceptional disasters and war, attending also to their spiritual well-being and the strengthening of their Faith in God) and 3 (establish dependent organizations in accordance with national laws and international conventions and agreements made with States).

Article 3, Sovereignty, paragraph 1, says the Order is a subject of international law and exercises sovereign functions. This does not mean that its sovereignty is not functional.

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[847] 'Bollettino Ufficiale' of 12 January 1998.

Article 4, Relations with the Holy See, deals with recognition by the Holy See as a legal person, certain 'exemption' aspects and the 'Cardinalis Patronus' and also with diplomatic relations with the Holy See.

Article 5, Sources of the Order's Law, mentions a number of sources among which as an 'adjunct' canonical legislation (or canon law).
Title II, Article 8, The Classes, deals with the classes, which are the First Class, divided into 1a) Knights of Justice or Professed Knights and 1b) Professed Conventual Chaplains who made religious vows of poverty, chastity and obedience; the Second Class or Members in Obedience, who make the 'promise' and are divided into 2a) Knights and Dames of Honour and Devotion in Obedience; 2b) Knights and Dames of Grace and Devotion in Obedience and 2c) Magistral Knights and Dames in Obedience and a Third Class, who do not make religious vows or the promise but who live acording to the norms of the Church and are prepared to commit themselves to the Order and the Church. They are divided into the following six categories: 3a) Knights and Dames of Honour and Devotion; 3b) Conventual Chaplains ad honorem; 3c) Knights and Dames of Grace and Devotion; 3d) Magistral Chaplains; 3e) Knights and Dames of Magistral Grace and 3f) Donats (male and female of Devotion).

This is then detailed in the Code. The obligations of the members are laid down in article 9, paragraph 1-4 and boil down to a degressive scale of religious involvement from Professed Knights, who are religious for all purposes of canon law, to Members of the Third Class. Only Members of the Second and Third Class make a financial contribution, with the exception of priests.

Article 10, Assignment of Members, deals with when a Member is belonging to a Priory, a Sub Priory or an Association or 'in gremio religionis'.

Article 11, Duties and Offices, reserves the offices of Grandmaster and Grand Commander and Prior to Professed Knights in 'Perpetual or Temporary vows'. The 'High Offices' and the 'Offices of the Sovereign Council' are preferably held by Professed Knights. Knights of Obedience are eligible, but their election must be confirmed by the Grandmaster. The position of High Officers, Priors, Vicars, Lieutenants, Procurators, Regents, Chancellors of Priories and of at least four of the six 'Councillors'of the Sovereign Council, are reserved to Knights having the requisites for Honour and Devotion or Grace and Devotion.

Title III, Government of the Order, starts with the position of the Grandmaster in article 12, The Grand Master. He has 'sovereign prerogatives and honours' and the title of 'Most Eminent Highness'.

Article 13, Requisites for Election of Grand Master, says the Grandmaster is elected for life by the 'Council Complete of State', from among the Professed Knights with at least ten years in perpetual vows,

respectively three years in perpetual vows. Grandmaster and Lt. Grandmaster must have the nobiliary requirements prescribed for the Knights of Honour and Devotion. Before the assumption of office, the person elected must communicate this election by letter to the Pope.

Article 14, The Grand Master's Oath, says that he shall take this oath in the presence of the 'Cardinalis Patronus' in a solemn session of the Council Complete of State. The Grandmaster shall observe the Constitution, the Code, the Rule and the laudable customs of the Order.

Article 15, Powers of the Grand Master, mentions a wide range of powers. i.e.: legislative powers (with the 'deliberative' vote of the Sovereign Council), promulgating 'Decrees', containing acts of government, admittance of members to the several classes (with the deliberative vote of the Sovereign Council), financial powers, carry out the acts of the Holy See insofar as these relate to the Order and communicate with and inform the Holy See, ratify international agreements (with the deliberative vote of the Sovereign Council) and to convene an Extraordinary Chapter General. When the deliberative vote of the Sovereign Council is required, the Decrees are 'conciliar' and otherwise 'magistral'. If a deliberative vote is required, the Grandmaster cannot go against its outcome, but is not obliged to issue a Decree in conformity with it.

Articles 16, Resignation from Office by the Grand Master, says he cannot resign without acceptance by the Sovereign Council and his resignation is only effective if communicated to the Pope.

Article 17, Extraordinary Government, deals with incapacity of the Grandmaster. On a petition by a two thirds majority of the members of the Sovereign Council, the Magistral Court of first instance, in a closed session, can declare the permanent incapacity of the Grandmaster.

Article 18, The High Offices, mentions the four High Offices, i.e.: the Grand Commander, the Grand Chancellor, the Grand Hospitaller and the Receiver of the Common Treasure.

Article 19, The Prelate, deals with a prelate appointed by the Pope, who will assist the Cardinalis Patronus 'in carrying out his mission to the Order'.

Article 20, The Sovereign Council, says that the members of the Sovereign Council are the Grandmaster or the Lieutenant and the holders of the four High Offices and six Councillors. The members of the Sovereign Council, except Grandmaster and Lieutenant, are elected by the Chapter General, by a majority of the votes present. The Grandmaster does not vote on matters where the Council has a deliberative vote or must give its advice. But in the case of a tie, the decision of the Grandmaster prevails and if he does not express an opinion, the matter is suspended.

Article 22, The Chapter General, says the Chapter General assembles every five years or when the Grandmaster may think fit, having heard the Sovereign Council, or on the application to the Grandmaster by the majority

of the Priories, Sub Priories and Associations. The Chapter General does not consist of all Members, but of: Grandmaster or Lieutenant, Members of the Sovereign Council, the Prelate, the Priors or substitutes, the Professed Bailiffs, two Professed Knights of each Priory, a Professed Knight and a Knight of Obedience of the Knights in gremio Religionis, five Regents of the Subpriories, fifteen representatives of the Associations and six members of the Government Council of the Order.
Its task is to elect the members of the Sovereign Council, the Members of the Government Council and the members of the Board of Auditors and to deal with modifications to the Constitution (two thirds majority required), or to the Code (absolute majority required except where its articles 6-93 are concerned, dealing with Members of the First Class only and requiring also the majority of their votes), to take cognizance of and deal with the important affairs of the Order. These are particularly its spiritual and temporal state, the programme of its activities and its international relations.

Article 23, The Council Complete of State, says that the Grandmaster or Lieutenant is elected by the Council Complete. The Council Complete has the same composition as the Chapter General, except that the six members of the Government Council are not part of the Council Complete, but are part of the Chapter General. Paragraphs 3 - 5 lay down an intricate system to elect the Grandmaster. The members of the First Class have the right to propose three candidates.

Article 25, The Juridical Council, says the Juridical Council is appointed by the Grandmaster with the advice of the Sovereign Council. It can be consulted about legal questions and problems of special importance. It is composed by experts in the law of the Order and in public and international and canon law.

Article 26, Judicial Regulations, distinguishes between ordinary ecclesiastical Tribunals acting in accordance with canon law and dealing with cases falling under the jurisdiction of the ecclesiastical forum and Magistral Courts acting in accordance with the Code and dealing with the other cases. The Grandmaster chooses and appoints (inter alia) the judges of the Magistral courts from among the members of the Order who are specially versed in law.

Article 27, The Board of Auditors, says the board is elected by the Chapter General by majority decision from among the Knights well versed in the juridical, economic and financial disciplines.

Title IV, The organization of the Order, deals with Establishment of Organizations (Article 28); Government of Priories (Article 29); Term of Office of Priors (Article 30); the Lieutenant of the Prior (Article 31); Vicars and Procurators of a Priory (Article 32); Subpriories and the Appointment of Regents (Article 33); Associations (Article 34), (Regional) Delegations (Article 35), governed also by a special regulation approved by the

Grandmaster; Text and Official Translations of the Constitution (Article 36) and with Transitional Regulations (Article 37). Priories need at least five Professed Knights. A Subpriory needs at least nine Knights in Obedience. Grand Priories, Priories, Subpriories and Associations are all established by Decree of the Grandmaster with the deliberative vote of the Sovereign Council.

XV.4. The most important elements of the Constitution of SMOM

What in our view are the most important elements of this Constitution?

1. The name is containing as main distinctive element the adjective 'military'.
2. The purpose, being a religious purpose, making the Order a religious Order, respectively an ecclesiastical community.
3. The subordination to the Pope and at the same time the forced maintenance of alleged sovereignty.
4. The express subordination to canon law, all be it as an 'adjunct'.
5. The elaborate and perhaps discriminatory class system and the privileged position of the Professed Knights (Knights of Justice).
6. The somewhat difficult distinction between on the one hand Priories and Subpriories and on the other hand Associations.
7. The rather autocratic position of the Grandmaster.
8. The Chapter General electing the members of the Sovereign Council, the members of the Government Council and the members of the Board of Auditors.
9. The Grandmaster appointing the judges of the Magistral Courts.
10. The election of the Grandmaster from among the Professed Knights by the Council Complete, allowing at least an indirect influence from the Member base.
11. This is also apparent from the fact that four of the six Councillor positions are reserved for members of the Third Class
12. Absence of a clear separation of powers.
13. Nevertheless, an attempted balance of powers between Sovereign Council and Grandmaster: if a deliberative vote is required, the Grandmaster cannot go against it, but he is not obliged to issue a decree in conformity with it. The Sovereign Council therefore seems to have at least some influence.
14. The Chapter General is regularly convened and has influence. The Chapter General is electing the Sovereign Council.
15. A tendency to do everything within one's own ambit.

XV.5. The Code of SMOM

As mentioned above, the Constitution is detailed further in the Code. The Code is officially called the 'Code of the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta'. It numbers 149 quarto pages and is divided into four Titles, which are Title I, General regulations; Title II, The Members of the Order; Title III, The Government and Title IV, The Organization of the Order. We will not discuss the entire Code, but will try to highlight some points which we deem important.

Article 1, Nature of the Code of the Order of Malta, says the Code regulates the life, the organization and the activity of the Order. We have seen that the sources of law are mentioned in article 5 of the Constitution and the Code comes right after the Constitution, but may obviously not be in conflict therewith ('lex superior derogat legi inferiori').

Article 2, Interpretation of Laws, contains a contradiction because it says on the one hand that the interpretation of the laws belongs to those who issue the laws and on the other hand that the interpretation of the laws is the exclusive competency of the Magistral Courts.

Article 4, Dispensation from Laws, give the Grandmaster a right to dispense in individual cases from the Code, except in matters of vows, the prescriptions of ecclesiastical law and the structure of Goverment.

Article 5, The Name of the Order, says that the name of the Order is the name as laid down in article 1, paragraph 3 of the Constitution and may be abbreviated to 'SMOM'.

Title II, The Members of the Order, consists of seven Chapters, dealing with the Members of the Order and inter alia lays down the requirements for admission. Only Catholics, who fulfil certain requirements, can be admitted. The Chapters are Chapter I, Members of the First Class (five Sections); Chapter II Religious Vows (three sections); Chapter III Obligations of the Professed in general; Chapter IV Transfer to another institute or society, departure or dismissal from the Order; Chapter V Members of the Second Class, consisting of two Sections; Chapter VI Disciplinary Provisions for Members of the Second and Third Class and Chapter VII Grades and Honours.

Article 6 mentions requirements for becoming a Member of the First Class, which are (inter alia) sub d, meeting 'other requirements prescibed by the Priories or Subpriories'.

Article 19, paragraph 2, mentions the two 'charisms'of the Order, which are the 'tuitio fidei et obsequium pauperum'. [848] A Member from the First or Second Class instructs the novice in the 'historical developmemt of the

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[848] 'The protection of the Faith and the service to the poor'.

Order, its traditions and its juridical evolution'. A distinction is made between temporary vows (articles 33-44) and perpetual vows (articles 45-49). At the expiration of temporary vows, the Knight is free to leave religious profession and to return to his previous Class. Article 44 says that the profession of temporary vows renders acts contrary to them unlawful, but not invalid, while article 49 says that perpetual profession renders acts contrary to it not only unlawful, but also invalid, provided that the law of the Church so prescribes.

Not surprisingly, Chapter II, Religious Vows, starts with an article 61 on the Virtue of Obedience. Articles 85 and 86 provide us with the duties of the Professed (other than being obedient, chaste and poor), while article 87 says that Professed Knights may practice a liberal profession and accept public office.

Article 93 says that dismissal of professed from the Order is regulated by the norms of canon law.

According to articles 94 and 95, Knights and Dames in Obedience make no vows, but a 'special promise' (refer to article 100) and may be married, contrary to Professed Knights, in which case their spouse must give her consent.

Article 101 provides us with his daily spiritual duties.

Withdrawal from the promise is possible, according to article 104, paragraph 1, but requires dispensation. According to paragraph 2, the Knight or Dame in Obedience will then return automatically to his/her original Class, if dispensation is granted. If not, he/she will remain in the Second Class or may withdraw from the Order.

Article 108 provides us with the requirements for joining the Third Class. A proposal by a member of the Sovereign Council or by the Prior or the President of the Association involved, is necessary and presentation of nobiliary proofs in itself does not constitute a right to be admitted.

Article 112 mentions a special regulation with regard to the nobiliary requisites for those who aspire to be received in the Order. Membership depends on the Grandmaster.

Chapter VI, articles 119 through 129 provides us with the disciplinary provisions for members of the Second and Third Class, the First Class being religious and falling under the disciplinary rules of canon law. The disciplinary sanctions are a) warning; b) reprimand; c) suspension and d) dismissal. Only suspension and dismissal are subject to special procedures. Appeal is possible within thirty days of notification of the disciplinary resolution, before the Magistral Courts.

Article 130, Grades of the Order, mentions the basic grades of Knight or Dame and the advanced grades of Knight Grand Cross or Dame Grand Cross, which latter can be conferred on Members of the First and Second Class and on Members of the Third Class (except on 3b), Conventual

Chaplains ad honorem and (except on 3d), Magistral Chaplains). The dignity of Bailiff can be conferred on Knights Grand Cross of Justice (First Class) and on Knights of the Second Class, being Knights of Honour and Devotion in Obedience and on Knights Grand Cross of the Third Class, being Knights of Honour and Devotion, as well as on Cardinals of the Holy Roman Church. The Sash may be conferred on Knights Grand Cross of Grace and Devotion (Third Class, 3c) and on Knights Grand Cross of Magistral Grace (Third Class, 3e). Professed Chaplains (First Class) and Conventual Chaplains ad Honorem (Third Class, 3b) may receive the grade of Chaplain Grand Cross.

Article 131, The Benefits of Commander, says that Professed Knights in Perpetual Vows, who have been invested with a Commandery of Justice, are entitled by right to the benefits of Commander. Those Knights of Honour and Devotion, who are titulars of hereditary *jus patronatus* Commanderies, enjoy the same position.

Title III, The Government, contains twenty one Chapters and mainly deals with the internal organisation of the Order itself, with the Juridical Council and the Courts and other legal aspects, such as the jus locus standi in other courts ('the Courts of other States') and the Board of Auditors.

In the framework of this title, we mention article 137, Authority, emphasizing the autocratic position of the Grandmaster.

Article 138, Supervisory Responsibilities, is reminiscent of ancient visitations to the Commanderies in Western Europe.

Article 148, Incompatibilty of Offices, lays down a number of important incompatibilities.

Article 150, Duties of the Grand Commander, says that the Grand Commander supervises the Priories and Subpriories and the Knights of the First and the Second Class, including the Knights in the First and Second Class in gremio Religionis, while according to Article 151, the Grand Chancellor, the Grand Chancellor supervises the Associations and matters concerning the Knights of the Third Class. He also has a powerful position, as he is the head of the Chancery and according to Article 153, Execution of Decrees of the Grand Master, his Decrees do not have effect if not countersigned by the Grand Chancellor. Also, the diplomatic representations are falling under the direction of the Grand Chancellor (Article 154).

Article 155, Duties of the Grand Hospitaller, inter alia says he promotes, co-ordinates and supervises the works of the Priories and the Associations.

Article 156, Duties of the Receiver of the Common Treasure, inter alia lays down the rules for the financial affairs, the accounts and the budget. The accounts and budget are submitted to the Board of Auditors and then to the Grandmaster for approval, with the advice of the Sovereign Council.

Article 165, Agenda and Notice of Meetings, inter alia says the Sovereign Council meets at least six times a year.

Article 168, Special Cases requiring a Secret Ballot, inter alia says the vote shall be secret whenever requested by a member of the Sovereign Council.

Article 169, Removal from Office, says that a member of the Sovereign Council can be dismissed by the Grandmaster with a two thirds majority of deliberative votes and the removal can be appealed before the Magistral Courts.

Title IV Organization of the Order, consist of nine Chapters and deals with Juridical Persons, Grand Priories, Subpriories, Associations, Churches of the Order, The works of the Order, Communications, Emblems and transitional law.

Article 176, Delegates of the Organizations of the Order, lays down a careful system of representation in the Chapter General.

Article 177, Place and date of Meeting and Agenda, paragraph 4, says that Knights of Justice can submit proposals they wish to be considered in the Chapter General. Otherwise, the Grandmaster sets the agenda.

Article 204, Jurisdiction of Magistral Courts, provides us with the jurisdiction of the Magistral Courts. There is also a Magistral Appeal Court. The Code of Civil Procedure of the Vatican City State is applicable. The Magistral Courts can also function as arbitrator in international disputes on the request of States and other subjects of international law (article 204, paragraph 3).

Article 206, Legal Representation of the Order, says that the person to sue or be sued, can a) be the Grand Chancellor, on behalf of the Order; b) the titulars of Grand Priories, Priories, Subpriories (or the Grand Chancellor separately) and those with the title of ius patronatus Commanderies on behalf of those entities (or the Grand Chancellor separately) and c) the person specified in the statutes or regulations for Associations and other bodies of the Order (or the Grand Chancellor separately).

Article 207, Advocates of the Order, says that the office of the Advocate General shall be made up of independent members of the legal profession.

Article 219, Report of the President to the Chapter General, says that the President of the Board of Auditors shall present to the Chapter General inter alia a precise accounting of the use made of the annual contributions from the members of the Order.

Title IV, Organization of the Order, Article 220, Juridical Personality of Entities of the Order, says that Priories, Subpriories and Associations internally, within the Order, have legal personality and Article 221, Acquisition of Juridical personality in National Law, says that the public bodies of the Order may acquire legal personality in the country where they are intended to function, but with the authorisation of the Grandmaster.

Article 229, Purpose, says that the purpose of Associations is to implement the objectives of the Order. A minimum of 15 members is required for an Association.

Article 233, Churches and Oratories, says that the superiors are to ensure that each organization of the Order shall have one or more churches or oratories.
Title IV, Chapter VII, The works of the Order, in Article 236, 'Obsequium Pauperum' sets out the principles of 'Obsequium Pauperum' and 'Tuitio Fidei', while Article 237, The organization of 'obsequium pauperum', inter alia says that the Associations are exclusively competent to set up works of charitable and social service in their own areas or any sub- organizations for these purposes, the Order retaining a measure of control over these sub-organizations.

XV.6. The most important elements of the Code of SMOM

What are the most important elements of this Code in our view?

1. The Class system a such, giving most, if not all, power to the First Class, more particularly to the Professed Knights (Knights of Justice).
2. The fact that the Professed Knights are deemed religious.
3. Menbers of the Second Class and the Third Class only have limited influence, but an attempt has been made to give them some sort of say.
4. Artificial clinging on to the past, resulting in an intricate system
5. Various attempts made to limit the autocratic powers of the Grandmaster.
6. The divison of Knights over Priories and Subpriories, where those of the First and Second Class are concerned and in Associations, where those of the Third Class are concerned, while those in First and Second Class also are members of these Associations.
7. The Members of the Third Class seeming to be some sort of hangers-on, but the Associations to which they belong being the most important ones for 'Obsequium Pauperum'.

XVI. THE LEGAL NATURE AND ORGANISATION OF THE ECUMENICAL ORDER

XVI.1 Ecclesiastical communities

Before proceeding to discuss the legal nature and organisation of The Ecumenical Order, we need to say something about 'ecclesiastical communities'. There are legal persons which are ecclesiastical communities and other legal persons. [849] The distinction has certain important consequences. Because we need a starting point, we will discuss this from a positive Dutch law point of view.

Dutch law distinguishes between a) public law legal persons; b) ecclesiastical communities [850] and 3) other private law legal persons. Under Dutch law an ecclesiastical community has a sui generis, but private law legal personality. These legal persons have a structure and organisation which are primarily determined by their own internal rules, in sofar as not against 'the Law'. Law seen here as the fundamental rules of written and unwritten Dutch law, which have priority over the Church rules. We have to think here of gross violations of the norms of reasonableness and equitability and of restrictions on the fundamental norms of freedom of joining and resigning.

The stipulations of Dutch association law are not applicable to ecclesiastical communities. Private law and criminal law remain fully applicable to ecclesiastical communities. The Church rules are in principle binding under Dutch private law except where it concerns rules of confession of faith. There is doubt where Church obligations of a religious Order and its members are concerned and where employment law is concerned. However, the ecclesiastical community still is a category of Dutch private law. [851]

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[849] For a general discussion of the legal person: Paul Scholten, *Asser-Van DerGrinten- Maeijer2 -II,* p. 1-26.

[850] As translation of the Dutch word 'kerkgenootschap' (plural: 'kerkgenootschappen'), we have opted for 'ecclesiastical community', which in our view better than 'religious community' expresses the Church character needed to qualify as kerkgenootschap. Kerkgenootschap also comprises non association species of the same, like foundation species. Not seldom, the two species appear in a mixed form.

[851] Different L. Hardenberg, 'Het eigen recht van de kerken' (*WPNR 5518*, 1980, p. 337-344; *WPNR* 5519, p. 353-358 and *WPNR* 5520, 369-373), p. 357.

XVI.2. Ecclesiastical communities have legal personality sui generis

Dutch law does not grant the legal personality of the ecclesiastical community, but recognises this legal personality. It wil be no surprise that some, like Hardenberg, go farther and even claim that the ecclesiastical body is deriving its legal personality from its own Church law, is not a category of Dutch law and is not subject to Dutch private law. On the other hand, there are also some who hold that there should be no special position for an ecclesiastical body in the private law. [852]

If desired, an ecclesiastical body can opt for a regular legal form under Dutch law (e.g. the form of an association). Then it will not be an ecclesiastical community in the sense of Article 2: 2.1 of the Civil Code. Dutch law does not require ecclesiastical communities to take a regular Dutch civil legal form.

Organisations on a confessional basis, which are not ecclesiastical communities, do not have legal personality sui generis. If their statutes have not been laid down in a notarial deed, they are associations which only have limited legal capacity and their administrators are personally liable. Ecclesiastical communities always have full legal capacity and their administrators are not personally liable.

Book 2 of the Dutch Civil Code is based on the freedom of association which is also anchored in Article 8 of the 'Grondwet 1987' (Dutch Constitution). [853] The Lawgiver as well as the Government have to respect the own identity laid down in the statutes of confessional legal persons. Same goes for ecclesiastical communities, but even stronger. The 'Algemene Wet Gelijke Behandeling' (General Law on Equal Treatment) [854] contains various exceptions for organisations based on a religious, confessional or political basis, or of special education. [855] These exceptions are allowed in

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[852] E. H. van Eikema Hommes, *De samengestelde grondbegrippen der rechtswetenschap* (Zwolle 1976), p. 187-188. Zeger Bernard van Espen may probably also be ranged in this camp: Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 39-40.

[853] Grondwet 1987, Stb. 1987, 458.

[854] Wet van 2 maart 1994, houdende algemene regels ter bescherming tegen discriminatie op grond van godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht, nationaliteit, hetero- of homoseksuele gerichtheid of burgerlijke staat, Stb. 230.

[855] 'Artikel 3: Deze wet is niet van toepassing op: a. rechtsverhoudingen binnen kerkgenootschappen alsmede hun zelfstandige onderdelen en lichamen waarin zij zijn verenigd, alsmede binnen andere genootschappen op geestelijke grondslag; b. het geestelijk ambt.' (This law is not applicable to: a. legal relationships within ecclesiastical communities and their independent parts and bodies they are united in, as well as to other communities on a spiritual basis; b. the spiritual office.'

sofar as needed for the fulfilment of the position or to realise its foundation (in the case of an institutution of special education), but may not lead to making distinctions on the basis of the sole fact of political creed, race, gender, hetero- or homosexuality, or civil status.

In case of an ecclesiastical community, the Dutch judge can be approached where civil rights are concerned. To determine these rights, the judge may have to judge the competence of Church officials or the validity of certain decisions. The judge may not give decisions in disputes about faith and confession. An internal dispute arrangement will first have to be followed. The decison can only be marginally tested by the civil judge. The civil judge may not go into dogmatic and theological disputes. Injunction cases before the civil judge will usually remain possible in emergencies. Registration in public registers is not obligatory for legal persons who are ecclesiastical communities. We see that the difference is vital. [856] This was also an important or main reason why the Knights organised themselves as a quasi-religious Order in the past.

XVI.3. What is an ecclesiastical community under Dutch law?

It can be defined as an organisation of participants/members, with as objective the common divine worship of the participants on the basis of common religious convictions [857] (objective element of the definition) and which desires to be an independent religious community and not a part of an ecclesiastical community [858] (subjective element of the definition), respectively is acting outwardly in conformity with the above objective. [859] Common divine worship may according to Maeijer prudently be broadened to common religious experience or reflection. Societies on a spiritual basis are not ecclesiastical communities. The definition is nowadays free of a

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[856] Article 51, Treaty establishing a Constitution for Europe, adopted by consensus by the European Convention on 13 June and 10 July 2003:
'Article 51: Status of churches and non-confessional organisations
1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.'

[857] Hoge Raad 23 July 1946, *NJ* 1947, 1.

[858] Addition deemed necessary by J.M.M. Maeijer, *Asser-Van der Grinten-Maeijer 2-II*, p. 254.

[859] Pitlo-Löwensteyn, nr. 1.3.

Christian or biblical bond. A spiritual leader of an Islamic religious community is holding a spiritual office.[860]
Independent parts of an ecclesiastical community are legal persons, provided they can act in private law traffic according to their own statutes. An umbrella organisation of ecclesiastical communities in which they are united in one ecclesiastical community or Church, has legal personality under the same assumption. Ecclesiastical communities are free to create independent parts. These parts have legal personality if civil capacity was intended. The law does not provide any criteria to determine whether a certain organisation is part of an ecclesiastical community. The following will show that an organisation can declare itself to be an ecclesiastical community, even under recent Dutch legislation.

XVI.4. The WID

The 'WID' (WID = Wet Identificatie bij Dienstverlening = Law on Identification in the case of Rendering of Services), [861]is applicable in case a client is asking an advocate or a notary to render services in the form of assistance or advice in certain defined areas. [862] Trial practice is outside the scope of application of the WID. [863] Where the WID is applicable, the

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[860] Hoge Raad 30 May 1986, *NJ* 1986, 702. Think also of the 'Scientology Church', for example. Designated as (translated) 'the ecclesiastical body under foreign law possessing legal personality CHURCH OF SPIRITUAL TECHNOLOGY, established at Los Angeles, United States of America', in President Rechtbank Den Haag 12 March 1996, rolnr. 96/160 and in Rechtbank Den Haag, 9 June 1999, rolnr. 96/1048.

[861] Stb. 1993, 704.

[862]

1. the buying or selling of real property;
2. the administration of monies, stocks or other values (example: advising about certain countries or institutions where financial means could be brought under, for example by the opening of an account.
3. the formation or management of companies, legal persons or similar societies (example: advising about the organisation of the bringing in which is necessary for the formation or the management of companies, legal persons or similar societies. Example: advising about the legal form of a business in the framework of which business activities are being deployed or will be deployed.
4. the buying or selling or taking over of businesses;example: advising about the legal form of 'business take overs in the widest sense of the word' (trade of shares, legal merger, etc.).
5. activities in the fiscal area.
6. in the event the advocate or notary is being asked to act in the name of and for account of a client in any financial transaction or any real estate transaction..

[863] The fact that the WID is not applicable, results into the strict identification procedure prescribed by this law not having to be observed. However, this does not mean that then the duty of care is not applicable. Also in these cases, the advocate

identity of the client as well as the identity of any representatives of the client have to be established.
The way the identity should be established, is prescribed in the WID and depends on the legal capacity and nationality of those involved. For foreign private legal persons not established in the Netherlands (is The Ecumenical Order a legal person and is it a foreign private legal person?), applies that their identity has to be established by way of an authenticated excerpt from the official trade register of the State where the statutory seat of that legal person is situate, or with the aid of a statement issued by a notary or by another functionary from that State, who is not dependent on the legal person, who can sufficiently guarantee the reliability of this statement on the basis of the nature of his function. This excerpt or statement will, as far as applicable, have to contain a number of details:

In the event the client is a public law legal person (is The Ecumenical Order a legal person and is it a public law legal person?), the identity can be established in the same way as prescribed for a private law legal person. The identity can also be established by a statement of the administrative organ, in the event it concerns a Dutch public law legal person, or a statement of the competent authority in the event a foreign public law legal person is concerned (who would this be, if The Ecumenical Order would be a foreign public law legal person?). This statement which according to its date may not have been issued longer than a year ago, will again have to contain, a number of details.

In the event the client is a) an ecclesiastical community (The Ecumenical Order will presumably claim it is also an ecclesiastical community; inter alia their vows are mentioning they are a 'religious body', [864] while they also claim to be part of a Syrian Orthodox Church), or b) an independent part of an ecclesiastical community, or c) a body in which various ecclesiastical communities are united (The Ecumenical Order encompassing its Grand Priories), the identity can be established in the same way as prescribed for a

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needs to know who his client is. This follows from the Code of Conduct, whereby particular reference is made to the Guidelines to prevent involvement of the advocate in criminal acts.

[864] 'Upon the true faith of a Christian, may God witness that I hereby vow and dedicate myself as a servant of Christ and the poor, the first qualification of a true Knight (or Lady). As a member of this religious body, I promise to be faithful and loyal to the ideals of the Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem, Knights of Malta – The Ecumenical Order – , to do everything in my power to contribute to its glory, protection, prosperity, support and utility; to combat everything prejudicial to its well-being; never to act contrary to its dignity, but to conduct myself always as a true Knight of Christ, that is to say, as a good Christian and a person of honor. Believing that Christ wilt grant me a special token of His favor, I, therefore, in all humility, charity and respect, agree to join with every sincere and godly Christian of whatever Church to bring about by prayer and deed the salvation of the Christian World by helping to promote a lasting Christian Unity.'

private law legal person. The identity can however also be established on the basis of a statement of the organisation of which the religious community, the independent part, or the community, is a part. Therefore this would be a statement of The Ecumenical Order itself. The WID was amended in this respect on 2 November 2000, [865] the amendment consisting of a new article 3, paragraph 5, introducing a special arrangement for identification of ecclesiastical communities. In the event the religious community, independent part, or the community do not belong to an organisation, the identity can be established on the basis of an own statement of the religious community, or the community, which statement according to its date may not have been issued longer than a year before.

'Order', as legal form does not mean much. 'Country of seat' is lacking here. We see how difficult it is to grasp these organisations, even under the latest legislation. It appears to be the case that one declares oneself whether or not one is a (foreign) ecclesiastical community. [866]

XVI. 5. Is The Ecumenical Order an ecclesiastical community?

The Ecumenical Order can be defined as an organisation of participants/members, but does it have as its objective the common divine worship by the participants on the basis of common religious convictions (objective element of the definition)? Common divine worship may according to Maeijer prudently be broadened to common religious experience or reflection. Societies on a spiritual basis are not ecclesiastical communities. The Ecumenical Order has the members, their motto is 'Pro fide, pro utilitate', they say they are a 'religious body' and the vows refer to being 'a member of this religious body', they claim to be an Order of a Syrian Orthodox Church and there is the way they are organised, with a Convent, Grandmaster, Grand Priories and Priories. The aims in the Statutes are:

> Article 3: Aims
> 3.1 To propagate the principles of Chivalry.
> 3.2 To care for the sick, the aged, the invalid, the poor, and the children in need.
> 3.3 To protect and defend Christianity throughout the world.
> 3.4 To combat error and champion truth.
> 3.5 To promote and encourage a spirit of brotherhood and charity within the Order.

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[865] Stb. 2000, 484. See also Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 128 and note 18 there on this issue.

[866] See however Hoge Raad 30 October 1987, NJ 1988, 392, note Maeijer and Van Drimmelen-van der Ploeg, *Kerk en recht*, p. 85 and p. 85, note 59.

3.6 Members of the Order are expected to be united in a spirit of brother hood and charity and help their brethren at all times by all possible means.

Does this contain anything about the common divine worship of God? And if so, is this relevant? Santing-Wubs holds it cannot be accepted that an ecclesiastical community would have to take up the religious beliefs adhered to by the members in its statutes, as legal rules, to ensure that they will be respected by a court. [867] It might also be contended that an Ecumenical basis is not the necessary basis of common religious convictions. But common divine worship may according to Maeijer prudently be broadened to common religious experience or reflection. This might be present.

Does The Ecumenical Order desire to be an independent ecclesiastical community (subjective element of the definition), respectively is it acting outwardly in conformity with the above objectives? Although sometimes a reference is made to 'the Churches' of The Ecumenical Order and although according to their Statutes, they have clergy, like the original Order, one or more elements of the definition might be lacking. Just the will is not sufficient and an alleged ecclesiastical community cannot be accepted as such just like that. The Dutch Supreme Court also especially requires a clear religious base and purpose. [868] In that case, The Ecumenical Order would be a society on a spiritual basis. The same goes for the Johanniter Order, the Venerable Order and the Balley of Brandenburg. SMOM formally is an ecclesiastical community. Societies on a spiritual basis are not ecclesiastical communities, but their confessional identity must be respected by the Lawgiver(s) and by Government(s).

XVI.6. International private law aspects

Although Hardenberg holds that Church bodies, which in his view encompass ecclesiastical communities, come into being on their own ground, under Church law, [869] the anwer to the question whether The Ecumenical Order is an ecclesiastical community, should in principle be provided under a national private law system. As a rule, private law legal personality will be derived from a national private law system. If we try to qualify The Ecumenical Order as an ecclesiastical community under a national legal system, three national legal systems come into the picture, i.e. Maltese, Canadian and English Law. Maltese Law, because that is where

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[867] Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 194.
[868] Hoge Raad 4 November 1942, *NJ* 1942, 773 and Hoge Raad 23 July 1946, *NJ* 1947, 1.
[869] L. Hardenberg, 'Het eigen recht van de kerken', *WPNR* 5520 (1980), p. 369.

according to its own Statutes, The Ecumenical Order has its Seat and its Convent (historically, this would be the headquarters); Canadian Law, because that is where its 'head and brains' are, in the person of the present Grandmaster, residing in Ontario and having a 'Grand Magistry', an executive office, near Toronto and finally, English law, because that is where the 'Grand Chancery', the administrative center of the organisation, is presently established.

The front page of the Statutes mentions that the 'International Seat of the Order and the diplomatic centre (is) Malta'. This presupposes the organisation has a certain status under public international law. An association has a statutory seat, but an international public law legal person has a 'seat'. But the only Order of St. John presently enjoying such status is SMOM, whatever one may think of this status. Article 2.1. of the Statutes reads 'The Convent of the Order is at Malta.' According to the real seat ('siège réel' or 'social seat') doctrine, giving control to that legislator where effectively important activity is situate, this if true, means the Ecumenical Order is subject to Maltese law and could be a Maltese legal person. A judge may qualify it as such or not. In case of non compliance with the requirements therefor, the entity may be void. But what is the reality of this Convent and can it be regarded as a statutory seat or a headquarters with substance? Can it be regarded as something more than a symbolical headquarters? What requirements are put to a seat or a statutory seat? This is the more interesting because articles 2.2. and 2.3 of the Statutes read:

> 2.2. The Grand Magistry of the Order is at the place determined from time to time by H.S.H. The Prince Grandmaster (usuallly his country of domicile).
> 2.3. The Grand Chancery of the Order is at the place determined from time to time by H.S.H. The Prince Grandmaster, in prior consultation with H.E. The Grand Chancellor (usually his place of domicile).

In view of the fact that it then becomes clear from the remainder of the Statutes, that the Grandmaster has very wide powers in The Ecumenical Order and the Grand Chancellor – although his position is rather inflated, compared with the position of a Chancellor of the original Order – is only the head of the administrative organ of the Order, i.e. the 'Grand Chancery', one might conclude that the Grand Magistry really is the place where the organisation has its head and brains and its 'center of control and management' [870] and therefore its real seat. This is an address in Canada,

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[870] Under tax treaties, an entity can be confirmed as resident in a country and subject to its corporation tax. For example, the text of art. 4 (as far as relevant) of the tax

near Toronto, Ontario, where the present Grandmaster lives. Furthermore, one might conclude that it is intended to have the Malta address function mainly or only as a symbolical seat. On the other hand, one meets there from time to time.

XVI.7. Qualification problems

Except for the question where this organisation has its real seat or statutory seat, the question also is, what kind of organisation this is under the relevant national law. Is this a Maltese or a Canadian or an English law association or foundation? If it is an association, does it then have legal personality, are the members of the governing board liable for the debts of the organisation next to the organisation, or is only the organisation liable? Even in the draft for a European Constitution, it has been laid down that the Union has legal personality and can therefore be sued and sue. At any rate, the Statutes and By-laws of The Ecumenical Order do not seem to have been laid down in a notarial deed by a notary under a specific legal system.

XVI.8. Legal persons under Maltese law

Although there is no clear cut definition under Maltese law as to what constitutes a legal person, references thereto are made in the Maltese Companies Act and the Maltese Civil Code. Relevant for our purposes is Section 4 of the Companies Act which stipulates that
'1. A commercial partnership may be: a) a partnership en nom collectif; or b). a partnership en commandite; or c) a company'. A partnership 'en nom collectif' may be formed by two or more partners and operates under a partnership name and has its obligations guaranteed by the unlimited and joint and several liability of all the partners. A partnership 'en commandite' operates under a partnership name and has its obligations guaranteed by the unlimited and joint and several liability of one or more partners, called

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treaty between Greece and the Netherlands, says:
'1. For the purposes of this Convention, the term 'resident of one of the States 'means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
(...)
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.''

general partners, and by the liability, limited to the amount, if any, unpaid on the contribution, of one or more partners called limited partners. A 'company' is formed by means of a capital divided into shares held by its members. The member's liability is limited to the amount, if any, unpaid on the shares respectively held by each of them. Furthermore, according to the Companies Act, a Company may be formed for any lawful purpose and shall have the status of a public company or (b) a private company. As already highlighted above, the most salient feature of each of these three commercial partnerships is that 'it has a legal personality distinct from that of its member or members, and such legal personality shall continue until the name of the commercial partnership is struck off, whereupon the commercial partnership shall cease to exist.'

Title X of the Malta Civil Code contemplates the possibility of setting up a civil partnership which according to section 1644 of the Civil Code is a 'partnership whereby two or more persons agree to place a thing in common, with a view to sharing the benefit which may derive therefrom.' The law further states that 'every partnership must have a lawful object and must be contracted for the common interest of the parties'.

As to the obligations imposed at law, Section 1676 expressly provides that 'the partners are not jointly and severally liable for the partnership debts; and one of the partners cannot bind the others, unless they have given him power to that effect.' On the other hand, Section 1677 provides that 'the partners are liable to the creditors with whom they have contracted, each one for an equal sum and share, even if the share of one of them in the partnership is smaller, unless the contract has expressly limited the liability of the latter in proportion to his share'.

Other legal persons would include all body corporates, defined by the Companies Act as 'any entity having a legal personality distinct from that of its members and includes a foreign corporation', established under Maltese law, as well as religious associations, non-profit associations and any other association of persons vested with legal personality. Additionally, Part X of the Companies Act provides for the possibility to set up an 'Association En Participation'. It is defined under Maltese law as 'a contract whereby a person assigns to another person, for a valuable consideration contributed by the latter, a portion of the profits and losses of a business or of one or more commercial transactions'. However unlike the partnerships outlined above, the law specifically provides that in this respect, it is an entity which does not have a legal personality distinct from that of its members.

XVI.9. When is a company a company under Maltese law? Formalities and consequences of a transfer

A company is considered to be a Maltese company either if originally incorporated in accordance with the Maltese Companies Act, or alternatively, if re-domiciled from a foreign jurisdiction, upon which re-domiciliation it will 'be deemed to have been incorporated under Maltese law' and will in fact thereafter also be considered a Maltese company. [871] A company incorporated in accordance with a foreign law (which company is not re-domiciled to Malta) is required to register as an 'Overseas Company' in terms of the Companies Act within one month of that company having established a branch or a place of business in Malta. From an income tax point of view, a company is deemed to be domiciled and resident in Malta for tax purposes if incorporated in or re-domiciled to Malta.

In addition, a foreign company, the management of whose business is carried out in Malta, is deemed to be resident (but not domiciled) in Malta for income tax purposes. A number of conditions have to be satisfied for continuation (re-domiciliation) of companies to Malta. In virtue of the 'Continuation of Companies Regulations, 2002', companies may continue to Malta. The continuance procedure is a simple and straightforward one (some additional requirements apply to licensed and public companies). [872]

Once the conditions are satisfied, the continuance procedure is put into motion through the filing of documents with the Registrar of Companies. With effect from the date of the company's Certificate of provisional registration, the company is deemed to be incorporated in Malta in terms of law.

XVI.10. Similar arrangements not in place for an association

Similar arrangements are not in place for an association. Can one 'parachute' an association into the Maltese legal system by writing and saying it has its 'seat' there, while it has been formed somewhere else and has its offices somewhere else? Maeijer [873] holds that under Dutch law, a foreign legal person as a rule cannot become a Dutch legal person by transferring its

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[871] The author is grateful to Mrs. Monica Galea, Mrs. Rosanne Bonnici and Mrs. Josianne Brimmer, of Fenech & Fenech Advocates, 198 Old Bakery Street, Valletta VLT 09, MALTA, who provided the material for this part on Maltese law.

[872] Compare similar legislation of other low tax jurisdictions, such as the Isle of Man Companies (Transfer of Domicile) Act 1998.

[873] Maeijer, *Asser-Van der Grinten-Maeijer 2-II*, p. 72 (nr. 66) and the various writers there.

statutory seat to The Netherlands. But in the case of an association, the formation of which is not subject to formal requirements, he deems it arguable that a foreign association by transferring its statutory seat to The Netherlands, can legally continue as a Dutch legal person, in the event the foreign law which originally governed the association, does not oppose this. The general question according to Maeijer, is whether a legal person, governed by a foreign legal system, can have its statutory seat in The Netherlands. This is possible now for the 'European SE'. Under the EU (Council) Ordinance 2157/2001 of 8 October 2001 on the European SE ('Societas Europaea' or 'SE'), [874] such a company can now move its statutory seat from one EU State to another EU State. Earlier, the European Court of Justice had already pronounced a few judgments which created more mobility, by taking away certain limits caused by international private law. [875]

In 1999, a proposal for a Council Ordinance with regard to the statute of the 'European association' ('EA') was introduced by the EU commission. [876] This is a structure in which the members are bringing in their know-how or activities, with a purpose which is of general use or with a view to direct or indirect furtherance of sectorial and/or professional interests. It can be formed either by two legal persons, formed under the law of one of the Member States and having their seat in at least two Member States, or by at least twenty one natural persons who are subjects of at least two Member States and residing in two Member States. The proposals do not provide for moving the seat of the EA within the EU, like in the case of the SE. [877]

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[874] *Publicatieblad van de Europese Gemeenschappen*, 10.11.2001 (L 294/1), effective 8 0ctober 2004.

[875] EU Court of Justice 27 September 1988, case 81/87 (Daily Mail); 9 March 1999, case C-2112/97, *NJ* 2000, 48 (Centros); 5 November 2002, case C-208/00, *NJ* 2003 (Überseering) and 30 September 2003, case C-167, JOR 2003/249 (Inspire Art).

[876] Proposals of the Commission COM (91) 273/I and II definitive, *Publicatieblad* C 99, 21.04.1992; amended proposals COM 993) 252 definitive COD 930386 and COD 930387, *Publicatieblad* C 236, 31.08.1993; Advice of the European Parliament , first reading; *Publicatieblad* C 42, 15.02.1993; Advice of the Economic and Social Committee, *Publicatieblad* C 223, 31.08.1992, last modification 20.03.2002.

[877] The EA should deploy substantial activities within various Member States. The seat should be laid down in the statutes and must be situate within the EU and at the place where the board is established. Every member of an EA has one vote. Decisions are taken by majority vote. The board is appointed and dismissed by the general assembly. A budget has to be drawn up prior to each financial year. The EA is dissolved by decision of the general assembly or when the period laid down in the statutes has lapsed or if the annual accounts of the past three financial years have not been published or by judicial decision if the seat is moved to a place outside the Community.

XVI.11. When is an association under Maltese law legally present?

When is an association under Maltese law legally present? For example, under Dutch law when one has members, an object and some organisation structure, one is an association. A notarial deed of formation is not required. Under Dutch law, any association automatically has legal personality but only that association which statututes have been laid down in a notarial deed, will enjoy full legal capacity, i.e. can acquire and alienate immovables and inherit while the board of the association is generally not personally liable for the association's debts. Under Dutch law, an ecclesiastical community can take its own form and then is a legal person sui generis under the legislation on private law legal persons, but it can also take a form mentioned in the law on private law legal persons, like association. Then it has to observe the rules of an association as laid down in the law.

The legal status and other aspects of associations and similar entities, are not regulated by statute in Malta. The following provides a basic picture of the legal position of clubs and similar civil associations in Malta. The status of such entities and related matters was clarified by case law and the enactment of the Interpretation Act. [878] In a nutshell, no specific Maltese legislation regulates the existence of non-commercial partnerships or associations. Reference must therefore be made to judgments of the Maltese Court on this matter. It would appear there is no doubt – although plaintiffs/defendants in various cases do raise the issue – that associations and other civil 'partnerships' have a legal personality distinct from that of the members of the said association. Such associations and partnerships have the power to acquire rights and assume obligations - Anthony Bugeja v. Carmelo Agius et (Court of Appeal - 4th October 1991). In this case, the Court stated that in Maltese law, therefore every association formed on the basis of a social contract, would have a distinct legal personality, as long as the objects of this contract are not impossible, prohibited by law, immoral or in violation of public order. One of the rights of such associations would be to be represented by a physical person(s). The Court went on to explain that the issue of distinct legal personality is different from that of liability.

XVI.12. Personal liability of the members

The liability of a member of the association for the actions of the association are, as a general rule, unlimited, as is the liability of every physical person. An exception to such unlimited liability of the members arises either by law

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[878] Chapter 249 of the Laws of Malta.

(as in the case of shareholders of a company), or in relation to the commission of crimes, in which case the members of an association would not be liable for crimes committed by the 'directors' of the association. However, all persons who participated in such crimes (by commission or omission) would be liable in terms of general principles of law, depending on their level of participation in the commission of such crime.

The Interpretation Act states that the expression 'person' shall include a body or other association of persons, whether such body or association is corporate or unincorporate. Thus, as a person, a civil partnership or club would have the capacity of being sued in its own in terms of the procedure laid down in the 'Code of Organisation and Civil Procedure'.

The cases encountered did not lay down any specific rules and did not distinguish between civil partnerships/associations formed for some specific civic purpose and religious associations. The cases mentioned above dealt with the 'St. Joseph Club, Zebbug' and the 'De Rohan Band Club'. In another case – Architect Patrick Camilleri and Architect Stephen Mangion in their own name and on behalf of the firm Mangion & Mangion Partners v. Joseph and Maria Carmen Pace (First Hall Civil Court - 1 March 2002) – the Court commented that although a firm has no legal personality, in this case plaintiffs intended to use the word 'partnership' (socjeta) and that such a partnership, although of a civil nature, has a distinct legal personality and the capacity to institute legal proceedings. Furthermore, in Socjeta Filarmonika La Stella v. Commissioner of Police (Court of Magistrates Gozo - 17th July 1997), the Court referred to the plea that plaintiff did not have the capacity to institute legal proceedings and stated that, although Maltese law does not regulate the constitution of 'moral entities', it still considers them to be legal persons. It is not necessary that such consideration of an entity as a juridical person be express. It can also be implied by some act on the part of a competent authority. The Court referred to plaintiff's oral pleadings with approval and stated that band clubs have been recognised in different provisions of various laws, such as the 'Income Tax Act' and the then 'Customs and Excise Tax on Services Act', where band clubs were exempt from the application of such tax. This judgment was overturned on appeal, but not on the merits of this particular point.

Van Drimmelen & van der Ploeg point out that when it is not possible to register in the Netherlands as an ecclesiastical community under Book 2 of the Civil Code and thus as a legal person sui iuris, relatively many foreign religious organisations nowadays register as an association or as a foundation under Dutch law. They will then have to observe the specific association and foundation arrangements of Book 2 and do not enjoy the

formal status of ecclesiastical community. [879] Where a Dutch association is formed without laying down the statutes in a Dutch notarial deed, the board of the association will be jointly and severally liable for the debts of the association. [880] In sofar there is a parallel with Maltese law although this law seems to hold that all the association members can be liable for the actions of the association, not only the board members.

XVI.13. No registry for associations, foundations and religious organisations

There is a State registry of companies in Malta. There is however no similar registry for associations, foundations and religious organisations, all three of which are not bound by similar obligations to submit documentation for registration by an authority. One can therefore not find out from a public register whether is registered 'The Knights Hospitallers of The Sovereign Order of St. John of Jerusalem, Knights of Malta – The Ecumenical Order –' and obtain a copy of a registration. If such organisations are set up (by choice) by public deed, one may possibly attempt to order an official search at the public registry.

Some organisations are exempt from income tax in terms of legal notice published in the Government Gazette. [881] There is a list of such entities.There are only four apparently relating to Orders of St. John, i.e. '50. Order of St John of Jerusalem Knights Hospitaller Russian Grand Priory of Malta; 57. Sovereign Military and Hospitalier Order of St John of Jerusalem, Rhodes and Malta; 58. St John's Ambulance and 59. St John Council'.

One does not immediately know where to serve a writ on an association or organisation not being a company under Maltese law if one cannot find this association or organisation in an association register, because this register does not exist. And would the local Maltese judge accept that he has jurisdiction, in case the organisation is summoned to appear before him, respectively recognise it has legal personality? There is also no specific law relating to religious organisations as such, but they are in practice regulated by various laws in relation to various aspects thereof.

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[879] Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 124.
[880] Van Drimmelen & van der Ploeg, ibidem, p. 127-128.
[881] Exemption on Philanthropic Work Notice [S.L.123.24 1, Subsidiary Legislation 123.24], Legal Notices 182 of 1991, 64 of 1994, 76 of 1996, 68 of 1997, 47 of 1998, 95 of 2000, 9 of 2001, 87 of 2002 and 23 of 2003, consolidated. The institutions and organizations as listed in the Schedule to this Notice are to be considered exempt from income tax for the purposes of article 12 (1) (e) of the Income Tax Act.

XVI.14. Conclusion under Maltese law

We conclude that it seems that Maltese law might accept that The Ecumenical Order is a legal person and might even accept that it moved its statutory seat there. Under Maltese law, The Ecumenical Order might even be deemed to be a private law organisation 'sans loi'. [882] But Maltese law may not provide the members of The Ecumenical Order with the protection of limited liability. Furthermore, it seems that Maltese law does not expressly stipulate that the members of the Board of a legal person, in casu the Supreme Council, are not personally liable for the debts of the organisation. It seems to be the other way around. The Interpretation Act, Section 13, says: 'Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence, unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.' This is clearly a legal assumption of personal liability. Finally, it seems that the organisation might be sued as such before the local court, but it does not seem certain that the local court would grant jurisdiction.

XVI.15. General conclusions about the legal nature of The Ecumenical Order

The Ecumenical Order in our view has an uncertain private law legal nature. Not only because it is doubtful whether or not it is an ecclesiastical community and under what national law we are to establish this, but also because if it is not an ecclesiastical community, it remains doubtful by what national private law it is governed. To claim it is an international public law legal person is one thing, but to prove that is another thing, as it is not recognised as such by the international Community of Nations. Then it is something which claims it is something which it is not and then it is difficult to qualify what it is. Is it an association under Maltese law, is it an association under Canadian law or an association under English law?

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[882] Infra p. 375, *XVI.16. Is The Ecumenical Order an association sans loi?*

Simultaneously, it remains unclear where it can be sued and where it has its principal place of business or main office, in Malta, Canada or the UK? And if one would qualify it as an association under for example Maltese law, would it then be a normal or a religious association? But if confronted with a writ to appear in a Court somewhere, the question of qualification is bound to crop up. If one in that case is qualified in principle as an association, one might have to face a situation wherein it would be said that one is a null and void association, because one does not comply with the basic requirements of association law, such as that the members are able to vote who their council is and that the members establish the annual accounts, etc., although Hardenberg holds that with a church institution which prima facie may appear to be a form of co-operation, voting rights may not be available and the membership is subordinate to the religious purpose in such a measure, that the institution is similar to a foundation. [883] Another problematic situation, is the situation in which The Ecumenical Order wants to claim something before a Court. As what would it then claim this? As an international public law legal person which it is not, as an association or an ecclesiastical community, but under what law then and with a statutory seat and main office or headquarters where?

From a strict legal point of view, it might have been better to have opted in the Statutes for a governing law, a clear choice for a national legal system and execute a notarial deed of formation under this law. Maltese association law is anyhow not yet well developed. At any rate, it seems this choice was not made (yet), in spite of the statement saying the 'International Seat of the Order and the diplomatic centre (is) Malta'. This is not an express choice of law clause saying that the organisation wants to be subject to Maltese law (if this could have this effect). If an express choice of law would be proposed or made, no doubt voices might be raised against this in The Ecumenical Order then. It might be argued voluntary qualification as association under a national legal system could mean giving up the pretended historical position the organisation is an independent (sovereign) international legal person or an 'Order'. The advantage would be clearer legal relationships and in principle no personal liability of the Supreme Council members (or other members), except under Maltese law.

XVI.16. Is The Ecumenical Order an association sans loi?

However, there are – next to legal persons deriving their legal personality from some specific national legal system – other legal persons, i.e. international bodies which are not connected to a national legal system.

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[883] L. Hardenberg, 'Het eigen recht van de kerken', *WPNR* 5520 (1980), p. 371.

These are particularly bodies which came and come into being under public international law. The Ecumenical Order has no public international law legal personality. But an association 'sans loi'or 'sui iuris', [884] formed by private initiative, may be recognised by a national judge as a legal person in the event it has 'social reality'.

International bodies which are not connected to a national legal system, are usually formed by or by virtue of a treaty, or by agreement. These are usually bodies with a public law status. They derive their legal personality from the treaty or agreement involved. Their seat – as a rule – does not entail a special link with the country involved. Sometimes, such a legal person is subsidiarily governed by the country of seat or establishment, next to the formation treaty and are its statutes drawn up in conformity therewith. The question whether such an international body should be recognised as a legal person, is not dependent on the national private law of the judge before whom a case by or against such a body, is conducted. In the (Dutch) UNRRA case, [885] in three instances, an international public law legal person was recognised which had not obtained this capacity from a national lawgiver of a foreign country, but by a deed of common lawgiving by a number of foreign countries.

Hardenberg distinguishes between three types of church bodies, i. e. an ecclesiastical community or an independent part thereof and other church bodies, who therefore are sui generis and compares their coming into being with that of international legal persons, not connected with any national law. [886] It is disputed whether also private parties are able to enter into forms of collaboration, not linked to a national legal system and on the basis of their organisational unity and their participation in legal traffic, should to be designated as legal persons. Struycken holds that under the private international law of the judge adhered, the intent of the promoters and successive bearers of control to create and maintain a legal person 'sans loi', has no legal effect. [887] But although the general rule is that a legal person should be linked to or be part of a national legal system, an exception is deemed possible by others for those international associations, who do not have a 'fixed seat'. [888] These associations nevertheless do have 'social reality' and act as organised bodies. The law then should and does not pass

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[884] Gai. Inst. I, 48: 'Sequitur de iure personarum alia diusio. Nam quaedam personae sui iuris sunt, quaedam alieno iuris subiectae sunt.'

[885] Hoge Raad 19 May 1950, *NJ* 1951, 150, note Ph.A.N.H. [UNRRA (United Nations Relief and Rehabilitation Administration)].

[886] L. Hardenberg, 'Het eigen recht van de kerken', *WPNR* 5520 (1980), p. 369.

[887] A.A.H. Struycken, 'Goed en trouw' (*Van der Grinten Bundel*, Zwolle 1984), p. 267.

[888] Maeijer, *Asser-Van der Grinten-Maeijer 2 II*, p. 72; Seidl-Hohenveldern, *International economic law*, p.61.

these organisations by, as is also apparent from the (Dutch) Union Cycliste, Badan Persatuan and FIDE cases. [889]

The right to independently act as trial party (ius standi) is often a point of dispute. This dispute is then usually solved in terms of recognition of legal personality, either by the law of the country of incorporation of the organisation ('loi nationale') [890] or the law of the country of the organisation's 'management and control' ('Verwaltungssitz'). [891] However, in practice this is not always sufficient, while the desirability that the organisation involved can sue and particularly be sued, necessitates setttlement of the dispute, independently of the recognition methods mentioned. In the FIDE case, the Court of Appeals inter alia established that the FIDE organisation – formed in Paris in 1924, but not under French law, while there were no connection points available to indicate the choice of a certain national law – had members entitled to vote in the general assembly; this general assembly was the highest organ and that it appointed a financial commission to inspect the books and therefore, the organisation had all the characteristics to qualify it as an association under Dutch law.

Assuming The Eumenical Order does have 'social reality' and does act as an organised body – which one could dispute for reasons to be mentioned below – the question is whether The Ecumenical Order has a fixed seat somewhere (which we are inclined to deny for the reasons set out above). The Ecumenical Order would then be an international private law legal person 'sans loi'. But how this may be, the lex fori of the court approached with a case and its national private international law, will decide this matter.

XVI.17. How is The Ecumenical Order organised?

The Statutes and By-laws of The Ecumenical Order. These were revised and then 'ratified' and 'promulgated' on 9 February, repectively 1 March 2002, on Malta. Certain alleged problems and difficulties in the implementation and operation of those Statutes then arose. An alleged lack of flexibility was adduced. This situation was surprising, because these Statutes were based on the previous Statutes. But the new Statutes required a higher degree of

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[889] Pres. Rechtbank Utrecht, 11 May 1973, WPNR 5374, (1977), p.41 (Association Union Cycliste Internationale); Rechtbank 's Gravenhage 18 April 1975, *NJ* 1975, 220 (Badan Persatuan); Hof Amsterdam 21 January 1981, *NJ* 1983, 420, note CJS (FIDE);

[890] Dutch law applies the incorporation doctrine: article 2, Wet conflictenrecht corporaties (Stb. 1997/699).

[891] *Dicey-Morris*, II, 1980, p.1191; *Batiffol-Lagarde*, II, 1976, no 702; *Iprax* 1082, p.202; Rabel, *The conflict of laws*, II, p. 15 ff. ; *François I*, 2e druk, p. 145, 588 and 972.

accountability of the Order itself and its Grand Priories and Priories, as well as a higher degree of involvement in the affairs of the Grand Priories and Priories by the Grand Chancery and its officers. They had to carry out a number of additional tasks in the framework of these new Statutes. Furthermore, it was alleged that, particularly in common law jurisdictions, this lack of flexibility was likely to add greatly to the cost of operating Priories and Grand Priories. It was then considered to rescind the Statutes and By-Laws adopted on 9 February 2002 and to reinstate the previous Statutes.

However, this road was not taken. The Statutes and By-laws of 9 February 2002 were left in force, but amended by a special drafting committee and then replaced by a set of Statutes and By-Laws, which was ratified on 22 August 2002 and promulgated on 8 September 2002, on Rhodes. We will now highlight the most important aspects in our view of these documents. Of course, later amendments cannot be included.

XVI.18. The most important aspects of the Statutes of The Ecumenical Order

The Statutes have a front page with a trademarked logo and some essential statements on it, one of which was already discussed and are divided into nine Chapters: I General; II Mottos, Standard, Banners, Armorial Bearings, Grand Seal and Feast Days of the Order; III Organs; IV Grand Priories, Priories & Commanderies of the Order; V Knighthood and other Grades of the Order; VI Obligations; VII Discipline; VII By-Laws and IX Amendments. Indirectly, these Statutes and By-laws refer to history in many places, while it can also be said that these Statutes and By-Laws taken in their entirety, are an historical statement.

The front page shows a coat of arms which prima facie looks like a Russian eagle with a Maltese cross. This coat of arms is supposed to be a registered trademark. Is The Ecumenical Order indeed the owner of this trademark or is it a licensee and if so who is the licensor? [892] Does this coat of arms infringe on someone else's rights, for example the Russian State or SMOM?

It also says on the front page 'The Ecumenical Order should not be confused with any other genuine Order St. John (i.e. The Sovereign Military Order of Malta, the Johanniter Orden i Sverige, the Balley of Brandenburg, The Venerable Order), or any other such Order of St. John.' We deem this a step into the right direction, i.e. we see here an attempt to prevent confusion with the public. However, whether they themselves are a 'genuine' (or

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[892] Infra p. 401, *XVIII.3. Sovereign Order of St. John of Jerusalem, Inc. v. John L. Grady*.

'legitimate') organisation of St. John is the question.

Article 3, already cited above, [893] provides us with the aims of the organisation. Clause 3.1. is rather vague, but it is probably always useful to be able to say that someone did not behave in a chivalric way; clause 3.2. is rather ambitious; clause 3.3. is probably a reference to the original Order and its fighting task; clause 3.4. could be anyone's task; clause 3.5 is probably very necessary for every organisation and clause 3.6 quickly leads to unfounded expectations and attempts of mixing the organisation with commercial interests. We noted that the theoretical purposes of the original Order were threefold, i.e. praying, nursing and fighting. We miss the praying purpose in the objects clause.

XVI.19. Language of The Ecumenical Order

Article 5 says the official language of The Ecumenical Order is English. The official language of the original Order was French, but Italian was also widely used, particularly in the fleet.

Interesting is also article 6, stating that the sources of law are the Statutes and By-laws and the ancient Hospitaller customs and traditions and for professed members, the 'Rule' (obedientia, castitas and sine proprio) and that in case of conflict, the Statutes shall prevail. But the primary source of law where a private law organisation, not being an ecclesiastical community, is concerned, is the governing national legal system with which the Statutes and By-laws may not conflict. 'Ancient Hospitaller customs and traditions' are also rather vague. We also note the Statutes and By-laws are referring here to 'Members', i.e. the individual Knights and to others 'having a degree from the Order'. The organisation therefore is set up in principle as an association type of organisation.

XVI.20. Grandmaster's will is law

From the remainder of the Statutes, it becomes clear that – like in the Most Venerable Order – the Grandmaster's will is law, which conflicts with the organisation's association type set up. An association intrinsically is a democratic organisation. An association is an organisation enabling its members to have a heightened participation and put forward their interests, which are taken into account in the policy making and executing. It might be argued this also conflicts with the the original Order's set up, at least as it was in the beginning and later, with how it was theoretically, i.e. the idea of a 'nobles republic', where theoretically the highest power was in the hands

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[893] Supra p. 364, *XVI. 5. Is The Ecumenical Order an ecclesiastical community?*

of the members, principally the Knights and theoretically, the Grandmaster was a 'primus inter pares'. [894]

An Order of St. John probably needs to have a mitigated democratic but not a presbyterian or congregational structure, rather than an autocratic or episcopalist structure. This for at least two reasons. All Orders of St. John, whether 'recognised' or not, nowadays invoke the ideals from the beginning times, from the 11th century and if that is the case, it might be argued one should also go for the more democratic original organisation. Secondly, the democratic system is more accepted nowadays than the autocratic system. One is more in line with the early history and with the present times, if one follows the constitutional or democratic structure instead of the autocratic structure. SMOM has a mitigated episcopalist structure. The Johanniter Order in the Netherlands does have a more democratic structure. Same goes for the Balley of Brandenburg. The Venerable Order is different in this respect. It is – at least in theory – very episcopalist. If one prefers an episcopalist or autocratic system and if does not qualify as ecclesiastical community, one has to opt for a foundation. A foundation has no members.

As is stands now, members of The Ecumenical Order might be under the impression they join as members of an association, but then it appears they have nothing or not much to say, in theory nor in practice, because the organisation is set up autocratically and is applying 'loyalty and obedience'. By entering the organisation, the individual renounces his freedom vis à vis the organisation and undertakes to subject himself to its objects and its interpretation of the religious basis. The interpretation of the vows made, seems to be that Knights swear allegiance to the Grandmaster and vow to obey all 'Rules and the Superior Officers of the Order'. Obedience also is the prime virtue in the Roman Catholic Church and the Army. But loyalty and obedience are also two virtues which caused havoc in history many times. An autocratic and uncontrollable structure can and will quickly be abused. The present new Statutes and By-laws have not struck a balance between the democratic and the autocratic system. The ancients said there would always be a vicious circle between democracy, oligarchy and tyranny, reason why a governing system, to be well balanced, would require certain elements of the three combined in one. This balance is in our view realised best in the Balley of Brandenburg's Satzung, then in the Statuten of the Johanniter Orde in Nederland, then in SMOM's Constitution and Code; the least in the Most Venerable Order's Statutes and in The Ecumenical Order's Statutes. The latter two are episcopalist organisations.

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[894] Similar Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 10; Sutherland, *Achievements I*, p. 270: 'In an Order constituted like that of Saint John, a system of unmitigated despotism was not likely long to be tolerated.'

'Wer sich zum Wurm macht, soll nicht klagen, wenn er getreten wird.', [895] but the law still has the task to protect such people. Although it concerned a foundation under Dutch law, the Dutch Hoge Raad (Supreme Court) did not reject a statutory arrangement whereby the board was dependent in important matters on the binding advice of the foundation's spiritual leader, residing in Pakistan. But on the other hand, both the Gerechtshof (Court of Appeals) and the Hoge Raad held that the binding advices of the spiritual leader involved, were in themselves subject to the reasonableness and equitability of articles 2:8 and 2:15 BW (Dutch Civil Code). [896] According to Van Drimmelen & van der Ploeg, the Dutch judge would only in religious matters abstain from a judgment and otherwise be able to only marginally test decisions taken and proceed to nullification only where no reasonably thinking person could have taken such decision. [897]

According to article 12.2.a of the Statutes, the Grandmaster is elected for life by the Supreme Council and the Knights Grand Cross together with the other Knights of Justice. According to article 15.1, the Grandmaster appoints the members of the Supreme Council, also called senators. [898] Only Knights of Justice can vote in this organisation. This may be historical, but is also a weakness of this system from a democratic point of view. According to article 23.1, the powers of the Supreme Council, whose members are appointed by the Grandmaster, having heard the recommendations by the Grand Priors in good standing, are consultative only. Under article 23.2, the Grandmaster can issue a decision which is at variance with the vote of the Supreme Council in emergency cases, in his discretion. The Grandmaster is only obliged to follow the vote of the Supreme Council in the event the Supreme Council would deem a Chapter General necessary.

According to article 8.1, it is the Grandmaster who interprets the Statutes together with the Supreme Council, but having heard the Attorney-General. According to article 8.2, the Grandmaster's decision will be binding and final in any matter not covered by the Statutes or By-Laws.

According to article 9, the Grandmaster may grant dispensation of the Statutes and By- laws. Article 9 contains a general power of dispensation 'with consultation with the Grand Chancellor by ancient powers vested in him.' In reality, this is an unlimited power of dispensation. Article 16.2 is illustrative in this respect. It says the President of the Supreme Council is the

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[895] Immanuel Kant.

[896] Hoge Raad 12 May 2000, *NJ 2000, 439* (World Islamic Mission).

[897] Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 130-131.

[898] An old tradition. See Spruit. Chorus, *Corpus Iuris Civilis VII*, p. XIII. The Roman emperors used the senatus consultum as instrument to bring about the changes desired by the emperors, while practically all senators were appointed by the emperor, also called autocrator.

Grandmaster and that he may 'exercise in the Supreme Council and in the Chapter General all the ancient rights, privileges and prerogatives due to and inherent in the sovereignty of his Office'.

XVI.21. Organs of The Ecumenical Order

The organs of The Ecumenical Order are the Grandmaster, the Lieutenant Grandmaster, the Supreme Council, the Grand Chancellor, the Grand Prior's Conference and the Chapter General. As said, the Grandmaster has a very important position. The Lt. Grandmaster only comes into action when the Grandmaster has to be replaced. The Supreme Council is important to give guidance but together with the Grandmaster. Ultimately, the Grandmaster decides any interpretation dispute and also decides whether there is a vacuum in the rules. The Grand Chancellor is the organ running the day to day business and supervising the Grand Chancery which is under his control.

The Grand Prior's Conference will annually be heard, but under article 29.2 only has consultative powers which fits the overall autocratic strucure of the Statutes.

The Chapter General does not establish the annual accounts. Under article 27, these are established by the Supreme Council. According to article 30, the Chapter General is an organ with nothing or very little to say. The basic rights of an association's general assembly which normally cannot be taken away from it, are to appoint at least the majority of the members of the governing organ, to establish the annual accounts, to amend the statutes and the right to dissolve the association. None of these rights are made available in the Statutes to the members of The Ecumenical Order.

XVI.22. The Grand Priories

The Grand Priories are not corporate members of The Ecumenical Order. Some of these Grand Priories are older than The Ecumenical Order itself. [899] These Grand Priories usually have a clear legal regime, because they usually are private law associations under their respective national legal system.

They are theoretically autonomous, but 'within the Statutes'. This means that on the one hand they are not members, but on the other hand they can be regarded as sub organisations of the Order. If they were members of the Order, one would have had to work out what votes they would have had and how they would have voted. One would have had to solve a conflict between

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[899] Supra, p. 276, *VIII.25. The Paternò Order formed in Canada.*

their votes and the votes of the individual members they represent.

XVI.23. Grandmaster also has the ultimate control over the Grand Priories

Under article 43, the stipulations of the Statutes with regard to Grand Priories, are also applicable mutatis mutandis to all Priories, Commanderies and members of the Order.

The Grandmaster has the ultimate control over the Grand Priories, as is evidenced by article 35. The local organisation may be able to vote who is its Chairman (or 'Grand Prior'), but the Grandmaster's approval is always necessary. He also has ultimate control over who can become a member of a local Grand Priory, as is evidenced by article 50. He approves the elected Grand Priors. Under By-Law 2, the Grand Prior has to swear a heavy oath and under By-Law 3, he and the rest of the Council of the Grand Priory have to sign a 'Declaration of Allegiance'. His approval is necessary for all investitures of new members, under article 45.

He also controls all promotions within a Grand Priory, under article 50 and as said, he appoints the members of the Supreme Council. If a Grand Priory does not do what he wants, he may threaten to dissolve them as a Grand Priory of the Order, although this is not laid down anywhere in writing. In such a case, their private law status as association may stay intact, but their ties with the Order (having fons honorum) are severed. If a member of the Supreme Council does not do what he wants, he may dismiss him rightaway. If another member does not do what he wants, he may not promote him to a higher rank or not appoint him to a certain office. But in practice, the national organisations are left pretty much alone and are indeed rather autonomous, as long as they generate new Knights and thus new investitures and passage fees.

XVI.24. Conclusion: total control by the Grandmaster

What we see, is total control by the Grandmaster over the organisation through his control over the organs of the organisation, as well as total control over the national organisations. People depend on him for membership, promotion to a higher rank, appointment to an office or a higher office and have to be obedient and loyal. If deemed not to behave, they may be brought before a Court of Honour under article 65, juncto By-Law nr. 17. It will be no surprise that it is the Grandmaster who decides if and when the Attorney-General (who under article 25 of the Statutes is responsible only to him but has no independent position), should prosecute a member before the Court of Honour, on which Board we again find the Grandmaster as President, with the Grand Chancellor as Secretary-General and a third member 'in good standing'. Although there usually is no

separation of powers in an ecclesiastical community, we find this rather crass. Finally, we again find the Grandmaster as the sole member of the instance of appeal from decisions of the Court of Honour. One may ask whether this can be qualified as 'acting as an organised body', necesary to be recognised as a legal person 'sans loi' and thus having legal personality, juncto the right to sue and be sued. The escape might be the ecclesiastical community aspect.

XVI.25. Financial aspects

Financially, the organisation is dependent on a very small annual subscription payable by each member, called 'oblation' and on the 'passage fees' payable by each prospective member under article 52. At the moment these are around USD 1.000, which is reasonable compared to similar Orders. In the context of investitures, requests for discretionary but sometimes sizeable 'donations' unfortunately are not eschewed. The organisation appears growth driven for financial reasons alone already. At any rate, the membership administration should be accurate and match with the financial administration. It cannot be established and controlled by a member or an outsider whether this is the case, because accounts are not made available to a member, who is not also a member of the Supreme Council, let alone to an outsider. Therefore control over how any oblations, passage fees or donations or other charitable funds are handled by the organisation, is lacking.

The situation is different in the national organisations, because they are run under a national legal system. But also here control by outsiders usually is not possible, because legislation obliging the organisation to annually submit a balance sheet with a register maintained by a local Chamber of Commerce, is usually lacking. For example, this obligation applies in The Netherlands only to organisations carrying on a business.

VI.26. Members

A relatively recent membership drive was especially aimed at Chinese businessmen and professionals, based in Hong Kong. This is not so strange as it might seem at first sight: think for example of the Japanese 'Bushido' concept (Samurai, applying a rigid doctrine of obedience and self sacrifice). The total number of members is not entirely clear but could be about 3.000 men and women. Membership is open to every 'practising Christian'.

Article 44 provides the Requirements for Knighthood or any other Grades of the Order:

> 'Without prejudice to Article 50 hereof, Knighthood of the Order or any other Grades of the Order are strictly confined to practising Christians, male or female, irrespective of any nationality or race, whose worthiness, repute and sincere intent are acceptable to the Grand Priory, Priory or Commandery normally involved and who are prepared to honour and uphold the high ideals of the Order by actively engaging in its religious, fraternal, Chivalric, Hospitaller, charitable and other activities and actively contributing to its aims and do not possess a Grade awarded by any other (genuine or non genuine) Order, except where expressly approved in advance by H.S.H. The Grandmaster.'

The organisation therefore can be seen as a competitor of SMOM or of other Alliance Orders, because it also attracts Roman Catholics, Anglicans or Protestants. Basically, the organisation can be regarded as a competitor of every Alliance Order in every country where it is active, in the form of attracting members or in the form of extracting funds for charitable purposes from the markets involved. Noble birth is not required for membership. In this respect it is theoretically similar to inter alia the Balley of Brandenburg. Grandmaster and Lt. Grandmaster however need to be noble.

By-Law 8 claims the right to attack a member for providing wrong or insufficient information on his application form but without applying any time limit. The original Order applied a time limit of 3 years here.

The umbrella organisation is called the Order. Each Knight is a Member of the Order. Under that umbrella are a number of national organisations which are called Grand Priories, but may also be Priories or Commanderies. Each Knight also is a member of the national organisation. Ideally, there would be a Grand Priory in each country, consisting of three Priories (a Priory having a minimum of 10 Brethren, so 3 x 10 = 30 = a Grand Priory). Each Priory would ideally have to consist of two Commanderies (a Commandery consisting of a minimum of 5 Brethren, so 2 x 5 = 10 = a Priory).

There is no provision for what happens if a member of the Order fails to pay his or her oblations. But the oblation is collected by the local organisation. The local organisation is jointly and severally liable for the collection of the oblations, under article 53.2, but also for the collection of the passage fees. The Order has the right to collect from the local organisation or the member itself. Where a member will not pay his oblation, he will usually also not pay his subscription to the local organisation. Then the local Statutes and By-Laws are triggered and his membership will be suspended or terminated. If terminated from the local organisation, then the member automatically is not a member of the

umbrella organisation anymore. The same goes the other way around. Also, if a member would be guilty of a certain behaviour which would instigate disciplinary measures against him under By-Law 17, then his membership could be suspended or (ultimum remedium) terminated which also automatically would entail suspension, respectively termination of his membership of the local organisation.

The Statutes and By-Laws should in principle be available for inspection, to all members and prospective members of the Order and to the public. But article 64 of the Statutes contain a confidentiality obligation. Preferably, the organisation does not liberally pass around its Statutes.
The Grandmaster put the Statutes in one book and the By-Laws in another book. Both books are in the hands of all leading members of the umbrella organisation or of its (Grand) Priors and are also open for inspection by all other members, at at the Grand Chancery or at the local Chanceries. Grand Priors are instructed to read from the Statutes and By-Laws at meetings. At any rate, postulants should be given the opportunity to personally inspect the Statutes and By-Laws of the Order, as well as the Statutes and By-Laws of their local organisation, because they have to declare in writing they shall abide by them.

XVI.27. Important items in these new Statutes and By-Laws improving the organisation

Obviously what one is involved here in this organisation is an ongoing process. Statutes and By-Laws must not be seen as fixed and immutable forever. Preferably, the Statutes and By-laws of an organisation such as this, should be a flexible document which can be used for a long time. This does not mean amendments may not take place. On the contrary, where amendments are needed, they should take place. But as it stands now, these Statutes and By-Laws at any rate are systematical and coherent and rather complete and a number of important issues improving the whole organisation, were laid down in them. These are particularly the following:

- the avoidance of confusion with other Orders by adding '(The Ecumenical Order)' and the obligation to always use the full name of the Order together with that addition (article 1.2);
- tighter arrangements with regard to member records;
- tighter arrangements with regard to financial year and accounts (article 27);
- the introduction of the organ the Chapter General (article 30), which organ oddly enough was lacking;

- the clarification of a number of powers of the Grand Chancellor, enabling him to better co-ordinate charitable projects (article 28 particularly);
- the closer co-ordination by the Grand Chancellor and closer co-operation with the Grand Priories, Priories and Commanderies (article 33 particularly);
- the introduction of a number of important obligations for the (Grand) Priories (article 33 particularly), also standardising the local organisations as much as possible (see also By- Laws 4 and 5);
- The recodification and collection of all By-Laws in one document;

XVI.28. Opportunities that may have clearly been missed

However, also a number of opportunities may have clearly been missed, where it concerns:

- the governing law of the organisation;
- the forbidding of any dispensation unless expressly provided for in the Statutes;
- the election, suspension and dismissal of the Grandmaster by the Chapter General or Supreme Council;
- the impossibility of the Grandmaster to go against a majority vote in the Supreme Council;
- the election, suspension and dismissal of the Members of the Supreme Council by the Chapter General or the Grand Priors Conference;
- the representation of the organisation only by Grandmaster and Grand Chancellor acting together (except in less important matters, to be defined), notwithstanding the present requirement for countersigning by the Grand Chancellor;
- the voting rights of the Knights and Dames of Grace;
- By-Law 17, The Rules of the Court of Honour and the Penalties, needing amendment;
- the Attorney-General's position which might become more independent from the Grandmaster, although this might present other problems again.

XVI.29. Summary of the Orders discussed

Having finished this discussion of the organisation of The Ecumenical Order, we summarise as follows.

The most presbyterian or democratic Order seems to us the Potestant German Balley of Brandenburg, with various careful checks and balances. Then follows the Potestant Dutch Johanniter Orde in Nederland. However, all Orders discussed work with indirect democracy.

The Johanniter Orde in Nederland is a pure private law association. The Balley of Brandenburg also is a part of the Evangelische Kirche of Germany. It is doubtful whether it can be regarderd as a real ecclesiastical community or a part thereof ('Bestandteil').

The Roman Catholic SMOM is also still somewhat democratic, in spite of the division of members determined also by its formal religious character. It also knows some checks and balances. Due to its international public law legal personality and its connection with the Roman Catholic Church, it has a privileged position in the courts of law of a number of States.

The Anglican Most Venerable Order, superficially speaking surprisingly enough for an English institution, [900] is set up rather episcopalist or autocratically, like The Ecumenical Order. The Most Venerable Order was set up by and by virtue of Royal Charters and therefore looks like a kind of public law legal person with an arrangement in and by virtue of a special governmental Decree, or a private law person with an arrangement in and by virtue of a special governmental Decree. Will its Statutes stand up in a court of law?

The Statutes of The Ecumenical Order however lack even more checks and balances. The Ecumenical Order is a vague national or international, but private law legal form. Possibly The Ecumenical Order also is an ecclesiastical body. Will its Statutes stand up in a court of law?

Finallly, it appears that the more one is distant from the normal association type, by being a legal person sui generis or by being an ecclesiastical community or a body created by public law, the less democratic one becomes. Democratic content is not only important from a private law or a human rights point of view, but also from a tax point of view. For example, under the Dutch Successiewet 1956 (Succession Act 1956), article 24.4, a qualifying institution presently only pays 11 % succession tax over inheritances received. But one of the (9) qualification requirements is, that the board should have at least three members, with equal votes. Another is, that accounts should annually be filed with the Tax Inspector, so that he may check whether the actual activities are conforming to the institution's objects clause. The Inspector should also be consulted upon any amendment of statutes. [901]

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[900] Anthony Sampson, *Anatomy of Britain* (1962), discovered the paradox that in Britain the most respected institutions are the least susceptible to democratic principles: 'decisions are actually taken by small groups of people, most of them unelected and unaccountable'. See also *Changing anatomy of Britain* (1982); *The essential anatomy of Britain* (1992) and *Who runs this place? The anatomy of Britain revisited* (2004).

[901] Successiewet 1956, article 24.4; also Resolution 31 May 2006, nr. CPP 2005/2891M, Stcrt. nr. 112.

XVII. THE SPECIFICITY OF AN ORDER OF ST. JOHN

XVII.1. Who is entitled to the history of the original Order and the original ideals?

Alain Beltjens [902] said that cut off from its history, 'the Order of Malta', meaning SMOM, would be loosing its specificity. It would be nothing else than one charity among many others. Other charities also have a history. Furthermore, the question with all discussed Order's of St. John, is whether they are entitled at all to invoke what Beltjens calls 'its history'. The questions also are whether this history is always correctly portrayed and whether this is their history. We demonstrated that the original Order was already dead before it was finally dissolved by Napoleon. Furthermore, that the history of the original Order is practically always presented only in a favourable light and not as it really was. It follows from the above that the history of the original Order is not the history of all those Orders which exist now and at best are only reconstitutions of parts of the original Order. There is no uninterrupted historical, let alone legal or material continuity. The Vatican has a different view of continuity obviously, as is also apparent from Canon 120 of the Code of Canon Law 1983. [903] But is it true that if the cut off from history indeed is happening, the (legitimate) Orders of St. John are indeed loosing their specificity and would be nothing else than just another charity? The previous Chapter showed that already from a legal and an organisational point of view, an organisation of St. John will have a number of peculiarities.

What did not continue from the begining till now, but was revived in the late 19th century and the 20th century, is the idea of caring for the sick and helping the poor. These were the leading ideas in the beginning phase of the original Order, the period from 1050-1118. Around 1050 was the beginning, while in 1118, the decision was made to militarise. These ideas now seem to be monopolised by the Alliance Orders. Only nobles can form legitimate Orders of St. John and only nobles are entitled to the above ideals dating from the beginnings of the Original Order. But we saw that merchants, later

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[902] Beltjens, *Origines*, foreword.

[903] '§1. A juridic person is of its nature perpetual; nevertheless it is extinguished if it is legitimately suppressed by a competent authority or has ceased its activity for a hundred years; a private juridic person is furthermore extinguished if the association is dissolved according to the norm of its statutes, or, if in the judgement of the competent authority, the foundation itself has ceased to exist according to the norm of its statutes.'

deemed wholly unqualified to join [904] and not nobles, started the original Order of St. John and the Teutonic Order.

XVII.2. Orders of St. John compared with other organisations

What is the difference between a legitimate Order of St. John and respected and widely known service clubs like 'Lions', 'Rotary', 'Kiwanis' or 'Round Table'?

An 'Association of Lions Clubs' was formed in 1917 in the USA by Melvin Jones, a business man. It presently has about 1.4 million members world-wide. Lionism originated from a U.S. movement in the second half of the 19th century. Its motto is 'We serve'. Its mission statement is 'To create and foster a spirit of understanding among all people for humanitarian needs by providing voluntary services through community involvement and international cooperation'. Rotary was formed in 1905 in the USA by Paul Harris, an attorney and presently has about 1.2 million members worldwide. Its motto is 'Service above self'.

Hereunder we attempt to enumerate some differences/similarities of an Order of St. John with service clubs and some differences/similarities of such Orders with other Christian organisations. We will also say something about some differences and similarities of such Orders with Freemasons. It will appear that an Order of St. John still has specificity, even if cut off from history.

XVII.3. Some differences/similarities of the Order involved with service clubs

The Order involved may also be an ecclesiastical community or 'religious body', whatever that may be. Its first purpose might be, like SMOM's, 'to promote the glory of God through the sanctification of our members'. Furthermore, it might also claim to be an (Exempt) Order of the Catholic Church, like SMOM, or as The Ecumenical Order claims, of a Church of the Syrian-Orthodox Patriarch of Antioch.

A service club member usually wishes to further the application of ethics in business life. Lionism has a 'Code of Ethics' [905] and Rotary has 'the 4-

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[904] Vertot, *History II*; *The old and new statutes of the Order of St. John of Jerusalem, Title II*, p. 18, item 41.

[905] *Lions Code of Ethics*: 'To show my faith in the worthiness of my vocation by industrious application to the end that I may merit a reputation for quality of service; to seek success and to demand all fair remuneration or profit as my just due, but to accept no profit or success at the price of my own self-respect lost because of unfair advantage taken or because of questionable acts on my part; to remember that in building

Way Test'. [906] Lions and Rotarians want to further mutual understanding and tolerance between nations and serve the general well-being. Activities are based on friendship, personal and professional input. Service clubs are based on a humanistic and liberal and democratic base. This is not the same as being based on a Christian base. The Order involved might not only be an association on a Christian base, like for example the Christian Farmers Union, or something like that, but (also) a spiritual organisation. The membership of the Order therefore, if correctly understood, may affect the life and the spiritual life of the Order member more, than the service club membership affects the business behaviour and the life in general of the service club member.

A service club member is more or less solemnly 'installed'; an Order Member receives the 'Accolade' in an elaborate semi-religious ceremony, usually after a real religious ceremony, like Mass. The Accolade has a deeper and also religious significance. Judging from the satisfied, happy and relieved, often stealthy smile of the dubbed Knight, immediately after the actual dubbing, when he rises from his kneeled position or when they put the neck decoration on him, in the presence of his wife, family and guests, the accolade means a lot to him at that moment. The Order member is also a 'Chevalier' or 'Knight'. The Order involved, if enjoying valid fons honorum, may validly grant this title by virtue of the fons honorum of its Protector(s). Elevation to a chivalric Order usually meant and means being nobilitated. [907] But this title may have no significance outside the Order involved, depending on the nature of this Order and the local law. Grades may not be mentioned outside the Venerable Order, for example. Remember on the other hand that all present Dutch 'Ridders' under the relevant Dutch law, the 'Wet op de Adeldom' (Nobility Act) [908] historically derive their titles from foreign nobility diploma's). The Ecumenical Order is at any rate up till now a 'Dynastic Order' of King Michael I of Romania. Just like the Roman Catholic Popes could and perhaps still can validly grant nobility

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up my business it is not necessary to tear down another's; to be loyal to my clients or customers and true to myself; whenever a doubt arises as to the right or ethics of my position or action towards others, to resolve such doubt against myself; to hold friendship as an end and not a means; to hold that true friendship exists not on account of the service performed by one another, but that true friendship demands nothing but accepts service in the spirit in which it is given; always to bear in mind my obligations as a citizen to my nation, my state, and my community, as to give them my unswerving loyalty in word, act, and deed; to give them freely of my time, labor and means; to aid others by giving my sympathy to those in distress, my aid to the weak, and my substance to the needy; to be careful with my criticism and liberal with my praise; to build up and not destroy.'

[906] By Herbert J. Taylor, President RI, 1954-1955, adopted by Rotary in 1943: 'Of the things we think, say or do: Is it the truth? Is it fair to all concerned? Will it build goodwill and better friendships? Will it be beneficial to all concerned?'

[907] Bruin, Kroon op het werk, p. 18.

[908] Wet op de adeldom van 1 augustus 1994, Stb. 1994, 360.

(nobiltà nera) and granted such nobility in effect, this may be done by His Holiness the Patriarch of Antioch and did he indeed do so, if this is not a fake. The Ecumenical Order's fons honorum is also based on him. The fact that this Order grants the title of chevalier, does however not mean that thereby the member is also part of, for example, the Dutch nobility. The member may however in principle use his title anywhere in the world, provided it becomes obvious what kind of title he is using, for example as follows: 'Chev. XYZ, OSJ'. The Order member may be deemed nobilitated and the Service club member is at any rate not nobilitated but does also usually not aspire thereto. In the origin of service club members, compared with those of Order members, at least where non Alliance Orders are concerned, there is however in principle no difference. Alliance Orders also have many non-noble or civil members, but they put the emphasis on noble members. The requirements for the membership of any Order of St. John do however contain the important requirement of being a 'practising Christian'. In a service club, one must be careful with discussing party-political or religious matters.

An aspiring service club member does not have to be a noble, while an aspiring Order member also does not have to be noble, although for historical but outdated reasons within the Orders, a noble aspiring member or member, has an advantage. Through the Accolade, every chivalric Order member has in principle been nobilitated. But the difference 'Knight of Grace' versus 'Knight of Justice'continues to play a role. The degree granted is not hereditary, unless a 'Hereditary Knighthood', in conformity with the statutes, is concerned. This is however only granted by way of high exception.

The attendance within the service clubs is (for example) the first and the third Thursday of each month. Within the Order, the attendance is less strict. The service clubs as well as the Order are organised in national organisations and where it concerns supranational Orders, in one overall international umbrella organisation.

The service club members as well as the Order members are charitably active or supposed to be so. Service club members often with a lot of success. For example, Lions International was able to raise around Euro 40 million in 2002 for charitable purposes. However, if things are treated correctly, the Order is charitably active in its traditional areas. Housing and nursing of 'pilgrims', hospital functions, etc.

The charitable activity of the Order should always go hand in hand with the spreading of the Christian religion? This is not the case with the service clubs.

Would the solidarity between service club members be less than that between Order members? We doubt it. A problem within an Order is that not seldom a certain chivalric behaviour is invoked, it not always being very clear what this is. [909] The difference between the Order and other organisations also is that the Order is a 'chivalric' organisation. But according to Curtius and the literature quoted by him, there hardly was a Knightly 'Tugendsystem' or 'Ritterethos'. [910] Steenkamp refers to the high ethical level with esthetical elements, attributed in medieval thinking to the title of Knight. Where the Knightly ideal was most adhered to, the emphasis was on the ascetic aspect. In the sphere of passion then developed the Knightly ideal of courage, justice and loyalty. [911]

XVII.4. Differences/similarities of the Order involved with other Christian organisations

The Order involved may (also) be a religious organisation. For example, the Franciscans are also a religious organisation. However, the Order is only partly a religious organisation, while its conventual life is usually non-existent. The difference between the Order and other religious organisations also is that the Order is a chivalric organisation.

Furthermore, it is important that the Order of St. John involved, is based on a Christian foundation. SMOM is on a Roman Catholic base, the Venerable Order is basically Anglican, the Balley of Brandenburg and the Johanniter Order in Nederland are on a Protestant base. The Ecumenical Order is on an Ecumenical basis and this also with a strong Orthodox twist (for example the alleged Patriarch of Antioch and H.M. King Michael I are Orthodox). This is also caused by The Ecumenical Order's supposedly Russian background.

XVII.5. Orders of St. John and Freemasonry

Freemasonry, which could be described as the constant development of those traits of a person's spirit and mind which can bring mankind and humanity to a higher spiritual and moral level, was allegedly already

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[909] Like 'I do not think this is chivalric behaviour.' or 'He does not know what the Order stands for.'

[910] Ernst Robert Curtius, *Europäische Literatur und Lateinisches Mittealter* (Tübingen und Basel 1993), p. 520: 'Das sogenannte Tugendsystem des Ritters ist wohl kaum ein System gewesen.' and on p. 521: 'Endlich muss daran erinnert werden, dass auch der Islam ein Ritterideal entwickelt hat, das 'auffällende Übereinstimmungen' mit dem des christlichen Abendlandes aufweist.' But refer also to the 'Nine Worthies' and the 'Twelve Peers' (Paladins).

[911] Steenkamp, *Ridderorden*, p. 51.

practiced by members of the English and Scottish building corporations for ages. If it is not a forgery, the oldest documentary proof of their existence dates from the late 14th century. [912] The formation of a Grand Lodge in London in 1721 was the start of the spreading of Freemasonry across the world. [913] Like many modern Orders of Knights of St. John, the founders of Freemasonry furnished it with medieval roots.

There are about 5 million Freemasons across the world now, organised in independent national private law associations, each having their own Grandmaster. These national private law associations more or less work together and maintain friendly relations, but are not subordinated to an international governing body. These associations are in turn divided in 'Lodges'. These associations and lodges are completely democratic organisations. Members come from various backgrounds.

The common denominator is the belief in a 'Grand Architect of the Universe'. Vows can be taken on the Bible, the Thora or the Koran or on another 'holy book'. The national Freemasons Orders want to be a focal point for the practice of Freemasonry. The individual member has a social task, not the Order, but individual members are and have been very active outside the Lodges in the charitable and other fields, also political.

Freemasonry is not a religion, but a working method. Inter alia are recognised the high value of the human personality; everyone's right to independently search for truth; man's moral responsibility for his own behaviour; the essential equality of all men; the general brotherhood of men and everyone's obligation to work with devotion for the well-being of the community. They further everything which can change spiritual poverty, moral and material misery into spiritual and moral richness and material well-being. They breed tolerance, strive for justice, stimulate love of one's fellow man, seek what unites, try to eliminate what divides the minds and hearts and bring about a higher unity, by emphasising the brotherhood binding all. Their method is the ritual and the symbol, which is said to be the difference with other similar organisations. Their patron Saints are John the Baptist and John the Evangelist. The Freemasons are much more contemplatively involved while the Order is more factually involved, more within the society ('viri probati'). But Freemasonry may be deemed to be an organisation on a spiritual basis.

In 1723, James Anderson, a Scottish preacher, drew up a Constitution Book (there are previous constitutions) with in it the 'Old Charges'. In the event an organisation of Freemasons is basing its working method and its

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[912] The 'Regius Manuscript' from about 1390.

[913] Anton van de Sande, *Vrijmetselarij in de Lage Landen.Een mysterieuze broederschap zonder geheimen* (Zutphen 2000).

points of departure thereon, one refers in principle to a 'regular Order'. The English Grand Lodge counts around 600.000 members, the Scottish around 300.000, the Irish around 55.000, in the US every State has its own Grand Lodge and there are around 3 million Freemasons in the US, in Canada around 200.000 and in Australia around 250.000. In The Netherlands there are around 6.200 members, in 144 Lodges and 70 towns. Up till now, only men can join, but there are also women and mixed associations. [914]

We see that Freemason organisation seems to be younger. But this is not the case. Freemasonry organisation in reality is older than contemporary Orders of St. John. As we saw (IX 9.7), the contemporary Orders of St. John all date from the second half of the 19th century, respectively the first half of the 20th century. Freemasonry exists at least since the formal formation in 1721 and its organisation has been more consistent. This consistency seems to be particularly based on the Constitution Book and the Ritual Book of Samuel Prichard, [915] which was very successful, was reprinted many times and translated into German, Dutch and French, as well as on the erection of a Masonic Hall in London; the ensuing concept of 'regular Order' and on a longer experience in dealing with disputes (started in England as of about 1775) between regular and irregular Masonic Orders. [916] For example, two competing Grand Lodges which had developed in England in the 18th century, formed one United Grand Lodge of England in 1813. Also according to Zeijlemaker, these differences of opinion did not disturb the unity of Freemasonry. [917] These are a few reasons for the growth of Freemasonry, but the main reason is its concept. It is a way of thinking and acting and not primarily an organisation. [918]

This is different in the sphere of Orders of St. John, where mutual reproaches and accusations between competing Orders of St. John are not rare. Compare 'false Order', 'bogus Order' or 'legitimate Order', in the sphere of Orders of St. John. There certainly is a desire for unity also there,

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[914] Wet van 2 maart 1994, houdende algemene regels ter bescherming tegen discriminatie op grond van godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht, nationaliteit, hetero- of homoseksuele gerichtheid of burgerlijke staat, Stb. 230; Artikel 3: Deze wet is niet van toepassing op:
a. rechtsverhoudingen binnen kerkgenootschappen alsmede hun zelfstandige onderdelen en lichamen waarin zij zijn verenigd, alsmede binnen andere genootschappen op geestelijke grondslag; b. het geestelijk ambt.' (This law is not applicable to: a. legal relationships within ecclesiastical communities and their independent parts and bodies they are united in, as well as to other communities on a spiritual basis; b. the spiritual office.).

[915] *Masonry dissected* (London 1730).

[916] Zeijlemaker, *Vrijmetselarij ontleed*, p. 127.

[917] Zeijlemaker, ibidem, p. 97.

[918] 'A peculiar system of morality, veiled in an allegory, illustrated by symbols'.

seeing inter alia the various Alliances created, but this desire cannot yet develop further in the present climate of mutual distance or even (sometimes) hostility. In Freemasonry, internationally there were disputes in the late 19th century between the United Grand Lodge of England and France and Belgium, [919] which resulted into the 'Basic Principles' for the recognition of foreign Grand Lodges of 1929 and the 'Aims and Relationships' of 1949, both drawn up by the English Grand Lodge. [920] Mutual recognition, which is in the power and discretion of the national Grand Lodges, although the English Grand Lodge claims the leadership position in this respect, also plays an important role in Freemasonry, but here the recognition act is governed by fixed and widely accepted norms for the formation and particularly for the working methods constituting a regular lodge. These were inter alia laid down by the 'Association Maçonnique Internationale, formed October 1921 in Geneva [921] and also contained in the principles laid down in the 'Alliance Fraternelle', of July 1953 and the 'Convention of Luxembourg' of 1954. Nevertheless a universal Freemasonry did not come about – this is also an illusion – and extensive discussions about the criteria for being a regular Order broke out repeatedly and will break out again. [922]

The Grand Lodges and their Lodges are private law associations which do not claim sovereignty. One of the criteria for being a regular Order is that the laws of the land are to be respected and the organisation makes no political or religious statements. There is no central organ with the power of command. Freemasonry appears to be more democratic, but there is a ranking system (pupil, companion, master, etc.). However, this system is based on learning. Freemasonry is religious, but not Christian. It is Ecumenical. There seems to be less or little emphasis on obedience and a lot of room for individuality, but they are conservative in that women cannot join, although there are also a solely women and a mixed Freemasonry. It is an initiation society, a brotherhood and a life attitude, a life school. Because Freemasonry is an initiation society, it is growth driven like most Orders of St. John. Regularly, someone has to be initiated, either in the three normal grades or in a higher grade or obedience (sic). In an Order of St. John, there are always investitures, but Orders of St. John are not as initiation oriented

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[919] Zeijlemaker, *Vrijmetselarij ontleed*, p.203-204.

[920] Zeijlemaker, ibidem, p. 152.

[921] Predecessor 'Internationale freimaurerische Geschäftsstelle', formed on 1 January 1903 in Neuchâtel, Switzerland.

[922] Zeijlemaker, *Vrijmetselarij ontleed*, p. 209-213, p. 222-224 and p. 286. Further details in A. Slootweg, 'Geschiedenis van de zoektocht naar een wereldomspannende broederketen, wegen naar universele vrijmetselarij', *Ken uzelve* 6, June 2005.

as Freemasonry. But Orders of St. John are also a brotherhood and an attitude towards life. Obedience is also not an empty word in Freemasonry either. In certain situations, the 'Worshipful Master' of a lodge may – without motivation needed to be given – suspend one or more members of the lodge from its activities, for a maximum of two months. [923]

Generally speaking only that practising Christian, who is enjoying a good name and reputation and who socially speaking earned his spurs, can hope to become a Knight of the Order. This is something else than just an automatism in the case where just being noble is required to automatically being able to become a Knight. In a Freemason Order, the requirements for membership are to be a religious and free man with a good reputation. Sofar our remarks on Freemasonry compared to Orders of St. John.

XVII.6. The appeal of joining an Order of St. John remains

There is obviously still a lot of appeal to join an Order of St. John. This appeal is caused by the power of the old ideals of caring for and nursing the sick and the combination with the power of religion, religious ceremonies, investitures, romantic ideas about Knights and Dames and social status. Think of the flight into a dream: the dream of leading a noble life. The entire medieval aristocratic life was based on an attempt to play a dream [924] and the appeal of being nobilitated, knighted and then to be able to wear the lapel pin with the Maltese Cross and to say to someone: 'Yes, I am a Maltese Knight'– which to the un-initiated is something very special and immediately raises the profile of the person involved – is and was great. [925] This aspect has been studied in-depth by Bruin in the framework of the two Dutch civil decorations. [926] Decorations explicitly refer to a hierarchical system between people. The terminology (Knight, Officer, and Commander) refers to a military-feudal past. They are symbols of unequality in a democratised or levelled society [927] This can all be abused and as Stair Sainty and others have shown, has been abused and perhaps is being abused. But accusations alone are not enough, particularly not when the impression is they are also or mostly based on a desire to claim a monopoly of the charitable ideals and the traditions of the early Order of St. John for the benefit of fund raising, to which ideals finally all seem to have returned.

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[923] Article 18, paragraph 3, Regelementen voor de Orde van Vrijmetselaren onder het Grootoosten der Nederlanden.
[924] Huizinga, *Herfsttij*.
[925] Steenkamp, *Ridderorden*, p. 111.
[926] Bruin, *Kroon op het werk*.
[927] Bruin, ibidem, p. 13, p. 91 and p. 219; Machteld O.L. Klein, *Statusonderscheidingen. Wijze waarop sociale niveauverschillen worden vastgesteld*, Dissertation, Leiden.

Seem, because there is not enough openness. There is in our view a strong need for clear criteria and more openness which should be able to be legally compelled, if not voluntarily offered, either by the public, by the member or members involved or by the Government. The situation should really be looked at first of all from a viewpoint of association law, annual accounts law, trade register law, tradename and trademark law and criminal law. Historical discussions alone are not enough and not decisive.

XVIII. SOME COMPETITION LAW ASPECTS

XVIII.1. General remarks

This complicated issue has to be addressed because it plays a big role in the various disputes which reached the courts.

It is generally forbidden to carry a tradename which, prior to the business involved being run under that tradename, was already legally carried by someone else, or is only slightly deviating from his tradename, insofar as a consequence hereof (also) in connection with the nature of both businesses and their respective seats, confusion with the public between the businesses involved is to be feared.[928]

Generally, the older tradename has priority over the younger tradename. Generally, it is prohibited to carry a tradename which can mislead [929] and to carry a tradename which contains an untrue indication of the owner or of the legal form of the business.

Insulting statements about competitors can be redressed by tort action.[930] The relevant national law may also contain special legislation to combat misleading marketing.

Criminal Codes or laws may contain special sections against unfair competition. Tort action may be preferred to, or follow a criminal action. Without prejudice to the criminal liability of private persons involved, it is usually possible to prosecute the organisations involved themselves. [931] It may be prohibited under criminal law to commit fraudulent acts to mislead the public in the event a disadvantage may result therefrom for a competitor or an individual. From a criminal law point of view one can also think of sections on forgery, deceit, or a section prohibiting the use of words, expressions or signs, which may create the impression one's action is enjoying the support or recognition of a national or foreign Government or an international public law organisation, or of a section prohibiting the use of emblems of the 'Red Cross' or the use of the coat of arms of the Swiss Confederation.

Where a specific law is not sufficient to cope with alleged offensive behaviour, a tort action on the basis of norms of carefulness, coupled to a

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[928] Hof 's-Hertogenbosch 2 March 2004, *LJN: AO8204*, Rechtbank Arnhem 6 September 2001, *LJN*: AD 3419 and President Rechtbank Maastricht 17 July 2003, *LJN*: AI1409.

[929] Rechtbank Amsterdam 15 May 1997, *LJN*: AA6390 and Rechtbank Arnhem 26 February 1999, *LJN*: AA1021.

[930] Hoge Raad 22 November 1934, *NJ* 1935, 529 and Hoge Raad 4 January 1952, *NJ* 1953, 158.

[931] Hoge Raad 25 June 1999, *NJ* 2000, 33 (B. B.V. / Br. B.V.)

'positive reflex effect' [932] of the relevant written law, may be instituted and successful. While only tradenames may be protected by the written law, other names can be deemed protected under general norms of carefulness. [933] The relevant tradename act can then have a certain reflex effect in the case involved. A basis for action can not only be found in tort, but also in certain international treaties.

Since the French Revolution, guilds were abolished and there is freedom of profession and business. [934] Entering a market and competing there, even at the expense of competitors, can in itself never be deemed illegal or uncareful. Acts of illicit competition cannot be ranged under one common denominator. The general rules of tort will apply. Vague norms will be scrupulously applied by the judge involved. Where the written law is not providing sufficient guidance, the judge will try to connect with objective and heteronomous connection points. The reflex effect of written law and the case law are important here.

Behaviour which is blatantly dishonest or contrary to public morals, like bribery, agressive physical interference, insults or breaking down competitors in needlessly denigrating terminology, misleading people (which is exceeding creating confusion) or plain lying, can be easily qualified as acts which cannot be allowed in competition. Goodwill in itself can however not be deemed to be an object of legal protection. Free competition is endangered where a dominant position is present or abused. Other connection points may be the prohibition of discrimination, right to privacy, freedom of printing/expressing opinions and information gathering. The concrete interests and circumstances involved, are higly important. The usage in the trade whether a certain behaviour is not usual or not fair, or is usual and fair, may be deemed decisive or not, but will at any rate play a big role. [935] Misleading or confusing customers may be adduced by a competitor, but these customers should also be heard in sofar as practical.

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[932] For instance in case of the Benelux Trade Mark Act. In a case before the President Rechtbank Haarlem 17 February 1989, *BIE* 1989, p. 232 (nr 70) wrongfulness was not accepted.

[933] President Rechtbank The Hague 12 Februari 1991, *BIE* 1993, p. 124 (nr. 35) and Hof 's-Hertogenbosch 10 June 1996, *KG* 1996, 246.

[934] This term is mentioned by the Hoge Raad inter alia in a judgement of 18 February 1949, *NJ* 1949, 357.

[935] The Hoge Raad determined by judgment of 8 Januari 1960, *NJ* 1960, 415, that this point of view is not by definition decisive in respect of the question whether such behaviour conflicts with the standard of due care. In the lower courts, this is actually regularly decisive, for example Hof Amsterdam 21 Januari 1988, *BIE* 1990, p. 69.

XVIII.2. Claims in which concepts of Orders of St. John play a role

Claims in which concepts of Orders of St. John play a role, can be divided into at least four crude categories: 1) individuals against individuals; 2) an Order of St. John against an individual; 3) an Alliance Order of St. John against a non-Alliance Order; 4) a non-Alliance Order against another non-Alliance Order. One could also distinguish between civil and criminal cases. In category 1, there are two American cases, which are usually mentioned. These are the 'Alhadeff case' and the 'Markovics case'. [936] Certain individuals had been confronted by certain other individuals with accusations of criminal behavior, in which concepts of Orders of St. John played a role. The 'Malteser-Orden in Österreich', mentions a criminal judgment and quite a lot of alleged dubious behaviour of Orders St. John and/or private persons. This is qualified by it as 'Mitgliederwerbung, Diebstahl, Täuschung, Ausweisfälschung ("Consular Service Knights of Malta"), Verkauf von Finanzprodukten, Urkundenfälschung ("Diplomatenpaß"), Betrug, Namensverletzung, Täuschung, Verkauf von Mitgliedschaften, Sammlung von Geldspenden für angeblich "humanitäre Zwecke", schwerer gewerbsmäßiger Betrug , Verkauf von ungültigen Adelstiteln und Ehrendoktoraten, Verkauf von Finanzprodukten für angeblich "humanitäre Zwecke", Urkundenfälschung, Verkauf von "Diplomatenpässen", Mißbräuchliche Verwendung des Zeichens, Zechprellerei, dubiose Finanzgeschäfte in Liechtenstein, dubiose Finanzgeschäfte in Rom, Urkundenfälschung (Führerschein, Zulassungsschein, Autokennzeichen) , Münzfälschungen', etc. The situation in Austria seems rather unique.

XVIII.3. Sovereign Order of St. John of Jerusalem, Inc. v. John L. Grady

In category 2 (an Order of St John company against an individual, more particularly a non Alliance Order against an individual), we mention an American civil case (Sovereign Order of St. John of Jerusalem, Inc., et al., et al., v. John L. Grady, decided in 1997. [937] This case is a fine demonstration of the legal and historical complexities involved.
The long-running dispute involved the validity and alleged infringing use of a collective membership trademark registered by the plaintiff, Sovereign

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[936] 1) Alhadeff v. Georg (82.Civ.5965 U.S. District Court, Southern District of New York), 30 November 1983;
2) W.D. X. et ux. v. Markovics (CA-3-87-0388-R, U.S. District Court for the Northern District of Texas, Dallas Division), 27/28 February 1989.

[937] ELECTRONIC CITATION: 1997 FED App. 0209P (6th Cir.); File Name: 97a0209p.06; decided and filed July 14, 1997.

Order of Saint John of Jerusalem, Inc., a Delaware corporation (the Corporation). The defendant, John L. Grady, contested the validity of the mark on the ground that he, not the Corporation, represented the 'true order' of St. John, and that the Corporation had acted fraudulently in submitting the mark for registration. The district court found that the trademark was incontestable, and therefore valid, and that the defendant's use of the mark constituted infringement. The court entered a broad injunction, which the defendant seeked to have set aside even if the court upheld the findings of validity and infringement.

In granting summary judgment against the defendant on this counterclaim, the district court had found that '[c]areful review of the record shows no facts that lead to the conclusion that the Corporation did not in fact own the [collective membership mark] as of 1958.' As the district court pointed out, furthermore, a valid trademark registration requires only that the registrant 'believe' himself to be the owner of the mark. There was no reason to conclude that Charles Pichel did not believe that the Corporation owned the collective membership mark in 1958. At this time, Pichel was the 'Grand Chancellor' of the Order, which had used the mark since long before its arrival in America. The Order had created the Corporation to serve as its 'historical and legal successor' and to hold its collective membership mark. Pichel apparently ran both the Corporation and Order at this time.

The court of appeals affirmed the order granting summary judgment in favor of the plaintiffs on this counterclaim. The court of appeals affirmed the injunction but only to the extent it prohibited use by Grady of the registered collective membership trademark No. 659,477. All other provisions of the injunction were vacated and the case was remanded to the district court with directions to grant a new trial on the claims of federal false designation of origin and state law unfair competition with respect to unregistered, common law marks, symbols and names. Alleged failure to enforce the collective membership mark for many years after its registration, was not considered by the court of appeals.

XVIII.4. Some aspects of cases in category 3 (an Alliance Order of St John against a non Alliance Order)

Claims which play a role in those civil cases known to the author, in which an Alliance Order of St John confronted a non-Alliance Order (category 3), usually revolve about a) the deliberate use of a confusing name; b) the illegal use of trademarks and symbols; and c) deliberately not telling the true historical aspects and illegally claiming to be the original Order or illegally claiming descendency from the original Order, therefore deliberately misleading people. The reproach of profiting or hooking on, is usually not expressly made. With regard to c), we remark once more that blatant

untruths – for example statements like: 'We are a State in exile', or 'He is the 75 th Grandmaster', or 'We are the only valid continuation of the original Order.' – cannot really be accepted, and that c) seems much less legal than a) and b), so that a judge will want to avoid c) as much as he can.

The main claims with which the attacking Alliance Order might however itself be attacked, either independently or by way of counter or cross claim, seem to be at least sixfold: a) deliberately using a confusing name while instituting a trial and only for that purpose; b) deliberately not telling the true historical aspects and illegally claiming to be the original Order or illegally claiming descendency from the original Order, therefore claiming a non admissable monopoly or misleading people; c) deliberately insulting or breaking down competitors in needlessly denigrating terminology; d) boycotting and e) subsidiarily, abusing a dominant position. [938]

The False Orders Committee itself seems never to be attacking. It probably has no legal personality, let alone international public law personality. It may also be said to have no legal interest. It may also want to maintain a semblance of impartiality. Where 'false Orders' of St. John would be legitimate ecclesiastical communities, infringement on the freedom of religion or organisation could be involved. [939]

Before proceeding now to mentioning some aspects and cases in category 3 (an Alliance Order of St John against a non Alliance Order), we would like to stress that much is depending on the lex fori (the law applied by the judge before whom the case is brought), but there are a number of points which are to be kept in mind in probably every legal system.

If we look at the coat of arms of The Ecumenical Order, we see they use a double-headed eagle with a cross topped by a crown, etc. The Dutch Code of Criminal Law contains a clause saying that it is a misdemeanor to use words, expressions or signs which indicate or may indicate the impression that the acting of the user is furthered or enjoys the support or recognition on behalf of the State or the countries belonging to the Kingdom, or of a foreign power, or of an international public law organisation. This misdemeanor against public order can be punished with imprisonment of one month or with a fine. [940] Same goes for the Red Cross and Cross of Geneva and the use of the coat of arms of Switzerland. [941]

Looking at the coat of arms used by The Eumenical Order, one may wonder whether the double-headed eagle with three crowns which we see,

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[938] Kapteijn – VerLoren van Themaat (eds.), *Het recht van de Europese Unie en van de Europese Gemeenschappen* (Deventer 2003, 6th edition), p. 653, holds that the legal form is irrelevant and that the question what constitutes a business, revolves around the independently offering of goods and services.

[939] On this point Van Drimmelen & van der Ploeg, *Kerk en recht*, p. 69-91.

[940] Article 435 b Sr. The condemnation can be made public.

[941] Article 435 c Sr.

with in the middle a crowned Cross of Malta, is a trademark in which the coat of arms of Russia and of SMOM are figuring. The 'Internationale Züricher Zeitung' of 6 December 2000, said that in the nineties, former president Jeltsin threw out the communist symbols of hammer, sickle, the Red Flag and Stalin. He reintroduced as coat of arms the double-headed eagle, but the legislative dominated by the communists, refused the new symbols their consent. To anchor them formally, a presidential decree was not sufficient, but a law had to be introduced. This law was passed but required in Parliament a two-third majority and in the Federal Council a three-quarters majority. Parliament also approved the use of the double-headed eagle. [942] Various countries use the double-headed eagle, for example also Austria. The double-headed eagle on The Ecumenical Order's note paper looks like a Russian double-headed eagle, except for the shield in the center, which shows a Maltese cross. Union Countries are those countries which adhere to the Union Treaty of Paris of 1883, then revised various times. There are at least about 169 States who signed the treaty. [943] The Russian Federation joined on 1 July 1965, the Holy See on 29 September 1960, Canada on 12 June 1925. Signs under article 6 ter of the Treaty of Paris which are coats of arms, flags and other emblems of member States, who signed the treaty, are normally refused for deposit as trademark. However, they are not refused if they form part of a composite trademark. The signs of international organisations will only be refused if there is a misleading association with these organisations. But the above trademark is also registered in Canada. [944]

As far as the name aspect is concerned, the first question is whether the names have any distinctive capacity or are merely descriptive, thereby having a weak distinctive capacity. The danger of associating two names with each other is not an alternative for the notion of danger of confusion. [945] Confusion is however not limited to direct confusion [946] but also encompasses indirect confusion. Indirect confusion is present where the public, in confrontation with the name is thinking that the association

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[942] Adopted in Dec, 20, 2000 by the Federal Constitutional Law.

[943] Paris Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883, last revised in Stockholm, 1967, amended 28 September 1979.

[944] File numbers Cipo (Canadian Intellectual Property Office) seen, were 908014, 908050, both referring to the adoption and use by the public authority (sic) 'The Grand Priory of Canada of the Knights Hospitallers of the Sovereign Order of St. John of Jerusalem Knights of Malta', since 24 September 1997, and file number 909653, referring to the same entity, since 24 June 1998.

[945] CoJEG 11 November 1997, *NJ* 1998, 523, *BIE* 1998, 64 (Puma-Sabel): just danger of association is not enough to assume an infringment of a trademark; danger for (in)direct confusion must be present.

[946] Rechtbank Haarlem 8 July 2002, *LJN*: AE4995

carrying the name is somehow connected with the other association. [947] There has to be such a similarity between the names, that the public, confronted with the names, can be subject to direct or indirect confusion. This has to be looked at in hearing the name, seeing the name and understanding the name. Are there points of conformity and if so, are they more important for the total impression than the points of difference?

Taking advantage of someone's good name is in itself is not illegal towards that person, in case danger of confusion is lacking. [948] Can it be assumed that the organisation using the name is taking unjustified advantage from or unjustifiedly deteriorating the distinctive capacity or the reputation of the other name? There has to be actual confusion on a relevant scale which is damaging to plaintiff by deteriorating the distinctive capacity of its name or otherwise. [949] Failing this, defendant's behaviour cannot be deemed illegal. The words 'Order' and 'Sovereign' and 'Knights' seem to be only descriptive and not unique, like 'St. John' is not unique. The words 'Malta' and 'Jerusalem' are geographical indications. One might say that the only distinctive word in the name of SMOM is 'Military', but even that is a descriptive word. Both names are weak as far as the distinctive aspects are concerned. Where SMOM is acting, there is the added benefit of having the – disputed – international public law legal personality, if recognised by the local jurisdiction. But SMOM's status as such is then usually exaggerated, by stating that SMOM is on a par with States.

Estoppel cannot quickly be assumed to be present. Generally speaking, the owner of the industrial or intellectual property right is free to determine himself whether and if so when and against whom he shall act in court.

Taking advantage of someone else's prestation is allowed, unless this takes place under such circumstances that needless confusion arises. If the name used by plaintiff already has no exclusivity, it cannot be deemed that by using the similar name, defendants are attributing damages to plaintiff. The name of SMOM is weak, so that SMOM can only derive a small protection therefrom.

It might be argued the public of each party is completely different and therefore they are not competitors. The names, seen in their entirety and in their individual connections, are, in spite of similar elements, not creating such a similarity that associations can be aroused. Upon hearing and reading the names, there is an outspoken difference. The points of difference by far

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[947] CoJEC 23 October 2003, C-408/01 (Adidas/Fitness World), Rechtbank The Hague 13 October 2004, *KG* 04/905 (Hallmark/Hagley) and Rechtbank The Hague 30 January 2004, *LJN*: AO3985.

[948] Hoge Raad 5 March 1943, *NJ* 1943, 264 (Hamea) and Hoge Raad 26 June 1953, *NJ* 1954, 90 (Hyster Karry Krane).

[949] Rechtbank Almelo 10 November 2004, *LJN*: AR5711.

prevail over the points of similarity. The similar words have no originality whatsoever.

Dangerous confusion can definitely or only hardly be deemed present, seeing the limited and select public at which both parties are aiming. The name of the offender does not arouse any association with the public with the name of the plaintiff and also does not in any other way affect this name, in so far as its attractiveness or purposefulness is concerned. The activities of both organisations are so different that confusion with neither the public nor any other damage inflicting circumstances can be deemed present.

There seems to be no law saying that the words 'Sovereign', 'Order', 'Knights of Malta' or 'Jerusalem' or 'Rhodes' or 'St. John' may only be used by SMOM. [950] No law gives the first user of a (trade) name an exclusive right to this (trade) name.

If it has been demonstrated that use of the name by a defendant has caused confusion or is likely to cause confusion with the public between the two parties involved, this can perhaps be prevented by consistently adding a clause that the organisation involved is not to be confused with the potentially attacking organisation. This has been done by The Ecumenical Order. [951] It recently added '(The Ecumenical Order)' to its name and according to its Statutes, makes it a point of always using its full name and always pointing out to the public it must not be confused with other genuine Orders of St. John such as the Alliance Orders, mentioning them by name, so that any confusion or likelihood of confusion with SMOM, as clearly a Roman Catholic Order and with its affiliated Anglican and Protestant Orders, should reasonably not be possible anymore. This remains to be seen.

In 1250, the white Cross of the Order developed into the Maltese Cross of four arms and eight points. Others say this did not finalise untill the mid 1500's. But an 11th century memorial stone found in Uppland, Sweden, the Angby Stone, already shows a Maltese Cross, surrounded by two intertwined serpents and bearing a Christian message. The Maltese Cross in itself is therefore very old. A cynic might say the two serpents represent spiritual and temporal power, but serpents are also a symbol of eternity. The author suspects it has to do with the universal Mandala concept. Eight points also play a role in this concept. An octogonal is the sign for perfection. Without knowing it, the Knights may have selected an old pagan Viking symbol as their symbol. The cross was in use centuries before the birth of Christ, in both the East and the West. This ties in well with the Germanic and Viking origins of Knighthood. On the other hand, the Maltese Cross was the emblem of Amalfi. But Amalfi was a conquest of the Sicilian Normans.

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[950] However, see article 435b.-1 Wetboek van Strafrecht (Dutch Criminal Code).
[951] Vide article 1.2 of its Statutes.

Another theory is that the eight points refer to the eight beatitudes, which is the general point of view taken nowadays, or the eight Langues, or the eight points of the compass, the Amalfi people like the Vikings being seafarers. Where a name allegedly infringes on a trademark, it is relevant to establish whether the goods and services concerned, are deemed similar and whether the infringor, by using the name, is profiting from the notoriety and reputation of the trademark. [952] Sometimes the use of a trademark must be permitted, because a person would otherwise be put at at an unjustified disadvantage. [953] Can a cross be monopolised? Even the Codex Justinianus was holding back here, where it only said that a cross could not be chiselled or painted on the ground, in stone or in marble put in the ground. [954] The Maltese cross is not distinctive and is used all over the world. Should a characteristic figurative element not be added, if deposited as a trademark? Could it be against public order or good morals or fair trade customs to monopolise this sign? Is registration as a trademark valid without being an industrial or commercial business? Is there normal uninterrupted use for at least five years after deposit? Do opponents use the infringing sign in economic traffic? Can one act only on the basis of tort? The answers will differ from country to country and case to case.

XVIII.5. Some case law

As far as category 3 and the name, respectively the trademark situation, are concerned, one can point at the following cases which became known to the author. We will treat this in alphabetical country order. We did not always have the full text of every judgment at our disposal.
1. Austria: SMOM Austria ('Souveräner Ritter-Orden vom Hospital des Heiligen Johannes zu Jerusalem, genannt von Rhodos, genannt von Malta' against 'Hilfswerk des Sovereign Order of St. John of Jerusalem in Oesterreich'). Vienna Landesgericht für Zivilrechtssachen Wien 4 Cg 213 / 97s-12. 24 August 1998. In this case, according to – expressly – the judge, who seems surprised by this fact, the defendant Hilfswerk never disputed that the plaintiff was not normally acting under the name it mentioned in the introductory writ, while prior use of this name by Hilfswerk was also not argued. Subsequently, the judge only dealt with the legal question whether

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[952] Voorzieningenrechter Rechtbank Haarlem 22 November 2005, LJN: AU6584 117263 KG ZA 05-532 (Penthouse/Penthouse).
[953] Gerechtshof Amsterdam, 7 July 2005, rollnrs. 905/04 and 926/ 04 (Subaru), permitting – under conditions – un-official Subaru car specialists the use of the Subaru trademark, because a prohibition would put them at an unjustified disadvantage.
[954] Codex Justinianus, 1, 8, 1, Spruit. Chorus, *Corpus Iuris Civilis VII*, p. 222.

article 43 ABGB (Austrian Civil Code), providing a certain name right available to natural as well as legal persons and deemed applicable by analogy, had been violated by Hilfswerk. Also in the context of this article, the danger of confusion with the public played a role and was in casu deemed to be present. Whether an appeal was instituted by Hilfswerk and what the outcome thereof was, is unknown to us.
Another Austrian case was 'Hilfswerk des Sovereign Order of Saint John of Jerusalem in Österreich', a registered association, compelled to change its name by judgment of 2 November 1998 (GZ 4Cg213/97s-12).

In 2001, a case 'Souveräner Ritter-Orden vom Hospital des Heiligen Johannes zu Jerusalem, genannt von Rhodos, genannt von Malta' against a Prior of Austria of the 'Knights Hospitallers of the Sovereign Order of St. John – Knights of Malta – (involved was the Grand Priory Austria of The Ecumenical Order), was settled in court by an agreement that the Grand Priory involved would voluntarily change its name (Landesgericht Wien 24 Cg 52/00p).

On 28 June 2002, in a case against the former 'Kanzler' of the Sovereign Order of Saint John-Hereditary Order, it was decided that only 'Souveräne Malteser-Ritter-Orden' is entitled to use the name 'Souveräner Ritter- und Hospitalorden des Hl. Johannes zu Jerusalem genannt von Rhodos, genannt von Malta' and essential components thereof, respectively the white beam cross on a red shield and the eight pointed Maltese cross (Landesgericht für ZRS Graz, Gz.: 10 Cg 90/01y).
2. France: Tribunal de Grande Instance de Nanterre, of 14 May 1996, case nr. B.O.: 9412916, between SMOdedM and a connected organisation against three competing French associations. The Court says in English (translation by the author): 'Considering that the Court, called to decide the dispute with materials exclusively furnished by the parties, is neither qualified nor competent to judge history, that the Court, not having any power of inquisitorial research, did not receive the task to decide how a certain period of history should be represented and characterised; that under these conditions it cannot impose an historical thesis which would have the value of an official history, let alone even to indicate a preference in trying to decide the particulars of this or that thesis; etc.' More or less the same point was made in The Netherlands in September 2005, by the Raad voor de Rechtspraak (Council for the Judiciary), in a letter to the Minister of Justice, when commenting on a (translated) 'Bill to amend the Criminal Code in connection with the penalisation of glorifying, apologising, belittling and denying very serious crimes and the privation of the exercise of certain

professions'. [955] One of the points of criticism was that the judge in the framework of such a case, should provide an answer to the question whether a certain (historical) event can be qualified as an international or terroristic crime. Thereby the danger arises that in essence historical, religious and political controversies would have to be settled by the criminal judge. It would moreover be most improbable that the judge would be able to dispose over enough material to adequately judge. [956] However, the French court felt the names were confusing. It was also decided in this case that the Maltese cross should not be used.

3. Germany: in Germany, the 'Knights of Malta-Sovereign Order of Hospitallers of Saint John of Jerusalem O.S.J. USA – Section Germany (vormals: Zakon Maltanski – Suwerenny Szpitalnikow Swietego Jana z Jerozolimy O.S.J. – Sektion Deutschland) OHG'and the founders of this organisation were condemned not to use the name or a translation thereof in social traffic (LG Hamburg Nr. 315o 101/02).

4. Hungary: SMOM Hungary, i.e. 'Hungarian Association of the Knights of Malta, Budapest', against the 'Hungarian Association of the Order of the Knights of St. John of Jerusalem (Knights of Malta)'. Central District Court of Pest, No: 17. P. 888117 (1999) 4, in a judgment of 3 March 2000 against the Sovereign Order of Saint John of Jerusalem-The Hereditary Order, found a name infringement present. On 20 September 2000, the judgment in first instance was confirmed in appeal.

5. Italy: Apparently, the White Book was mainly aimed at the Yugoslav Order, a split-off from the American Order and probably also had to do with an Italian judgment of 1951 in connection with some Grand Priory of Podolia in Italy, which lost a court case against the Papal Order. [957]

6. Ukraine: there seems to have been or pending a case of Souveräner Ritter-Orden vom Hospital des Heiligen Johannes zu Jerusalem, genannt von Rhodos, genannt von Malta against an Order of St. John in Kiev.

7. Switzerland: on 8 August 2001, a court issued a judgement against an association not to act under the name 'Ordine Sovrano ed Ospedaliero di San Giovanni di Gerusalemme OSG, Ordine Sovrano e Militare es Ospedaliero

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[955] Voorstel van wet tot wijziging van het Wetboek van Strafrecht in verband met de strafbaarstelling van de verheerlijking, vergoelijking, bagatellisering en ontkenning van zeer ernstige misdrijven en ontzetting van de uitoefening van bepaalde beroepen, van 12 juli 2005, kamernummer. 2A.43. A similar bill was rejected by the British Parliament in February 2006.

[956] Letter of 15 September 2005 from the Council to the Minister, reference UIT 7245/ONTW AK.

[957] See also R. de Francesco, *La Legittimità e validità degli ordini cavallereschi "non nazionali" secondo gli insegnamenti della Corte di Cassazione* - Con prefazione del prof. Luigi Gianetti (Napoli, 1959).

di San Giovanni di Gerusalemme', respectively 'Ordine Militare es Ospedaliero di San Giovanni di Gerusalemme, Cavalieri Ecumenici di Rodi e di Malta' (Gericht Lugano Nr.OA.1998.00458).
8. United States: The American Association of Master Knights of the Sovereign Military Order of Malta and Western USA and the Association of the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta withdrew a petition for cancellation of The Ecumenical Order's (?) trademarks. Lost by SMOM (but was not really a court case). USA, around 5 April 1987.
These cases require further study. For now, we conclude from these cases that either the Orders attacked had indeed weak cases, or weak legal assistance, or lack of funds to buy proper legal assistance, or just were not willing to fight the case till in the highest instance.

Cases in category 4 (a non Alliance Order against another non Alliance Order) are yet unknown to the author.

XVIII.6. Did the same problems not occur between other organisations?

In spite of disputes about what constitutes a regular Order, the following names of Freemason organisations never caused a problem, as far as we know. In Belgium one knows a) 'Het Grootoosten van Belgie' (The Grand Orient of Belgium); b) 'De Grootloge van Belgie' (The Grand Lodge of Belgium) and c) De Reguliere Grootloge van Belgie (The Regular Grand Lodge of Belgium). In Denmark one knows a) 'Den Danske Store Landsloge' and b) 'Den Danske Frimurer Orden'. In France one knows: a) Le Grand Orient de France; b) La Grande Loge de France and c) La Grand Loge Nationale Française. Roman Catholic religious Orders and Anglican and Eastern Orthodox religious Orders are often using the same names.

A certain degree of confusion seems to be un-avoidable, respectively has to be accepted. This does not mean to say that within Freemasonry, there have not also been serious disputes about irregular Orders or Lodges. [958] But Freemasonry evidently relatively quickly found the right guidelines to solve these disputes and they are anyway not settled via name or trademark issues or trials, or only very rarely.

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[958] An example is the refusal by the Grand Orient of the Netherlands to grant a constitution letter to Lodge Post Nubila Lux, at Amsterdam, from 26 May 1850 till 20 June 1886.

XIX. FINDING LEGITIMACY CRITERIA/ANSWERING QUESTIONS

XIX. 1. Why there is a need for proper criteria

It will probably be impossible to stop people from starting and operating organisations under the name of St. John, from attracting members thereto and raising funds under the aegis of St. John, except in very clear cases. This fact has to be faced. One would therefore probably do better to try to find proper criteria for establishing the legitimacy of these organisations. A simple answer to this question by a statement pro domo may be alluring, but is neither valid nor helpful. Any entity can in our view validly say it is a chivalric organisation, provided it has valid fons honorum. The Protection of a reigning or involuntarily abdicated and still pretending sovereign is not necessary, if the chivalric aspect is deemed unimportant. Recognition, historical background or authenticity does not seem to be a hindrance in this connection. There is in our view no entity of St. John maintaining a proven uninterrupted formal, historical and traditional substantial link with the original Order. The authenticity question in our view is also just part of the entire legitimacy criteria question complex.

We will therefore now try to find these proper criteria for the legitimacy of an Order of St. John. Overlooking the battle field, we have to repeat that legitimacy is accordant with law and/or with accepted just or fair standards, but there seems to be little or no law governing this area and there are little or no generally accepted standards.

XIX.2. Discussion of the criteria put forward by Stair Sainty

Stair Sainty [959] rightly remarks that the alleged false Orders of St. John indicated in his text, are all private organisations. So are several International Alliance Orders of St. John. SMOM is also an umbrella organisation of a number of private law associations. SMOM has a functionally limited sovereignty and a derived and disputed international public law legal personality. This legal personality is derived from the special international public law legal personality which SMOM's umbrella organisation, i.e. the Roman Catholic Church, is enjoying and which in the view of many should be abolished, because it is allegedly a discrimination of other religions, who do not enjoy such status and cannot obtain it. [960] The

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[959] Stair Sainty, *Orders of St. John*, passim.
[960] For example the See Change Campaign.

Most Venerable Order may have a special public law status as a public law legal person created by letters Patent. [961]

As we saw, all present organisations of St. John shot up in the 19th and 20th centuries. They are all 'Neugründungen' and the fruit of a reactionary tendency or a penchant for romanticism and nostalgia or both. There are many people with a certain degree of ambition, but who are also sincere, respectable and hard working. It is hard to see why they could not be part of any Order of St. John, 'false' or 'genuine', whatever that may be. Indeed every Order of St. John can play on that ambition, use these people and does so. In principle, this is neither illegal nor illegitimate. Indeed members are convinced they are doing good work and of course a variety of motives is involved in joining and in participating. Instead of discouraging these people, one could use them for the good of the world (whatever that may be), one would be inclined to say. But indeed, once having joined an Order of St. John, one seems to be hooked. An oath or vow will be made in the investiture process and Grandmasters are prone to invoke that oath or vow. They are equally prone to require 'unconditional obedience' (the foremost virtue in the Roman Catholic Church) and apt to forget that this can only be required from socalled professed members. One is usually dubbed at a 'Solemn Investiture' and may have invited family and friends. One may even have given a reception to celebrate the fact one was knighted. It then looks rather foolish to have to admit lateron one did not join the right organisation, like one did not go to the right school or the right university, etc. Sometimes people do not wish to be part of a Roman Catholic, or of a Protestant or Anglican organisation, but only can or wish to join an Orthodox or Ecumenical Order. Nobility according to Stair Sainty, is not a prerequisite for membership of a chivalric Order.

The names and badges of Orders of St. John are about the same the world over, but there are prestigious Orders of St. John and there are others. We assume for the sake of discussion, that indeed all Orders of St. John are doing charitable work. However, the question is whether indeed one group would be doing 'important charitable work and humanitarian activities' and has a wide purpose, while another group would only be doing some ad hoc charitable work, which is worth not much and only has a limited charitable purpose. There is at any rate luckily no monopoly on doing important charitable work and humanitarian activities. One of the points we would like to make, is that the activities of Orders of St. John generally speaking, are shrouded in mystery and therefore cannot be easily measured and evaluated and compared with each other, or with charitable work other (non-St. John) charities are doing. One cannot suffice with looking at the 'Constitutions' or

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[961] Supra p. 341, *XIV.8. The Royal Charters.*

the ‘Statutes’ (or how these basic organisational documents may be called) of an Order of St. John and the purposes mentioned therein, all lofty no doubt. One should also and particularly, look at the actual activities carried out. There can of course be machinations everywhere, in a small false Order of St. John and in in a recognised Alliance Order of St. John. At least this is what various press articles have implicated. [962]

But the standards we can distill from Stair Sainty, are: a) the private association aspect; b) the limited versus wide charitable purpose or activity and c) the being recognised. The last point seems to be the opposite side of the private association aspect. Being recognised is a dubious standard. The same goes for the negative standard of d) ‘illegitimately invoking descent from the original Order’; or the positive standard of e) ‘having historical roots to the original Order’. These last two standards (which are backfiring for those who believe in an uninterrupted continuation of the original Order), were also used by Stair Sainty in his publications. They cannot be regarded otherwise than as dubious and leading to endless historical discussions. Standards such as the above, are not easily widely accepted and really cannot be widely accepted. Standards should ideally be widely acceptable and not just be the standards of one Order of St. John or of an Alliance of self-proclaimed genuine Orders of St. John, even if these are recognised. But we certainly agree with Stair Sainty that standards should be applied. Standards are necessary, but upon reflection, the question is whether we need more than those standards which are already legally available.

Stair Sainty referred to five elements, i.e. 1) private; 2) self-styled versus 3) recognised, which three seem to flow over into each other; 4) historical roots or legitimate descendency or the lack of it and 5) wide charitable and humanitarian activities. The ‘King Peter Order’ has shown that it is possible to be regarded as a true knightly or chivalric Order or knightly fraternity, because of a valid fons honorum by virtue of which people were able to be validly knighted. It was regarded by experts (inter alia ICOC) as a legitimate new Order of St. John. But surely fons honorum cannot be the only criterion and even if such a phenomenon as the King Peter Order was deemed to be a chivalric Order, how then to decide – which is still necessary – whether it is legitimate in other respects?

Interesting is that Stair Sainty does not feel a legitimate noble title is a prerequisite for joing a ‘genuine’ Order of St. John. Amalfi merchants were involved in the formation of the original Order of St. John. German merchants were involved in the formation of the original Teutonic Order. The development was from merchants and charitable to military and power,

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[962] Various articles in the Italian and other press about SMOM’s alleged involvement in several alleged tax and other frauds.

from charity to trust, from there to wealth and selectiveness, then to decadence and death since the Tacit Truce (1723). Then from dissolved by Napoleon in 1798 to dispersed and splintered, into dormancy. Then from reconstitutions and monopoly building to merchants and a new definition of nobility. Merchants were anathema under custom (or rule) 41, formulated under Grandmaster Verdala (reigned 1581-1595). [963] Merchants could never be admitted as Knights. Yet merchants started the original Order of St. John and the original Teutonic Order.

XIX.3. Recognition not a valid criterion

What is the decisive criterion for being legitimate then? Surely this must be 'recognition'? First, is is not clear what exactly is meant with recognition. But this may be the same as not self-styled. Or self-styled is the opposite of being recognised and would then be the same as private? But the Most Venerable Order was self-styled and very succesful. This is the reason why it was recognised, i.e why the English Queen gave it several Charters and became its Sovereign Head. Is it not ironical that the successor of King Henry VIII, who together with his daughter Queen Elisabeth I effectively suppressed the original Order in England, in the 16th century (eradicated it), is nowadays invoked as the reason for the recognition of the Most Venerable Order, Alliance-partner of SMOM? Was the Venerable Order not legitimate before and until it was recognised by Queen Victoria? We conclude that recognition prima facie seems to be an easy and straightforward criterion for the legitimacy of an Order of St. John, particularly for those who claim to have been recognised, but in reality is a doubtful criterion.

The question also is what kind of recognition would be required and by whom, by a Royal House or a State? As chivalric Order, as decoration allowed to be worn or as both? It was said by Stair Sainty to be a recognition by the State of the place where the headquarters of an Order are established. [964] The original Order had its own territory, first Rhodes and then Malta and was at any rate widely recognised by other States, if one could already talk of States. SMOM is recognised by the Vatican, as the doubtful State where it has its headquarters and by about ninety-four other, mostly Catholic countries, as a person under public international law with whom quasi-diplomatic relations are maintained. It is apt to establish or maintain quasi-embassies. The Dutch Johanniter do not have a formal State or other recognition and are a private association. The Venerable Order is recognised by the Ruling Monarch of Great Britain, who is the Hereditary Grand Prior

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[963] Vertot, *History of the Knights of Malta II*, *The Old and New Statutes*, p. 18.
[964] Supra p. 286, IX. SOME CHIVALRIC DEFINITIONS.

of this Order, but does this make it a State Order or a House Order. Is it a public law organisation? The Ecumenical Order claims to have certain recognitions. Supposedly there even exists a decree of the US Military, dated 18 March 1968, saying the cross of the American or Shickshinny Order can be worn on the military uniform. Polite letters from the Prime Minister of Canada or his Cabinet, or from a member of Parliament, a Consul of Malta, or a blessing by the Pope, or even a thank you letter from Queen Elizabeth II, in which the Grandmaster of The Ecumenical Order is adressed as 'Your Serene Highness' are also available. But recognition should be based on an express act. An act based on or by virtue of the Law. Implied recognition is discriminatory and probably illegal.

XIX. 4. Recognition and fons honorum

The question is what is added to fons honorum, if deemed to be a proper criterion, by recognition, if and what kind of recognition is required, express or implied and which express or implied recognition would be sufficient.

Recognition can also mean being recognised as a decoration (how) by the State, where the main establishment of the Order is. In that respect, the question has to be answered affirmatively for SMOM. The Italian State recognised the decorations of SMOM as decorations which may be worn in Italy. The same seems to go for the Venerable Order and at any rate for the Balley of Brandenburg. Dutch law takes a liberal stand. [965] Malta does not seem to have any legislation in this respect, Malta being the place where The Ecumenical Order claims to have its Seat and its Convent. As to other Orders of Saint John, the question cannot be answered without further research.

But no State can validly declare that some organisation is recognised as chivalric, if this organisition has no valid fons honorum. A State can also not declare that a certain organisation is legitimate, if this is not the case. The sole fact of the act of recognition, express or implied, does not make an organisation more legitimate, if it already is legitimate. The act of recognition can at the most only be a confirmation of that fact. It can never be a constitutive element for being legitimate or have declaratory effect. Slim said that a working definition of legitimacy could be 'the particular status with which an organisation is imbued and perceived at any given time that enables it to operate with the general consent of peoples, governments, companies and non-state groups around the world'. [966] This is primarily a

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[965] Supra, p. 298, *IX.11. The right to accept and wear decorations and the local law.*
[966] Slim, *By what authority?*

sociological working definition, not a legal one. The normative element is lacking here.

Recognition is providing the confirmation by a government, which is important of course, but cannot be accepted at face value and also is not enough.

It wil also probably not be a big problem to convince some smaller State to shelter the headquarters of a certain Order there and recognise this Order. The recognition criterion would then have to be refined. If recognised by Great-Britain, one cannot be said to be not-recognised, but if recognised by a smaller or a non- European, non-Western State, this would be a different matter?

Finally, we refer to the International Commission for Orders of Chivalry, who, in their Report of December 1978, said: 'The recognition of Orders by States or supernational organisations, which themselves do not have chivalric Orders of their own, and in whose Constitutions no provisions are made for the recognition of knightly and nobiliary institutions, cannot be accepted as constituting validation by sovereignties, since these particular sovereignties have renounced the exercise of heraldic jurisdiction. The international 'status' of an Order of Knighthood rests, in fact, on the rights of 'Fons Honorum' which, according to tradition, must belong to the Authority by which this particular Order is granted, protected or recognised'.

XIX.5. Historical roots

Historical roots or lineage, whatever these exactly are, can be direct or indirect. A definition is difficult. It can be argued that even the original Order was not a direct descendant after the militarisation of the original wholly charitable Order. It is held by several authors [967] that then another, military Order started and one has to distinguish since then between the old purely religious and charitable Order and this new military Order. The Papal Order was started by Pope Pius VII with the appointment of Tommasi, 'Motu Proprio' in 1803. Tommasi was not elected. This Order then died for lack of corporate life. A new Papal Order was then started in 1879 by Pope Leo XIII, who appointed a Grandmaster. This Grandmaster was again not elected. The Dutch Johanniter and the Venerable Order in our view cannot even be deemed to be indirect descendants of the original Order or of a part thereof. The Venerable Order at any rate is not an uninterrupted formal and

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[967] Inter alia Le Goff. Supra, p. 79, *III.17. Charity aspect overshadowed by the military aspect.*

material continuation of a part of the original militarised Order. The Venerable Order was supposedly started by the 'Commission des Langues Françaises de l'Ordre Souverain de Malte'. That French Order was declared illegal. The Venerable Order was a result of a private initiative in the second half of the 19th century. This initiative was then neutralised or taken over by turning it into a mainly Anglican Order and making the then ruling Queen Victoria and her descendants the Hereditary Head and the Prince of Wales the Grand Prior of this Order. The Protestant Dutch Johanniter were the result of a private initiative. Its formation took place in the form of an association under Dutch private law and it still is an association under Dutch private law, but they were a part of the German Johanniter. They deliberately cut loose after the Second World War. Thereby they cut any indirect or direct roots they might have had.

The Ecumenical Order may have direct or indirect roots. But we argued above, it cannot be deemed to be the same as or a legal successor to the American (a/k/a as the Shickshinny) Order without further convincing evidence. It also cannot be assumed without anxiety, that this American Order indeed started in 1890/1908 as a direct or indirect descendant of the Russian Grand Priories, which at any rate were recognised as a part of the original Order; a quaint part as far as the Russian Orthodox Grand Priory was concerned, but allowed to pay responsions, like the Protestant Balley of Brandenburg. They were allegedly relocated or reconstituted as separate Order in 1908 by descendants of Russian and other Knights, who belonged thereto, with the support of Saint Czar Nicolas II and Grand Duke Alexander Romanov. One might like to believe it and many do. But evidence for these contentions sofar is weak. [968]

No Order of St. John can in our view legally and legitimately claim to be a direct descendant of the original Order. This Order's purpose could not be fulfilled anymore, it became corporately dead, then dissolved and liquidated. Certain remnants may have survived in a way, but were not representative. All present Orders of St. John are new institutions or revivals. They are all 'Neugründungen', in the terminology of some historians of the Balley of Brandenburg. All are invoking and hooking on to the past and all are entitled thereto, as no-one owns history or religion. Some would have it otherwise and do the best they can, but may be regarded as a cartel, trying to keep others out of an interesting field and trying to monopolise it for a variety of reasons. All have indirect roots, because no-one can really have direct roots to something that was dead, dissolved and liquidated, except emotional ties. We grant that some are closer than others to someone who is dead, but they

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[968] Supra p. 222, *VII.19. Problems with the validity of the birth of The American Order.*

are not necessarily the deceased's family. There is no uninterrupted continuity, not legally, not historically and not even ideologically. It is at any rate an arbitrary matter whether some group has more direct roots to the original Order than others, as we think we have adeqately explained.

XIX.6. Irrelevancy of historical roots

Historical roots are also irrelevant, respectively became irrelevant. The Most Venerable Order had no roots at all with the original Order and was nevertheless accepted by SMOM as an Alliance-partner. SMOM and the other Alliance partners thereby renounced any alleged right to invoke that an Order of St. John should be able to legitimately claim (direct or indirect) descendency from the original Order. It may be said that 'this dispute has long been relegated to the realms of academic discussion', [969] but there was and is of course a reason for this. The reason is that the Most Venerable Order as well as the Johanniter Orde in Nederland cannot legitimately claim to be direct or indirect descendants of the original Order.

XIX.7. The chivalric aspect

Having discussed and dismissed the criterion historical roots, we will now discuss the chivalric aspect. As we saw, Stair Sainty did not deem nobility necessary for membership of a chivalric Order of St. John. [970] This seems to be a contradiction. When we talk about Orders of St. John, we immediately think of a club of noble persons. But indeed, to be chivalric in the sense of being composed mainly by nobles, i.e. persons who were nobles before dubbed a Knight, does not seem to matter anymore. The Most Venerable Order, SMOM and the Balley of Brandenburg have all declared that being noble is not a pre-requisite for membership. The Most Venerable Order does not confer any knighthood or degree, while the usual abbreviations behind the name cannot be used outside the Most Venerable Order.
Chivalry has a formal and material side. If accepted as criterion, the relevant Order should have valid fons honorum. It might be argued that to be truly (at least formally) chivalric, the majority of members has to be composed by nobles, i.e. persons who are deemed to have an exclusive anterior right to become a member, an exclusive right to be knighted (Knights of Justice). We saw this may conflict with the law. [971] This was not so when the original Order started, in the 11th century. It is also not so for any contemporary

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[969] Joint declaration of SMOM and The Most Venerable Order of 26 November 1963. Refer to *VIII.19. Joint Declaration of SMOM and The Most Venerable Order*.
[970] Supra p. 411, *XIX.2. Discussion of the criteria put forward by Stair Sainty.*
[971] Supra, p. 326, *XII.10. The Johanniter Order formally chivalric*.

Order of St. John, although it might be held that all Knights of St. John in an Order having valid fons honorum, are nobilitated by having been invested in such Order. The majority of the Knights in any contemporary Order of St. John having valid fons honorum, at any rate was not noble upon becoming a Knight of such Order. Some of them acquired noble titles on the way. These are either a) titles which are clearly not validly awarded, or b) titles which are valid, but bought after becoming a member, or c) recent, but validly awarded titles. These titles may be acquired to elevate one's status within the organisation, because it only allows nobles to vote. Knights of Justice could vote in the original Order, but Knights of Grace could not. This can easily lead to dubious practices like the selling of noble titles, valid or not. It is an old tradition, though. For example, Willem Bentinck, a Dutch noble, had to buy the title of 'Reichsgraf' from the Austrian Emperor for 20.000 ducats, before he could marry his German wife, Charlotte Sophie, Prinzessin von Aldenburg. [972] Sticking to this ancient rule that only Knights of Justice may vote, also means entering a dangerous area from an association or anti-discrimination law point of view.

Chivalric = nobles means having a majority of Knights, who are of noble origin, without taking into account the fact that they are knighted or nobilitated by becoming Knights of an Order of Saint John. In that sense, the majority of the Knights of the original Order probably was Knights of Justice. As to SMOM, the majority of its Knights, taking together Knights of Justice and Knights of Grace, is not of noble origin. The same goes for the Venerable Order, the Sovereign Order of Saint John of Jerusalem and probably any other Orders of Saint John. With respect to any other Orders of Saint John, not being Alliance Orders, it has to be remarked that the question is whether they have any genuine Knights at all, because valid fons honorum apparently is generally lacking (but not in The Ecumenical Order).

The question also is whether it has to be accepted that being chivalric = nobles, is a valid criterion. The original Order was not wholly chivalric until the 1120's or 1160's. A military element was never introduced in the Vows. Nevertheless, during the greater part of its history – from 1120 till 1723, maximum till 1798 – the original Order was controlled by Knights. Notwithstanding this fact, this criterion cannot be strictly applied anymore.

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[972] Hella Haasse, *Mevrouw Bentinck* (Amsterdam 1994), p. 110; Vajda, *Felix Austria, eine Geschichte Österreichs*, p. 184: Borso d'Este became Duke of Modena for an annuity of 4.000 gold ducats. King Charles I (1625-1649) forced nobility patents on people because of urgent need of money, at the same time improving the position of their tenants and limiting their rights of jus patronatus in the Church, particularly in Scotland, etc.; Bruin, *Kroon op het werk*, p. 18, mentions that in Great-Britain, a baronetcy cost around four hundred pounds in 1660. Van Beresteyn, *Geschiedenis*, p. 19.

For example, the Venerable Order has about 30.000 members now and most are not of noble origin.

Great personal courage in physical and other dangers, a great sense of honour, integrity, unswerving loyalty, an iron devotion to duty, but also pious zeal, generosity, humanity, compassion, respect for others, courteous behaviour, etc., can be called chivalric qualities, but are not reserved to Knights. The most important material sides of chivalry are the – primarily physical – combat aspect, [973] including outstanding bravery, gallantry, knightly daring, quest for glory ('laus et gloria'), contempt of death, etc., coupled to charitable activity, including protecting widows and orphans, nursing the sick, generosity, etc. That last charitable part at least was ideally, but mostly theoretically the case.

No personal physical combat is engaged in for a long time now and the only combat one seems to be engaged in now, is of a non-physical nature, i.e. primarily disputing each other's legitimacy. The psychological reasons are anxiety and indignation about encroachments on one's already very deteriorated but still enviable position ('Is nothing sacred?') Furthermore, one evidently always wants to be able to claim or feel, one is on a higher social level than someone else ('is better') and the psychological needs in this connection are evidently the greater, the higher one thinks of one self. Another reason is the task felt, of protecting the public from 'the practices of the false Orders'. A more material reason may also be the competition which is felt from non-Alliance Orders in attracting funds from the public. This competion can in our view not be stopped, where confusion or confusion danger with the public about one's identity, is not present. Finally, the whole concept of Orders of St. John, together with the basic obligations of protecting the Faith, the succour of the sick and of chivalric behaviour, of leading the masses also in spiritual development, can also be seen as one big reactionary attempt to revive or maintain nobility (which per se includes noble families), as a biological and historical concept or phenomenon and as a means of transferring valubale social and human capital in the framework of families.

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[973] Refer to the Dutch parliamentary debate on 'deeds on the field', i.e. not from behind a desk, but in actual combat, deemed necessary for granting the Military Order of William (MWO), mentioned in Bruin, *Kroon op het werk*, p. 123-131.

The Johanniter Gerhard von Jansen litterally said the following in this context: [974]

> 'Die Notwendigkeit einer gewissen Verbreiterung des Johanniter-Ordens liegt nicht nur angesichts der allgemeinen Zeitumstände nahe, sie drängt sich vielmehr nahezu auf, wenn man von der Tatsache ausgeht, dass der Adel mit anerkanntem Adelstitel, also mit adeliger Namensform seit 1918 einen numerus clausus darstellt, eine Gruppe von Familien, die nicht mehr ergänzt werden kann, also unweigerlich über kurz oder lang aussterben muss. Nimmt man dazu die noch kurzfristigere Gefahr des Aussterbens durch Mangel an Zuzug aus der adeligen Jugend, so kann man an dem Ernst der Lage nicht vorübergehen. Die Neuerung vom 14. April 1948, die ja gar keine Neuerung ist, sondern nur einen Zustand wieder herstellt, der grundsätzlich bestanden hat, bis 1852 eine gewisse Erstarrung der Form eintrat, wurde teilweise so verstanden, als denke man aus materiellen Gründen an eine Ergänzung aus bürgerlichen, zahlungskräftigen Kreisen. Es handelt sich aber um etwas ganz anderes, nämlich um eine zeitgemäße Auffassung des Begriffs Adel. An dem Inhalt des Adelsbegriffes ist nichts zu ändern, er ist ein biologischer und historischer Tatbestand. Das muss immer betont und festgehalten werden. Es gibt Familien, die in Generationen sich in ihre Verantwortung und ihre persönliche Lebensführung soweit über dem Durchschnitt gehalten haben, die führend und deshalb Verantwortungsträger waren, die das "noblesse oblige" zum Inhalt ihres Lebens machten und Gott mehr gehorchten als den Menschen, die sich redlich bemühten, alles dies weiterzugeben an ihre Kinder und Kindeskinder. Nun hat es zu allen Zeiten Familien gegeben, die auch ohne die adlige Namensform zu den Edelleuten zu rechnen waren. Es sei an die herrschenden Geschlechter in den Hansestädten und in den Freien Reichsstädten erinnert, an Gelehrten- und Offiziersfamilien mit langer Tradition, an den bürgerlichen Großgrundbesitz des Ostens und an manche sehr alten Bauernfamilien. Einen Teil dieser Familien konnte die Nobilitierung durch die Landesherren erfassen und als Ergänzung dem Adel laufend zuführen. Das hat diesen vor dem Zusammenschrumpfen auf einen immer kleiner werdenden, zum Aussterben verurteilten, historischen Kreis bewahrt, ihn lebendig erhalten. Uns geht es im Johanniter-Orden um etwas Lebendiges, um ein Wiedererwachen und Wiedererwachen adligen Lebens und Tuns, um den Zusammenschluss der Wenigen, die sich in besonderem Maße verpflichtet fühlen, als Christen und Edelleute und zwar nicht nur als Einzelpersonen, sondern mit ihren Familien. Es kommt doch - uns Johannitern jedenfalls - nicht auf das Äußerliche, auf eine

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[974] Gerhard von Jansen, 'Schrift zur Begründung des Beschlusses vom 14. April 1948', in *Geschichtlicher Abriss des Johanniterordens*, Balley of Brandenburg.

[975] For connections between Romania and the original Order of St. John, see Sutherland, *Achievements I*, p. 154. King Michael I is a Hohenzollern.

> inzwischen erstarrte Form an, sondern auf den Gehalt des Menschentums, auf charakterliche Haltung und geistige Potenz. Dann gehören auch diejenigen zu uns, die solchen Geistes sind, auch wenn sie einen bürgerlichen Namen tragen. Man kann das Rad der Geschichte nicht rückwärts drehen, aber man kann ihm bestimmt ab und zu einen kräftigen Schwung vorwärts geben. Wenn der Herrenmeister sich entschlossen hat, solche Träger bürgerlicher Namen, die als Christen und Menschen den Voraussetzungen des Ordens entsprechen, als Johanniter aufzunehmen, dann ist das niemals eine Preisgabe des Prinzips, sondern eine Anwendung dieses Prinzips auf Edelleute bürgerlicher Namensform. Es ist ein Hinwegschreiten über die Störungen, die auf diesem Gebiet durch die republikanische Gesetzgebung entstanden sind, es ist die Neubelebung eines königlichen Rechtes in zeitgemäß abgeänderter Form. Die Verantwortung, die damit übernommen wird, ist groß. Wer sie übernimmt, dokumentiert damit den Mut zum Leben, zum Weitertragen und Weiterleben einer Idee in gänzlich veränderter Umwelt. Die Gemeinschaft eines christlich ritterlichen Lebens, mit fühlbaren Opfern verbunden, im ernsten, grauen Alltag einer stürmisch bewegten Gegenwart, wird zwischen den Trägern adliger und bürgerlicher Namen, sofern sie von ganzem Herzen Johanniter sind, etwas Neues schaffen, einen Bund von Menschen besonderen Wollens, die aus ihrer Lebenshaltung heraus dem Nächsten dienen und sich des Evangeliums nicht schämen wollen, einen lebendigen Laienorden, der gestützt auf das Fundament seiner historischen Vergangenheit auch dieser Gegenwart gewachsen ist und deshalb für die Zukunft arbeiten darf.'

Von Jansen advocates a certain expansion of nobility. He refers to the danger of nobility dying out. Nobility according to Jansen is both a biological and a historical fact. He distinguishes between German nobility and the patriciate, composed by the old merchant families in the Hanse and free cities of the Reich; old academic families; the large land owning gentry from the East and the old farmer families. He refers to regular refreshment of nobility out of this reservoir. He mentions the need to remain a live Order and stresses the virtus requirements (Christian and humane) of the candidate from those families. Dropping nobility as a criterion would not mean abandonment of the virtus principle, but on the contrary application thereof on noble persons with a civil name, belonging to one of those families. Jansen therefore applies a material criterion and not the formal criterion of having a (recognised) noble name, but maintains a relation with an established family.

As to chivalric = combat, ('fighting the Infidels' and 'chopping them to pieces'), we can assume that up till about 1723 (the Tacit Truce with the Turks), the original Order was in possession of this combat and essential element of chivalry. Thereafter, this side of chivalry slowly entirely disappeared from the original Order, notwithstanding various naval actions mentioned inter alia by Lo Celso & Busietta. All Orders of Saint John do not

carry on any combat of a physical nature whatsoever anymore. Of course there may be some military men involved as Knights, but they usually don't actually fight but some may have seen actual combat, like the present Grandmaster of The Ecumenical Order.

As to chivalric = charitable, we can euphemistically establish that it is doubtful whether the original Order during its entire life, i.e. till the Surrender of Malta in 1798, was indeed uninterruptedly carrying on in a substantial charitable way, was involved in substantial charitable and wide humanitarian activities. Charitable works factually were not the main Hospitaller tradition, or at least not an uninterrupted Hospitaller tradition. As a matter of fact they more or less stood still after the good beginning phase, till the late 19th century. There are exceptions, but not of a substantial and wide humanitarian nature. But every contemporary Order of St. John enjoying valid fons honorum, as well as other Orders of St. John, legitimate or illegitimate, seems to be engaged in substantial charitable activities, or at least claims this.

Chivalric as a criterion would mean that an Order would always have to have valid fons honorum. This in turn means one has to have a reigning Sovereign, or a Sovereign, who has not voluntarily abdicated, from whom the power to dub someone a Knight is derived, by way of power of attorney.

XIX. 8. Fons honorum

Having valid fons honorum can be regarded as having received recognition from this Sovereign. Fons honorum by nature is a sovereign, discretionary right. If it is exercised by its rightful owner, no-one can do anything when power of attorney to dub people is given to an Order calling itself an Order of St. John. [975] Neither anything can be done when a Sovereign is combining this – which is always the case – with providing his Protection to such Order. Protection can be distinguished from fons honorum. Fons honorum can theoretically be given to an Order in the form described above, without awarding it protection. But in practice one is asking and receiving protection and is deriving the fons honorum from the protection awarded. Fons honorum is a sequel of the protection awarded. Where chivalric is accepted as a criterion, fons honorum and protection should therefore be accepted as criteria and be present also.

This fons honorum is at any rate present in the Most Venerable Order and in The Ecumenical Order. King Michael I of Romania is one of its Protectors and never voluntarily abdicated. Perhaps it is not present in the Johanniter Orde in Nederland and in the Balley of Brandenburg. It may also not be present in SMOM anymore. Was it not a consequence of the Pope's temporal power that he could knight people? The Pope has no real temporal power anymore and also does not claim this anymore since the Treaty of

Laterans (11 February 1929). If SMOM nevertheless presently has valid fons honorum, this is derived from the presumed worldly powers of the Pope. They must make known the name of the candidate to the Pope. They derive their fons honorum from the Pope. The Dutch Johanniter derive their fons honorum from the Land Commander and the Venerable Order, from derive theirs from the Ruling Monarch of Great Britain. The Ecumenical Order derives its fons honorum from its Protectors. The other Orders of Saint John have no fons honorum in so far as can be established, respectively this fons honorum is doubtful.

XIX. 9. Sovereignty/independence

Another criterion one may think of is the quality of the Order involved of being 'sovereign'. Here we see that the Alliance Orders want to keep the pie and eat it. On the one hand they want to be sovereign and on the other hand they want and claim to be recognised by the State, where they have their headquarters. The SMOM is painstakingly trying to claim independence from the Pope and at the same time is regarding him as its Head. This emphasis on the alleged importance of being recognised, whatever that may be, seems contrary to the independent character, attitude and history of the original Order of St. John, which claimed it was sovereign, meaning independent. It was born out, or if not born out, developed on the basis of the will of Knights to be free, which they achieved by a symbiosis with the Pope, who in the Bull Piae gave them a status higher than 'exempt'.

Independence is the same as sovereignty. The original Order was independent. It listened to the Pope and it used the Pope whenever it was convenient to it, but it was never subject to the Pope. SMOM is not independent, although it has Sovereign in its style. It has to listen to the Pope and is a religious Order of the Church. The Dutch Johanniter is formally not independent, because it subjected itself to the Red Cross. The Ruling Monarch of Great Britain is the hereditary Sovereign Head of the Venerable Order. It may also be assumed that the Dutch Johanniter or the Venerable Order will do nothing against the will of the respective ruling monarchs. The Ecumenical Order is completely independent. They have to listen to no-one, but if they do not behave as they should in the eyes of their Protectors, these might withdraw their Protection. Gone will be the chivalric aspect then. One may nevertheless continue to dub people, but the value of this dubbing will have been influenced rather negatively. One might even say it will be worth nothing anymore then. One might therefore argue that non-chivalric Orders of Saint John, i.e. without a Protector and thus without fons honorum, are less vulnerable and more independent than those with a Protector and with valid fons honorum.

XIX.10. The religious Order aspect

Another criterion one may think of, is being a religious Order. The original Order was organised as such, but it is doubtful it can be called a real religious organisation. In appearance it was, but in practice it was not. It was a theocracy because this was convenient. No contemporary Order of St. John is a real religious organisation, except perhaps SMOM. This Order is formally organised as a religious community, just like the original Order hooked on to religion. Materially it can in our view not be regarded as such, inter alia because its unprofessed members dramatically outnumber its professed members.

The original Order was inter alia composed by a body of Knights, which became the decisive body and the majority of these Knights were professed Knights, in the sense that they had made vows of obedience, poverty and chastity. These vows were only a matter of form during most of the life of the original Order. SMOM has a very small number of professed Knights, next to Chaplains and Prelates. The overwhelming majority of its Knights is not professed. We feel that if the criterion of having a substantial number of professed Knights would be applied as a real and valid criterion, the Papal Order would not fulfil this criterion, like it is not fulfilled by the Dutch Johanniter Order or the Venerable Order, The Ecumenical Order and the other Orders of Saint John. But a certain degree of Christian spirituality and vows of a religious or semi-religious Christian nature, seem to be an essential and valid criterion.

The original Order formally was a Christian religious community and so is SMOM. The Balley of Brandenburg claims to be part of the Evangelische Kirche. The Dutch Johanniter are formally and materially not an ecclesiastical community. The Ecumenical Order probably are materially not an ecclesiastical community, but claim to be part of the (a) Syrian Orthodox Church. The Venerable Order is formally and materially not an ecclesiastical community. It is doubtful what the status of other Orders is in this context. They are probably only Christian lay fraternities. But in spite of not being religious Orders, the Dutch Johanniter and the Most Venerable Order were recognised by SMOM. We conclude that being a religious Order is not a criterion which can reasonably be required nowadays.

XIX. 11. Being organised like the original Order

No contemporary Order of St. John whether or not enjoying valid fons honorum, is organised like the original Order was. The original Order's organisation changed through the times, perhaps not formally, but certainly materially. This organisation also is not always very clear, except where their main instrument of income was concerned, the Fleet. The Statutes were

also not always observed, or, one might be tempted to say, mostly not observed. The original Order was organised in a very complex way. The Papal Order comes closest to that original organisation, although a navy is non existent, while the navy was the primary tool of the original Order since moving to Cyprus. We can state that no Order of Saint John nowadays is organised like the original Order was.

XIX.12. Hospitaller traditions

Many Hospitaller traditions, such as 'Solemn Investitures' and other gatherings and ceremonial, are still being engaged in, more or less in the old style. They have a big psychological significance and effect on the average participant, postulant and on the crowd. This is a unique selling point, next to the alleged or real Knighthood, the Christian ideals and the charitable activities.

XIX.13. The insufficiency of the criteria discussed

We have discussed a number of criteria which are interconnected and flowing into each other. We have discussed a) self-styled; b) recognition; c) historical roots; d) nobility requirements; e) the combat aspect, the military side; f) the charitable side of chivalry; g) the substance or measure of charitable activities undertaken; h) fons honorum; i) protection; j) independence or sovereignty; k) the religious organisation aspect; l) the way of being organised and m) Hospitaller traditions. These are all rather vague and we feel they are too vague to come to the results desired. The results desired are a tool with which to distinguish the wheat from the chaff and to prevent abuse of gullible and/or ambitious people. We need something more. We have to apply the basics first. These seem to be that in a civilised legal system, complying with the basic principles of a 'Rechtsstaat' – the legality requirement, as a means for guaranteeing the fundamental principles of legal certainty, equality before the law, democracy and a serving government, legitimising the authority of government; divison of powers between lawgiver, a representative body composed on the basis of free and secret elections in which everyone shall enjoy active and passive suffrage and administration, the representative body to be able to influence the decisions of the administration by repressive control; the recognition of certain political fundamental rights; safeguarding of human rights in the positive law; independent judicial control; the effective maintenance of the law and legal personality of the State [976] – one cannot really be legitimate, if one is

[976] G.T.M. Jurgens, *Bestuurlijk gedogen* (Zwolle 1966), p. 21-43. Compare Helmut

not legal. But one could also question what the legitimacy is of asking the question whether an Order is legitimate if it is observing the written law.

XIX.14. Valid criteria for the legitimacy of an Order of St. John

What then are valid criteria for the legality and legitimacy of an Order of St. John? In our view about 20 general and special criteria are involved, distinguishable in 3 groups of criteria A through C. Although we refer to 'Order' below, these criteria should be applied on the level of the umbrella organisation (the 'Order'), as well as on the level of the local organisation (the 'Grand Priory', or lower).

XIX.15. Five general requirements for being legal

1. First of all the name assumed should not be confusing. A distinctive element should be present, respectively always added, to distinguish the relevant Order from other Orders of St. John. This may be difficult enough sometimes.
2. Secondly, the public needs to be actively advised that the Order involved is not to be confused with any others. This means in our view one is obliged to always clearly set out and clarify one's own identity and position. Either when trying to acquire new members, or when engaged in fund raising, or fund spending, but also internally. We believe these two criteria (1 and 2) to be based on norms of carefulness which are befitting in social traffic, i.e based on common decency.
3. Thirdly, the Order involved, like anyone else, should always punctually observe the public law (tax law, criminal law, law on charitable activities, filing and publishing requirements, etc.) and private law, applicable to it. This as far as private law is concerned, is first of all the law under which it was incorporated. Where the Order involved claims it was not incorporated under a specific national legal system, but claims it is a 'State in exile' or an international private law legal person 'sans loi', it thus seems to try to avoid or evade the applicability of a national legal system (SMOM has a special status here). The Courts approached will in our view normally reject such contentions and grant jurisdiction if they can do so under their forum rules. Then they will

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Coing, *Rechtsphilosophie* (1956), p. 184-186:
'1. keine Macht darf weitergehen, als es dem Zweck entspricht, dem sie zu dienen bestimmt ist;
2. jede Macht wird durch die menschlichen Grundrechte begrenzt;
3. auch der Machthaber ist im Verkehr mit den Machtunterworfenen an den Grundsatz von Treu und Glauben gebunden;
4. jede Macht muss kontrolliert werden'.

normally try to subsume the Order involved under some national legal system, depending on the private international law rules of the Court approached. Secondly, not only as far as private law is concerned, this is the law of the place, where it has its real seat, i.e. the place from where it is actually managed (this may sometimes be hard to establish). This law will be the private law applicable to its form (it will usually be an association or a foundation, [977] or something similar, which is a qualification matter) and the mandatory private law applicable to its internal rules and regulations, also its disciplinary system and connected rules of procedure ('courts of honour') and private law (including tort) and public law (including law on charities, tax and criminal law, applicable to its activities (charitable, of necessity always). This is depending on the question whether the Court approached applies the 'incorporation doctrine' or the 'real seat doctrine'. As far as criminal law is concerned, this will be the law of the place where the Order involved is established, respectively the law of the place from where its activities are carried out, or where they are having effect. This is all depending on the rules of international criminal law of the legal system of the Criminal Court called upon and upon treaties. [978]

4. This usually also means the Order involved should have a relatively democratic organisation. Not only formally, but also in practice. The constitution should in practice always be observed, which unfortunately is not always the case. This is inherent to the association aspect which inevitably comes up where one is referring to 'members', which one does. The organisation must have a proper constitution, a proper balance of powers (legislative, administrative and judicial), preserving away certain essential minimum powers from its assembly of members. Not all powers should be in the hands of some persons, or even in the hands of one person (this is all too often the case), because power corrupts and the law (usually) forbids it. The original Order in the beginning phase (which phase people always invoke nowadays), was relatively democratic, as the Chapter General was the power base. At least theoretically, this remained the case throughout its history. We are convinced that when the Constitution of many an Order of St. John will be held against the light of the law, it will appear that this Constitution is not valid. As a matter of fact, the internal organisation and the organisation's activities should ideally mirror the above requirements

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[977] Having members is imposssible with a foundation and where one has members, one will almost invariably be an association, with all consequences thereof. The law does contain few mandatory rules for foundations.

[978] M. Faure and C. Schwarz, *De civielrechtelijke en strafrechtelijke aansprakelijkheid van de rechtspersoon* (Ius Commune Europeum 1998).

for the Rechtsstaat, the more so where it would be claimed the Order involved is an international public law legal person. Where the Order involved would be able to succesfully claim to be an ecclesiastical community, the situation is different. Where ecclesiastical communities are concerned, the legislator may have accepted that a certain less democratic or undemocratic system is applied, or some discrimination, which normally would not be tolerated in civil organisations, is allowed. The question is, whether this should be maintained and how long this will be able to be maintained.

5. This also means a high degree of accountability. Legitimacy and accountability are not the same but are closely related. [979] There should be well maintained membership records, available for inspection. Financial reporting should match these and cover all income, particularly but not limited to passage fees, donations and all monies collected for charity. All expenditure should be regularly and timely recorded, accurately and truly. Accurate and complete accounts should regularly be drawn up and made available, discussed and formally approved and made available for inspection. [980] This seems self evident and obvious, but actually it is not. We would like to mention in this respect the notion of 'corporate governance'. This notion became rather popular in a short time due to various big scandals [981] and has now become a daily reality. All EU Member States are strenghtening their corporate governance legislation while there is also a tendency to stimulate self-regulation. [982] Corporate governance literally is the running or administering of a business. Being a charity does not exclude running a busines at all. A charity should also be managed in a businesslike way. According to the Cadbury report, [983] core items of the notion are transparancy, accountability, fairness and responsibility towards shareholders and other stakeholders. Corporate governance is a prerequisite for integrity and credibility. It has to do with administrating

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[979] Slim, *By what authority?*

[980] An example of proper annual reporting by a charitable organisation, is 'Hope Horizons, 2000 Annual report, The Princess Margarita of Romania foundation', with an accountants report by Price Waterhouse Coopers Bucharest.

[981] Enron and Worldcom in the USA, Parmalat and Ahold in Europe.

[982] Europan Commission 'Action Plan on Corporate Governance' and the 'European Corporate Governance Forum'. Relevant EU Directives re annual accounts were First Council Directive 68/151/EEC of 9 March 1968 (article 58, § 2 Treaty) and Fourth Council Directive 78/660/EEC of 25 July 1978 (article 54 (3)(g) Treaty).

[983] Chairman Sir Adrian Cadbury, 1992. In the meantime a number of other reports were published (Greenbury, Hampel, Turnbull, Mynes and others). See also the US 'Sarbanes-Oxley Act of 2002'.

and controlling, responsibility and determination (having a say) and with accountability and supervision. [984] Corporate governance is (translated) 'the process of exercising influence on the course of events in businesses by those interested, both with regard to the decision making as with regard to the implementation.' [985] A charity, be it an association or a foundation, often runs a business, but we feel that corporate governance applies, respectively should apply just as well to charities as to businesses. We also feel it applies, respectively should apply, to any type of organisation, be it a public or a private one, a religious or a non-religious one, a commercial or a charitable one. [986] In 2004, Ernst & Young Accountants developed a Corporate Governance Model consisting of ten requirements. These are: an effective independent and expert supervisory board; a pro-active audit committee with financial expertise; a well functioning executive board; clear competences for the shareholder; striving towards one share one vote; transparence with regard to financial risks and finances and the corporate governance structure; relevant ethical code of conduct; adequate risk mangement; internal control measures which reduce the business and financial risks; an effective internal accountants department and finally, independent external accountants control. It will be clear that application of these corner stones for corporate governance also on managing of a charity, let alone on managing of an Order of St. John, is not only necessary, but will also be very useful to distinguish the wheat from the chaff. If their activities are indeed substantive, as invariably claimed, the more reason to apply these corner stones for proper corporate governance. [987]

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[984] Commission-Peters, *Report on corporate Governance in The Netherlands* (1997). See also Commission-Tabaksblat, *Corporate Governance Code,* 9 December 2003 <www.commissiecorporategovernance.nl.> Tabaksblat is applicable as of 1 January 2005 for companies quoted on the Amsterdam Stock Exchange (Besluit van 23 december 2004 tot vaststelling van nadere voorschriften omtrent de inhoud van het jaarverslag, Stb. 2004, nr.747).

[985] S. Peij, P. Moerland, J. Glasz, a.o., *Handboek Corporate Governance* (2002).

[986] On 15 July 2004, it was published that the Dutch Minister of Finance wants to oblige all appr. 138.034 Dutch foundations to publish their accounts. Right now, this is only applicable to foundations with commercial activities and a turnover of euro 3,5 million. It is also being considered by the Minister to subject associations to a stricter regime, as they are too vulnerable to abuse in his view. 'Nota inzake de bestrijding van misbruik van nonprofitorganisaties voor terrorismefinanciering' (Note re combating abuse of non-profit organisations for financing terrorism), Ministry of Finance FMO4-925a.

[987] In The Netherlands, some (Laurens J. Brinkhorst, the present Dutch Minister of Economic Affairs is investigating this possibility since April 2004) are now even pleading for the introduction of a code like Tabaksblat for the non profit

Sofar the 5 general requirements for being legal. If one is not legal, it is hard or impossible to be legitimate, assuming that the applicable positive law is acceptable. The usual basis of legitimacy is the belief in legality, the readiness to conform with rules which are formally correct and have been imposed by accepted procedures. [988] Modern societies are ruled by rational law and therefore rational legitimacy could be identified with legality. [989] Power is legitimate in so far as corresponding with rational norms. Obedience is given to the norms rather than to the persons who issue the norms. In such a system, one cannot really be legitimate without being legal. One can be legal without being legitimate, but legality can produce legitimacy.
Putting forward these requirements will weed out a lot of mala fide organisations of St. John, if there are any, or bring organisations of St. John to a higher level. This can be achieved by government action, by private action, from within or outside the organisation and by additional legislation. For example, by legislation compelling all charities, be they organised as a non-profit organisation, as an association or Grand Priory or as a charitable foundation, or whatever, to timely submit a proper and accurate set of annual accounts to their members (if any) and to the public and at any rate to deposit a copy thereof with the trade register (respectively the register of associations or foundations or whatever register would be suitable to use or to set up). One can also think of an annual obligatory accountancy and/or legal audit. One cannot expect much from action from within the organisation. The Grandmaster or Grand Chancellor may bully the member who tries to achieve more openness, into submission by invoking 'obedience', or by just kicking him out or compelling him to resign.

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sector. Integrity and transparence play a similar role there. However, self regulation does not seem very popular with the non profit sector sofar, reason why some (like Hans Hogervorst, the present Dutch Minister of Social Affairs) even plead for the additional creation of a special court for this sector, similar to the existing 'Ondernemingskamer' (Business Chamber) with the Court of Appeals at Amsterdam.

988 Weber, *Wirtschaft und Gesellschaft*, p. 19 and p. 349-350.

989 A.J. Hoekema and N.F. van Manen, *Typen van legaliteit, ontwikkelingen in recht en maatschappij* (2001), p. 45 ff., point out there are various forms of legality and call this type of legality 'formal legality'. Next to this, they distinguish 'compensation legality', 'risk collectivization legality', 'forum legality', 'co-operative legality'' and 'pluralistic legality'.

XIX.16. Seven additional specific requirements for also being a genuine charity

Then we should apply a set of 7 additional criteria for being a genuine charity. They may be arbitrary, but at least they are mainly derived from accepted practice of organisations, trying to benchmark charities to establish whether or not to give them a stamp of approval, the public can rely on. [990] It is in our view all too quickly assumed that Orders of St. John are always charitably active. Stair Sainty is right here in asking for a certain substance, but we are afraid that also not all Alliance Orders do have this substance, compared with other charities and are just a few of many. The historical background mentioned by Beltjens, who said that 'cut off from its history, the Order of Malta', with which he meant the 'Sovereign Military Order of Malta', 'would be loosing its specificity', i.e. would be nothing else than just a charity among many others, does not help, or just is not present, as we have demonstrated above. It is a very debatable background or story.

6. At least 75 % of the funds raised should be spent on the organisation's expressed objectives.
7. Fundraising activities are to be aimed at the voluntarily making of gifts.
8. All accounts of all fund-raising by the Order involved, or by its individual Grand Priories, Priories and Commanderies, should be drawn up in the same manner, so that a clear insight and a proper comparison can be acquired, respectively made.
9. The Boards should be composed of independent persons, respectively persons who will watch out for conflicts of interests.
10. A plan should be drawn up by the Board, annually in advance, in which the policy, the activities and the expenditures are clearly laid down. It should be clear who is raising funds for what purpose, which activities are deployed and how much money is needed therefor.
11. Fund raising institutions may not compare themselves with other fundraising institutions. This is what Alliance Orders are doing all the time.
12. Every fund raising organisation should have a complaints procedure which is provided at request.

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[990] For example in The Netherlands 'Centraal Bureau Fondsenwerving'. This independent foundation, already since 1925 supervises fund raising for charitable purposes and grants the CBF quality mark for five years under certain strict conditions which are monitored. CBF vets management, policy, reporting, fund raising and fund spending. See also 'VFI (Vereniging Fondsenwervende instellingen)', who are developing since 2004, a 'Code van goed bestuur voor goede doelen' (Code of good management for charitable purposes).

This set of criteria also is a must, but leaves more leeway for discussion. However, it is a must because all organisations of St. John invariably claim to be charities. That being the case, they should submit themselves to the commonly accepted and apllied standards in this area or collectively try to create or develop these. [991]

XIX.17. Eight additional specific requirements for also being a genuine Order of St. John

Assuming one is a legal and a proper charity, the question then is what makes one additionally a genuine Order of St. John. We will now deal with the more specific criteria for being additionally a real Order of St. John.

13. They should occupy themselves and the accounts should reflect this, with constant and genuine traditional Hospitaller charitable activities, of a relatively substantial size. Certainly not in name alone. [992]
14. Knights came in the driving seat relatively quickly in the beginning phase. It could therefore be argued that in principle always a certain chivalric element should be present. The original Order is practically always associated primarily with Knights. But the chivalric element is present anyway, if fons honorum is present. This fons honorum also in a way entails 'recognition'. In a way, but again, recognition is not a valid criterion in our view. This the more so, because no licence is required to form an Order of St. John. Neither is a licence required, at least not in a civil country, to form a Church, let alone a Christian Church. This is the same as saying that the 'recognition', allegedly acquired by the International Alliance Orders is only worth so much and not complete. If abuse would be really so widespread as emphatically suggested, the legislator would have taken action long ago.
15. Depending again on which historical constitutional phase of the original Order one is looking at, i.e. the early, supposedly very idealistic beginning-phase or the phase in which the original Order had

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[991] Slim, *By what authority?* gives an insight in what has been done by NGO's in this context.

[992] The usual activities of SMOM in Malta seem to be restricted to attending Mass, according to their 'Activities Report 2001'. The Dutch 'Stichting Johanniter Hulpverlening', a 'help fund', an organisation enjoying the CBF quality mark, was able to spend NLG 357.000 (Euro 161.999,54) on charitable goals in 2002, of which it raised NLG 120.000 (Euro 54.453,63). However, these amounts are negligible in comparison with amounts spent and raised by most other Dutch organisations enjoying the CBF quality mark. In 2002, in total about Euro 1,8 billion was raised in The Netherlands for charitable purposes.

militarized, there either should, or there should not be a military element present. This in the combat sense. In European decoration systems, military decorations also usually take priority in the ranking order above civil decorations. [993] Usually, the combat element is more or less automatically present, because quite a number of former military service men somehow feel attracted to join an Order of St. John and are active members. At the same time this can be a serious danger for the necessary, but usually only weakly present, democratic element.

16. There should be a certain code of conduct, if the chivalric aspect is deemed a criterion, but also independently thereof, there should probably be a certain 'Hospitaller' code, an also legally acceptable way of approaching and handling things. There is a tension here with minimum requirements of democracy.
17. Historical roots, as we have tried to explain, are not necessary in our view, are always doubtful and lead to endless discussions. But 'Hospitaller traditions' are necessary in our view. The Order involved should stick as much as possible and practical nowadays to the traditional honourable Hospitaller usages and obligations and 'work' in accordance with the tradition.
18. Vows of a Christian nature, which means that membership, can only be open to 'practising Christians', are necessary. So is the presence of a certain spirituality. Having 'professed' members or even 'Saints', is not necessary, let alone having a majority of professed members, because no Order has that. Materially, also the original Order did not have that. It had a subordinate clergy and, although only ceremonially, it gave this clergy priority.
19. 'Recognition' is in our view not a valid (and only formal) criterion. It can even jeopardise what is a valid criterion in our view, i.e. 'independence', which is really the same as being 'Sovereign', but not in the international public law sense. At any rate the recognition which some claim they have, does not cover the presence and continual application and monitoring of the criteria contained in the previously discussed two criteria groups A and B. It goes too far to assume this would be the case.
20. The organisation of the Order of St. John concerned, should have an element of a 'nobles republic' in it, meaning a certain democratic content, in spite of the fact that since the early 18th century the Grandmaster developed into an 'enlightened despot'. All too often a Grandmaster of a present day Order of St. John will be more than willing to invoke old rules of 'unconditional obedience' in any case and

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[993] Bruin, *Kroon op het werk*, p. 38.

will the constitution be drawn up in such a way that the members find out they really have nothing to say whatsoever and have delivered themelves into the hands of uncontrollable, but (perhaps) benevolent dictators. A Grandmaster should realise he is dealing with equals, not subordinates and behave accordingly. There are various examples of Grandmasters of the original Order being regarded as under the control of the Supreme Council and not the other way around. [994]

XIX.18. Conclusion about the criteria

We feel these not only formal but also intrinsic criteria are historically responsible, rational and coherent and more in conformity with requirements of justice, objectivity, efficiency and legal certainty [995] than alleged historical descent, recognition or substance of activities. A balance will always have to be struck between these criteria. They certainly can and hopefuly will be developed further. This could even result into a matrix one could use to check Orders of St. John with, to find out which one is legitimate, or not. This goes further than being 'self-styled' or being 'un-recognised'. The Alliance Orders of St. John could check themselves against these criteria.

Although this probably is an illusion, the Alliance could even be expanded with those 'un-recognised' (in the Alliance's eyes) Orders of St. John, meeting all of these criteria and continuing to meet them. Whether this could be confirmed, could be established in each individual case after a due diligence investigation and a report by an independent auditing committee, consisting of legal, accountancy and Hospitaller experts. It will be hard enough for most present Alliance or non-Alliance Orders – a terminology to be preferred, as it is less less depreciative and more neutral than the use of un-recognised or self-styled and bogus or false – to meet the first two groups of criteria. This way the available enthusiasm and capabilities could be put to better use, respectively a lot of unproductive energy would not be consumed in the framework of fighting each other. It cannot be denied that since the late 19th century and also particularly in the Russo-American Orders of St. John, a certain 'Hospitaller' way of thinking and acting has

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[994] Grandmaster Gilbert d'Assailly (1163-1170); Grandmaster Alphonse of Portugal (1203-1206), who abdicated; Grandmaster Foulques de Villaret (1305-1319), who was deposed, reinstated and then abdicated.

[995] Gustav Radbruch, *Grundzüge der Rechtsphilosophie*, p.170 f: 'Rechtssicherheit geht vor Gerechtigkeit'.

developed. [996] The further development and wide spreading of a simultaneously modern and old valuable Christian/Hospitaller way of thinking and acting, [997] has certainly been hampered and is being hampered by in our view unnecessary interventions by attackers, or unnecessary behaviour by attacked, in various cases. Thereby the opportunities were missed the Freemasons were obviously able to use, seeing their numbers, compared with those of the Alliance and non-Alliance Orders of St. John. One might argue this started already with the autocratic Grandmaster Alphonse of Portugal's action to pass a statute forbidding the secular gentry, who fought as volunteers under the banner of St. John, from wearing the Cross of St. John except when actually employed against the Infidels in the field. [998]

A central, impartial and expert institution to handle proper application of jointly agreed proper criteria would be preferable, but even Freemasonry was not able to achieve this. But Freemasonry did create National Grand Lodges, which convened and started discussing a set of criteria for regular Grand Lodges and regular Lodges and laid this down in a 'Covenant', during the Convention of Luxembourg, in 1954. As far as relevant here, these were the following. Regular Grand Lodges would only be those founded directly or indirectly by a regular Grand Lodge. Mutual recognition of a Grand Lodge or terminating the relationship with a Grand Lodge, should take place only after consultation with the other Grand Lodges and preferably jointly. Mutual recognition of jurisdiction was agreed and it was made possible for other Grand Lodges to join the Covenant. [999]

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[996] See for an expression hereof, the self-portrayal of The Ecumenical Order, particularly the four paragraphs before last (Annex 1); Ducaud-Bouret, *The spiritual heritage of the Sovereign Military Order of Malta* (Vatican City 1958).

[997] Smith/Storace, *Order of St. John of Jerusalem* p. XI: 'The *spirit* of the Order as *hospitalers* yet abides in all the Orders, and to a large extent, in all the knights, whether they be organized as Roman Catholics, Orthodox, Lutherans, Anglicans, or other Christians; that spirit is being re-kindled in our times before our very eyes.'

[998] Sutherland, *Achievements I*, p. 140.

[999] Zeijlemaker, *Vrijmetselarij ontleed*, p. 284-286.

XX. CONCLUSIONS

XX.1. Specific conclusions

We are now looking specifically at The Ecumenical Order in the light of history and the criteria we have found and draw some specific conclusions from the research. In this context, we have put our criteria as well as the tentative outcome of the application therof in a still rather crude table (Annex 2). We have added a tentative comparison with Alliance Orders and also added to our table between brackets what other authors would probably want to add, i.e. the historical roots element, the religious organisation element and the recognition element.

We have explained why we hold that the historical roots element leads to an endless and insoluble discussion and why it also cannot play a role anymore. Ideally, historical roots should be available but they are just not there for any Order of St. John, except in their imagination. The old rule 'nullus ad honorem militarem', etc., cannot play a role anymore. We have explained why the religious organisation element cannot be a valid criterion. We have also explained why recognition is not a valid criterion.

Questions which had to be dealt with and can now be partly answered, were inter alia the following. Is The Ecumenical Order a religious Order? We do not exclude this, but are inclined to qualify the religious element as weak, for the reasons mentioned. The affiliation with the alleged Patriarch of Antioch mentioned also seems rather doubtful. The Ecumenical Order is an organisation on a spiritual basis, though. Does it have to be a religious Order? We have explained why the religious organisation element cannot be a valid criterion. Is The Ecumenical Order a chivalric Order? The Ecumenical Order presently is a chivalric Order because of the present connection with King Michael I. If this Protection would disappear, its chivalric Order status would be lost for the future. A chivalric Order cannot exist without a valid fons honorum. Does it have to be a chivalric Order to be a legitimate Order of St. John? An Order of St. John should in principle be chivalric. On the other hand even the fons honorum of several Alliance Orders may be questioned. Are there recognised principles or accepted rules and standards in this area of chivalry and Orders? There are no generally recognised principles or accepted rules and standards in this area yet.

Is The Ecumenical Order a charitable, Hospitaller type of organisation? We are inclined to answer this affirmatively, but would need further evidence, particularly exact track record and proper annual accounts over a substantial number of years. Is The Ecumenical Order governed by specific international and national public law? What springs to mind here is charity law. Charity law could be defined in the same way as economic law, as a composite body of that private and public law concentrating on charities.

Charity law is in full development still, both from a private and a public charity law point of view. [1000] We do not think that presently there is specific international and national public law governing the supposed charity concerned.

Is The Ecumenical Order a State or does The Ecumenical Order have other international public law legal personality? Clearly The Ecumenical Order is not a State or a State in exile and clearly it has no international public law legal personality.

Is The Ecumenical Order governed by specific private law? Yes, but no more specific than applicable to other private law organisations. Does it comply with that law? This would require further investigation. Does The Ecumenical Order have private law legal personality? We are inclined to affirm this. It might also be an international private law legal person sans loi.

Does The Ecumenical Order have to take into account the constitution or statutes and regulations and customs of another Order or private law organisation? We do not think so. It is independent.

Did the Papal Brief of 1803, appointing Tommasi as Grandmaster, sufficiently disturb the organisation and statutes of the original Order – if still extant after the Surrender of Malta to Napoleon and after its reorganisation by Czar Paul I – to such an extent that it can be said to have founded another Order? There was no original Order anymore. If the original Order was still extant at the time, then indeed it had changed so fundamentally that it can be said to have become another Order and the Papal Brief of 1803 created yet another new and Papal Order.

Or did the original Order already 'die' as a chivalric Order upon the occasion of the Surrender of Malta in 1798 or even before that date? The original Order was already 'dead' since the Tacit Truce of 1723 and it had already long before that date lost its purpose. What and if still existed, was validly dissolved by Napoleon.

Did the original Order or the Order formed by Czar Paul I, remain extant in Russia till around 1890 or 1910, or even 1917? An Order or Grand Priory legally and legitimately formed by Czar Paul I, had a limited continued existence in Russia till 1917. It was seen by its members and by others as a continuation of the original Order.

Did a representative of the House of Romanov, acting together with descendants of Hereditary Knights, duly relocate and/or reconstitute the original Order, or the Order formed by Czar Paul I, to, respectively in the USA? This seems not improbable for a former small part of this latter Order.

[1000] Refer to the Vrije Universiteit of Amsterdam's program 'Philanthropy, sponsoring and volunteer work in a civil society' and to the Charity Law Unit of the University of Dundee, the Charity Law Research Unit of the University of Liverpool. In the USA, the National Council on Foundations, a private organisation.

Is The Ecumenical Order the same entity as the American Order, or is it a legal successor thereof? This seems improbable, at least from a formal point of view.

Does The Ecumenical Order have a right to its name and its signs? The answer will differ under the various national legal systems and the specific case involved.

This Order of St. John, like other Orders of St. John, can materially be distinguished from other more or less similar organisations not being Orders of St. John.

XXI.2. General conclusions

The above also results in a number of additional, general conclusions.

The original Order of St. John seems to have only in its early beginnings been generally charitable to everyone who was a Christian. The vows of poverty and chastity were usually only formally observed except perhaps in the early beginnings. They used slave labor and traded in slaves till the end of their stay on Malta. This involved inter alia parts of the local Rhodian population until 1463 and prisoners of war or victims of their raids until the end of their stay on Malta.

The Knights of St. John never were a formal or a material regular religious Order of the Roman Catholic Church.

Only in the late 19th and in the 20th century, the Orders of St. John were able to retrieve the original humanitarian ideals. They did not retrieve the chivalric, real physical combat ideal. This was already lost since the days of Grandmaster Rohan at least. What we have now, does not resemble the situation in the Crusades in any way. The idealisation of fighting, let alone chivalrous fighting, certainly not applied in the Holy Land, became unrealistic to most people after the Second World War. There are no real chivalric Orders of St. John anymore, in the essence of the word 'chivalric', i.e. exalting the combat ideal, based on a religious fundament.

No contemporary Order of St. John is organised or functioning now as the original Order was till around 1723, when the Tacit Truce with the Turks came about, respectively till the Surrender of Malta. The Knights of St. John up till 1723 were formally and materially chivalric in the old combat sense of the word. Fighting and the combat ideal are the most important elements of chivalry and the original Order always fought, until the Tacit Truce, respectively until the Surrender of Malta. It did not fight at all then.

The original Order was practically Sovereign – although this Sovereignty always had a weak legal basis – as from being on Rhodes and also on Malta, till the Surrender of Malta and it had international public law legal personality, more or less like a State.

The original Order had become partly Ecumenical already before Czar Paul I became Protector in 1797. There was no 'Russian coup d'état' in 1798. There also was no 'interregnum in the Order', because the original Order was 'dead', had lost its purpose and was dissolved. Czar Paul I created a new Order. This Order was wrongly seen as the original Order continued.

The original Order at any rate definitively came to an end when Napoleon dissolved it and the Knights of St. John left Malta. The original Order had no territory anymore since then and therefore definitively lost its statehood and sovereignty.

If one assumes the original Order continued in spite of Napoleon's dissolution, then the Seat of the original Order was legally and validly transferred from Malta to St. Petersburg and Grandmaster von Hompesch validly agreed to this development.

The two Catholic and Orthodox Russian Grand Priories were legally and validly founded by virtue of the Treaties of 1797 and 1798 between the original Order and Russia. If one assumes the original Order continued in spite of Napoleon's dissolution, Czar Paul I was a valid Protector, based on the Second Treaty of 1797 and in view of all events surrounding his election, he was validly elected as Grandmaster. If one assumes the original Order continued in spite of Napoleon's dissolution, the Sacred Council organised by Czar Paul I at St. Petersburg and functioning till his death in 1801 and all acts done by Czar Paul I and this Council, were in principle valid, de jure and de facto.

After the death of Grandmaster Czar Paul I, the Sacred Council of the Order involved, either the original or the new Order created by Paul I, was illegally constituted, because only provisionally and incompletely and can only be regarded as a puppet regime, forced upon the Order involved by (self-assumed) Protector and Hereditary Grand Prior of the Orthodox Russian Grand Priory, Czar Alexander I.

Whether or not one assumes the original Order continued, in spite of Napoleon's dissolution, all actions of Alexander I as Protector, including but not limited to the continuation of Soltykoff as Lieutenant Grandmaster and all actions of this provisional Sacred Council, may be deemed in principle as contrary to the statutes, respectively as legally non-existent, or as null and void. This includes the call for the appointment, instead of a statutory election, of a Grandmaster and the handing over to Tommasi, illegally appointed by Pope Pius VII and pending fulfilment of the Treaty of Amiens and contrary to its terms.

Even in the event these decisions of the provisional Sacred Council are deemed materially and formally valid, the procedure for the election of a Grandmaster adopted, was not observed, because the mandate had been consummated before Tommasi was appointed 'Motu Proprio' Pope Pius VII.

Tommasi was not elected. He was also not validly elected during the subsequent Chapter General, allegedly validly convened in Messina. The Chapter of Messina was not validly convened, respectively not representative, did not produce a quorum and therefore could not take valid resolutions.

That the provisional Sacred Council in Russia voted to hand over its powers first to Ruspoli and then to Tommasi, is not surprising because it was a puppet regime. Its resolutions were therefore not valid.

Tommasi never or only formally governed the Catholic Russian Grand Priory. He never formally or materially governed and could not legally govern the Russian Orthodox Grand Priory.

At the time of Tommasi's appointment, there were at least four Orders of St. John, the one of Tommasi being a new and Papal Order. This Papal Order died in 1814, respectively later, for lack of corporate life or was suppressed. It, respectively the original Order, was reconstituted in 1879 by Pope Leo XIII.

The two Russian Grand Priories were never officially suppressed by Czar Alexander I or his successors. On the contrary, they left these Priories intact as far as their non-economic aspects were concerned. The two never formally suppressed Russian Grand Priories carried on in Russia and quietly maintained an existence, like was the case elsewhere, as a quasi-religious Order, sometimes with and sometimes without express Imperial sanction. Also the Russian Order remained more or less inactive between the years from 1803 to 1917.

The survival of the Russian Grand Priories as well as the validity of the concept of Hereditary Knights and Hereditary Commanders remains disputed. The original Order had known Hereditary and Honorary Commanders and Knights before the alleged transfer of its Seat to St. Petersburg. The original Order, also when still mainly Roman Catholic, awarded honorary titles, independent of Commanderies and Priories which had earlier been suppressed, for example where the Grand Priory of England was concerned, the Anglo-Bavarian Langue was concerned and other split-offs were concerned. [1001] Hereditary and Honorary Commanders and Hereditary and Honorary Knights existed in the Catholic, as well as in the Orthodox Russian Grand Priory. The titles Hereditary Commander and Hereditary Knight existed as honorary titles. The male descendants of the founders of Russian or any other Hereditary Commanderies, can indeed claim to be successors to such Hereditary Commander titles. The distinction which some [1002] make between Family Commanders and Hereditary

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1001 Titular Priors in England, Dacia, Armenia and Brandenburg.

1002 Sherbowitz & Toumanoff, *Order of Malta and the Russian Empire*, p. 36 ff.

Commanders, is artificial, while too much importance is attached to the conditions to be fulfilled by Hereditary Commanders to become such Commanders. [1003] These titles were not necessarily tied to the continued physical or legal existence of a Commandery and did not disappear, respectively should not disappear upon a Commandery's disappearance or non-functioning anymore. All Priories of the original Order, of which SMOM claims to be the uninterrupted continuation, were suppressed at one time or another, formally and materially, or only materially.

It remains unclear whether the Seat of the two, or of one of the two Russian Grand Priories, was indeed moved from St. Petersburg to New York in 1908 and whether this happened pursuant to the express desire of Czar Nicholas II or the express desire of the Russian Order, or of the two Russian Grand Priories, or of the Orthodox Russian Grand Priory. It remains unclear whether various Russian and other nobles indeed and genuinely acted in New York in 1908 together with Grand Duke Alexander and whether Grand Duke Alexander, cousin and brother in law of Czar Nicholas II, gladly accepted the Grand Magistry of the American Order. It remains unclear whether Grand Duke Alexander also gladly accepted the Grand Priorship of the organisations founded in NewYork in 1908 or in Paris in 1928..

It may be assumed there was some sort of reconstitution of the Orthodox Russian Grand Priory in the United States of America in 1908. As this reconstitution was independent, one could validly create a Grand Priory of Europe and a Grand Priory of America. A number of private associations formed in the second half of the 19th century, were later adopted, either by the Pope or by other Sovereigns. These organisations all came into being based on a private initiative, which was later adopted. The adoption took place in some cases by Sovereigns, but according to the International Commission for Orders of Chivalry, it is not necessary that an adoption takes place by a reigning Sovereign. Sufficient is that the associations involved are adopted or created by such ex-Sovereigns, who have not abdicated, who according to the Commission therefore retain their full rights of fons honorum. In that context the Commission distinguished between 'Independent Orders', 'Semi-independent Orders' and 'Dynastic Orders'. The Order of St. John of Jerusalem under the Protection of the Royal House of Yugoslavia, was for that reason ranged by the Commission under the

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[1003] Vertot, *History of the Kights of Malta II*, *The old and new Statutes of the Order of St. John of Jerusalem*, item 8, p. 88: '..we enact that no brother knight or servant of arms shall be preferred to any commandry of grace or chévissement, till he has served and made three compleat caravans, either in person or by somebody else'. This was even under de la Valette, Grandmaster from 1557 till 1568, who may be deemed to have been a pretty stern Grandmaster. Under Garzes, Grandmaster from 1595 till 1601, this was formally retracted.

category Dynastic Orders. [1004] Therefore the 'Knights Hospitallers of the Sovereign Order of St. John of Jerusalem, Knights of Malta – The Ecumenical Order – ', can be regarded at this moment under the same criteria as a Dynastic Order, because since 1993 they are under the Royal Protection of King Michael I of Romania and since 1994 also under the Protection of a Syrian-Orthodox Patriarch of Antioch.

Where others formed private associations, later accepted by Sovereigns and also by SMOM – this was the case with the Venerable Order, for example, who was accepted by SMOM – also those who were successors or followers of the traditions of the Russian Grand Priories, had and have the right to reconstitute. The American Order may have been a legitimate reconstitution or formal and material continuation of a small part of the original Order or the Russian Order. Indeed various unfortunate quarrels occurred, resulting in various split-off's from that alleged part of the Russian Order, reconstituted in 1908 in New York. However, these quarrels and split-offs do not prejudice that the New York reconstitution may have been valid.

Bona fide non-Alliance Orders of St. John may not be adverse to reconciliation and co-operation with Alliance Orders and vice versa. [1005] The Ecumenical Order presently is under the Protection of H.M. King Michael I of Romania. It has to be qualified as a chivalric Order and perhaps also as a religious Order, whatever its origin may have been. The Ecumenical Order is not the same as the American Order or its sole or main successor, although various former Grandmasters of this organisation belonged to it.
The Ecumenical Order presently is an organisation which in principle is set up as chivalric Christian-Ecumenical and charitable.

It must be deemed legal and legitimate to set up a new organisation of St. John irrespective of having historical roots, if complying with the criteria found in Chapter XIX of this study. The Ecumenical Order is a chivalric

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[1004] According to Stair Sainty, *Orders of St. John*, passim, this Order was completely 'self-styled' and 'unrecognised'. Yet the International Commission for Orders of of Chivalry recognised it as a Chivalric Order and ranged it in the category Dynastic Orders.

[1005] Smith/Storace, *Order of St. John of Jerusalem*, p. 89: 'As it is policy of the co-authors not to magnify these similar misunderstandings and fragmentation in the great and well-known Order of St. John, it is thought not in good taste to enlarge here upon the often private misunderstandings within the Russian-American Order. Its schisms have sometimes been marked by the election of an independent head. It is the fervent hope of the co-authors to set the tone for unity and not disharmony. They seek to promote reconciliation amongst knights who have a modern task in today's world. King Peter himself asked the Knights to 'Serve God, obey Christ, and serve Mankind.'

Order in the sense of proper definitions accepted by the majority of chivalric experts. The Ecumenical Order is not a quasi-monastic Order, like the original Order was. It has no real convents or auberges.

The Ecumenical Order is not recognised as a State. It also is not a State in exile. The Ecumenical Order cannot validly claim to be the continuation of the original Order. It can claim to be a valid reconstitution, like certain other Orders of St. John can claim this. No Order can validly claim to be the one and only continuation of the original Order.

No Order of St. John is Sovereign anymore. It should be noted however that the International Commission for Orders of Chivalry specifically mentioned that the only recognised Order with the style of Sovereign, existing nowadays, is SMOM, whose international diplomatic status as an independent non-territorial power, is recognised officially not only by the Holy See, but also by 94 States.

The Ecumenical Order, as other charities, is governed by public international and national public law concerning private charities. It might be classified as a private law organisation sans loi, respectively be governed by Canadian, English or Maltese law. Its (Grand) Priories are governed by the respective national private law legal systems which will define whether they are enjoying separate local legal personality. These national private law organisations in principle are valid organisations under the various national legal systems concerned. The Ecumenical Order only has private law legal personality, like its (Grand) Priories are enjoying such private law legal personality only.

The organisation of The Ecumenical Order in principle is following as much as possible the old statutes and customs and may be deemed to be a Hospitaller type of organisation.

Whether The Ecumenical Order is legal and charitable in the sense of the relevant criteria (criteria groups A and B) developed in Chapter XIX, remains unclear for a present lack of transparency. Like most Orders of St. John, The Ecumenical Order should drastically improve its transparency.

The names ‘Sovereign Order of Saint John of Jerusalem’ or ‘Knights of Malta’, are used for already at least two centuries as generic names by many Orders of St. John. They are not distinctive enough without the addition of something else, to avoid the danger of confusion among the public. The addition of the words ‘Knights Hospitallers of the’ is not sufficient, but the addition of ‘The Ecumenical Order’, coupled to always actively advising the public of its identity, could be sufficient to avoid confusion. [1006]

[1006] See however Gericht Lugano Nr. OA.1998.00458, supra p. 407, *XVIII.5. Some case law.*

A harmonisation of the laws of the various States on the award and use of national and foreign noble titles and decorations could be considered.

Since the late 19th century and also particularly in the Russo-American Orders of St. John, a certain 'Hospitaller' way of thinking and acting has developed. Orders of St. John, especially those who are spiritually active, still differ from other charities in various important respects. The further development and wide spreading of a simultaneously modern and old Christian-Hospitaller way of thinking and acting, has been and is being hampered by un-necessary behaviour. Opportunities were missed that others were obviously able to use, seeing their numbers, compared with those of the Alliance and non Alliance Orders of St. John. The criteria found on the basis of our research will hopefuly be developed further and applied to Alliance Orders and non Alliance Orders.

That the Pope gave The Ecumenical Order his blessing various times, is not sufficient to assume it was recognised by the Pope. It cannot be assumed beyond reasonable doubt that The Ecumenical Order was recognised by various great Churches or by the Canadian and other governments as a chivalric Order.

There are a lot of myths and propaganda surrounding all Orders of St. John which can be proved to be dubious, respectively blown out of proportion. [1007] One may call this collectively 'the Maltese Myth'.

In view of the increased importance of charities, it should be considered to oblige them to register with a trade register like businesses and to oblige them to submit proper annual accounts like businesses. For example, tax law may only require a fund to draw up an annual balance sheet and private law may require additionally to draw up a state of income and expenses, but this is something else than proper annual accounts. Ecclesiastical communities or societies claiming to be ecclesiastical communities, should not be exempted from the above proposed obligations.

The freedom of private law legal persons 'sui generis' to arrange their internal affairs is and should be limited by accepted principles of private law and anti-discrimination and public law and this should be the subject of further study and perhaps of further legislation.

[1007] Giuseppe d'Aubigny and Bernard Capo, *Les Hospitaliers de Malte, neuf siècles au service des autres* (1999).

SUMMARY

THE LEGITIMACY OF ORDERS OF ST. JOHN.
A historical and legal analysis and case study of a para-religious phenomenon

Chapter I (Introduction) starts with an orientation on problems caused by the co-existence of a confusing number of Orders of St. John, all basing their lineage on the original Order, formed around 1050, which would never have ended. The much energy consuming issue of recognised versus false Orders of St. John seems mainly caused because Alliance Orders do not allow other organisations of St. John to connect on equal footing to the charitable concept of St. John, as developed since the late 19th century, harking back to the romanticised idealistic starting phase in the 11th century, when Amalfi merchants founded the original Order of St. John. The issues appear to be not purely academic, because in various countries law suits were and are being conducted about them.

Chapter I then goes into the subject of the study more closely, i.e. how to determine when an Order of St. John has a legitimate character. In this context, a number of observations is necessarily devoted to the important, but difficult subject of legitimacy.

Hereafter, a number of questions of an historical-legal nature are formulated and a status quaestionis is provided. The issues appear to have been studied more or less by various authors, but not always systematically, while also more than once polemic treatment seems to occur. For these reasons, but also and mainly out of pure scientific curiosity, the author deemed it necessary to prepare this study. It is hoped it will be regarded as an objective contribution and a responsible attempt to a more scientific debate, as well as a helping hand to those who, in whatsoever capacity, might be called upon to determine the legitimacy of an Order of St. John. The method used is historical/critical-legal, as well as inductive, in which context an Order, qualified by many as an important false Order of St. John, was selected as departure point.

Chapters II (A critical look at the historical developments) through VIII (Sixth phase (1940-2004): several Orders disputing each other's legitimacy; the creation of The International Alliance of Orders Of St. John), contain a critical historical/legal analysis of developments in the history of the original Order, respectively of the phenomenon of Orders of St. John, deemed of importance for this study. This history is subdivided into six more or less traditional phases. In this context, connected to the above indicated historical developments in each phase, various remarks are made and knowledge and insight are gained, which are of importance for the later responding to the research questions put in Chapter I.

Chapter IX (Chivalric definitions) discusses some definitions of a chivalric Order which were developed in the literature. Attention is also drawn to some international developments in this context. Also some case-law and legislation is discussed.

Chapter X (The organisation of the original Order) sketches the main lines of the organisation of the original Order, i.e. the Order of St. John founded around 1050 and which in the author's view at any rate ended in the late 18th century.

In Chapters XI (Discussion of some important contemporary Orders of St. John) through XV (The Sovereign Military Order of Malta), a number of leading contemporary Orders of St. John, i.e. the most important Alliance Orders and their statutes and by-laws, are discussed in the light of the previous chapters and the knowledge and insights gained there.

In Chapter XVI (The legal nature and organisation of The Ecumenical Order), the legal nature and organisation of the above indicated socalled false specimen-Order of St. John and its statutes and by-laws, are discussed.

In Chapter XVII (The specificity of an Order of St. John), the specificity (the own nature of an Order of St. John), is discussed, also in the light of a comparison of Orders of St. John with some important service organisations, such as Rotary and Lions and with the important spiritual movement of Freemasonry.

Chapter XVIII (Some competition law aspects) contains some remarks about various competition law aspects, connected to actions in the framework of the phenomenon Orders of St. John and also summarily discusses some case law.

On the basis of the foregoing, Chapter XIX (Development of legitimacy criteria and responding to questions), discusses a number of criteria put forward in the literature and on that basis, three categories of legitimacy criteria are found, with which one might try to determine the legitimacy of recognised as well as false Orders of St. John.

In Chapter XX (Conclusions), the questions raised are answered as much as possible and a number of specific and supplemental general conclusions from the research, are laid down. The outcome of the research appears to be of interest, not only to the specimen Order selected, but also to other Orders of St. John and also otherwise.

Sofar, the meaning of the notion 'legitimacy' with regard to the 'historical self-image' of the various Orders of St. John, was never really systematically charted. This led to a big confusion of tongues. By legal-historical analysis and by using The Ecumenical Order as a case study, tools are provided to enable critical testing of the criteria applied by various Orders of St. John with regard to their legitimacy claims and to pierce possible myth building. Through this, the author hopes to have developed an instrument which may be of use to researchers and others to better determine

the legal-historical aspects and legitimacy claims of these para-religious 'chivalric Orders' and similar associations, such as Freemasonry, so that testing, inter alia to operative law in The Netherlands and elsewhere, is better enabled. At any rate it is useful to clearly state the author wanted to deal primarily with the legal aspects of this much more encompassing 19th and 20th century cultural phenomenon.

SUMMARY IN DUTCH-NEDERLANDSE SAMENVATTING

DE LEGITIMITEIT VAN ORDES VAN ST. JAN.
Een historische en juridische analyse en case study van een para-religieus fenomeen

In Hoofdstuk I (Inleiding), is in de eerste plaats een oriëntatie vervat op de problematiek van het naast elkaar bestaan van verwarrend veel Ordes van St. Jan, die alle hun afstamming terugvoeren op de oorspronkelijke, rond 1050 opgerichte Orde van St. Jan, die nooit zou zijn geeindigd. De veel energie-eisende problematiek van erkende versus valse Ordes van St. Jan lijkt voornamelijk veroorzaakt, doordat Alliance-Orders het andere organisaties van St. Jan niet toestaan zich op gelijke voet aan te sluiten bij de charitatieve gedachte van St. Jan, zoals die zich sinds eind negentiende eeuw ontwikkeld heeft, in een teruggrijpen op de geromantiseerde idealistische beginfase uit de elfde eeuw, toen kooplieden uit Amalfi de oorspronkelijke Orde van St. Jan stichtten. Deze problematiek blijkt niet louter academisch van aard te zijn, aangezien er in diverse landen rechtszaken over gevoerd zijn en worden.

Vervolgens wordt in Hoofdstuk I de probleemstelling van het onderzoek nader geformuleerd, namelijk hoe te bepalen wanneer een Orde van St. Jan een legitiem karakter heeft. In dit verband worden noodzakelijkerwijs enige beschouwingen gewijd aan het belangrijke, maar moeilijke begrip legitimiteit.

Hierna wordt een aantal vragen geformuleerd van historisch-juridische aard en wordt een status quaestionis gegeven. De problematiek blijkt door diverse schrijvers wel min of meer, doch vaak weinig systematisch, te zijn bestudeerd, terwijl ook meer dan eens sprake lijkt te zijn van een polemische behandeling. Om deze redenen, maar ook en vooral uit louter wetenschappelijke nieuwsgierigheid, meende de auteur deze studie te moeten verrichten. Gehoopt wordt, dat deze zal worden gezien als een objectieve bijdrage aan en een verantwoorde poging tot een meer wetenschappelijk debat en als een handreiking aan diegenen, die in welke hoedanigheid dan ook, geroepen mochten worden te oordelen over de legitimiteit van een Orde van St. Jan. De gekozen methode van aanpak is een historisch/kritisch-juridische, alsmede inductieve, in welk verband een door velen als een belangrijke valse Orde van St. Jan gekwalificeerde Orde, tot vertrekpunt wordt gekozen.

In Hoofdstukken II (Een kritische analyse van de historische ontwikkelingen) tot en met Hoofdstuk VIII (Zesde fase (1940-2004): diverse elkaars legitimiteit betwistende Ordes; de oprichting van de ‘International Alliance of Orders of St. John’), is een kritische historisch/juridische analyse vervat van ontwikkelingen in de geschiedenis van de

oorspronkelijke Orde van St. Jan, c.q. van het fenomeen ‘Ordes van St. Jan’, die van belang worden geacht voor het onderwerp van deze studie. Hierbij wordt deze geschiedenis onderverdeeld in een zestal min of meer traditionele fasen. Naar aanleiding van bedoelde historische ontwikkelingen worden in elk van deze fasen opmerkingen gemaakt en analyses gegeven en worden kennis en inzicht verworven, welke van belang zijn bij de latere beantwoording van de in Hoofdstuk I gestelde onderzoeksvragen.

In Hoofdstuk IX (‘Ridderlijke’ definities) worden enige in de literatuur ontwikkelde definities van een ‘ridderlijke Orde’ besproken. Tevens wordt in dit verband de aandacht gevestigd op enige internationale ontwikkelingen. Ook worden enige jurisprudentie en wetgeving besproken.

Hoofdstuk X (De organisatie van de oorspronkelijke Orde) schetst vervolgens de hoofdlijnen van de organisatie van de oorspronkelijke Orde van St. Jan. Hiermee wordt bedoeld de Orde, die opgericht werd rond 1050, welke naar de mening van de auteur in elk geval tot een einde kwam in de late 18^{e} eeuw.

In Hoofdstuk XI (Bespreking van enige belangrijke contemporaine Ordes van St. Jan) tot en met XV (De Souvereine Militaire Orde van Malta), worden, in het licht van de voorgaande hoofdstukken en van de daarin opgedane kennis en inzichten, een aantal leidende contemporaine Ordes van St. Jan, te weten de belangrijkste van de Alliance-Orders en hun statuten en reglementen besproken.

In Hoofdstuk XVI (De juridische aard en organisatie van The Ecumenical Order), wordt de juridische aard van de hierboven bedoelde belangrijke, valse voorbeeld-Orde van St. Jan besproken en worden zijn statuten en reglementen besproken.

In Hoofdstuk XVII (De specificiteit van een Orde van St. Jan) wordt de specificiteit van een Orde van St. Jan besproken, mede in het licht van een vergelijking van Ordes van St. Jan met enige belangrijke service-organisaties, zoals Rotary en Lions en met de belangrijke geestesstroming Vrijmetselarij.

Hoofdstuk XVIII (Enige mededingingingsrechtelijke aspecten), bevat enige opmerkingen omtrent mededingingsrechtelijke aspecten, verbonden aan acties in het kader van het fenomeen Ordes van St. Jan en behandelt tevens enige jurisprudentie.

Op basis van het voorgaande, wordt in Hoofdstuk XIX (Vinden van legitimiteits-criteria en beantwoording van vragen), een aantal in de literatuur naar voren gebrachte criteria voor de legitimiteit van een Orde van St. Jan besproken en wordt mede op basis daarvan een drietal categorieën van legitimiteitsciteria geformuleerd, waarmee men zowel niet-erkende als erkende Ordes van St. Jan desgewenst op legitimiteit zou kunnen proberen te toetsen.

In Hoofdstuk XX (Conclusies) worden de eerder gestelde vragen zoveel mogelijk beantwoord en wordt een aantal aanvullende specifieke en algemene conclusies uit het onderzoek neergelegd. De uitkomst van het onderzoek lijkt niet alleen voor de gekozen voorbeeld-Orde, maar ook voor andere Ordes van St. Jan en ook anderszins, van belang te zijn.

Tot nu toe is nooit echt systematisch in kaart gebracht wat het begrip 'legitimiteit' inhoudt m.b.t. het 'historisch zelfbeeld' van de diverse Ordes van St. Jan, wat tot grote spraakverwarring heeft geleid. Door rechtshistorische analyse en door de Ecumenische Orde als case study te nemen, zijn handvatten aangereikt om de criteria, die de diverse Ordes van St. Jan hanteren t.a.v. hun 'legitimiteitsaanspraken', kritisch te kunnen toetsen en eventuele mythevorming door te prikken. Daarmee hoopt de auteur een instrument te hebben ontwikkeld, dat onderzoekers en anderen van dienst kan zijn om de rechtshistorische aspecten en legitimiteitsaanspraken van deze para-religieuze 'ridderlijke Orden' en soortgelijke verenigingen, zoals de Vrijmetselarij, beter te determineren, zodat toetsing, o.a. aan vigerende wetgeving in Nederland en elders, beter mogelijk wordt. Het is in elk geval dienstig duidelijk aan te geven, dat de auteur voornamelijk de juridische aspecten van dit veel meer omvattend cultureel fenomeen uit de 19e en 20e eeuw heeft willen behandelen.

Annex 1. The self portrayal of The Ecumenical Order

"More wonderful than the most remarkable fiction, more truthful and better founded than the accepted history of nine-tenths of the countries of the world; more touching in pathos and more inspiring in spirit than the most thrilling tales of the legendary days of Chivalry, is the narrative of Jerusalem, Cyprus, Rhodes, Malta and the valorous Knights who once defended the bastions of Christendom, fought the rear guard action as the boundaries of Christendom grew smaller and smaller, and who as a religious and military Order of Knighthood have come down to our day in well authenticated and unbroken succession.

Probably, this old world of ours has never, since the first century of Christianity, looked upon more heroic deeds than those which stand accredited and unchallenged to the men whose stories, as told here, merely scratch the surface of their glorious history.

It is believed that to reveal the admirable precepts and examples set forth by the history and achievements of this ancient Order, will serve as an inspiration and as an influence for good and an impressive character builder for the peoples of all nations.

During the last fifty years this religious and military Order of Knighthood has been known under various names, such as Hospitallers, Knight Hospitallers, Knights or Hospitallers of Jerusalem, Order of the Hospital of Saint John of Jerusalem, Knights of Saint John, Knights of Jerusalem, Knights of Cyprus, Knights of Rhodes, Knights of Malta and Order of Malta. The Order was also WELL KNOWN as THE RELIGION

The popular term "Knights of Malta" has often been misused by certain people and groups. It should only be used as a sub-title. Strictly speaking, the term "Knights of Malta" refers to the period during which the Order sojourned on the island of Malta which was only 268 years of the Order's total 950 years of existence.

Since the 17th century this noble Order has been known as the Sovereign Order of Saint John of Jerusalem, named so in honour of Saint John the Baptist and as a tribute to its place of foundation.

The origin of the Order dates to about the middle of the eleventh century or 1050 A.D., when a group of devout and religious laymen from Amalfi, Italy, subsequently led by God's Holy Spirit and the Venerable Peter Gerard, a pious and benevolent Frenchman, ventured into Palestine and obtained form Monstaser Billah, the ruling Caliph of Jerusalem, permission to erect an hospice for the use of the poor and sick Latin pilgrims.

In accordance with the Order of the Caliph, the Jerusalem Governor of the city, a site close to the site of the Holy Sepulchre, was assigned to these pious men. Immediately after possession of this site was obtained, they erected a chapel dedicated to the Virgin, giving it the name of Saint Mary at

Latinos, to distinguish it from those churches in which the Greek rite was followed. At the same time, two hospitals were erected in the vicinity of the chapel, one for each sex as was the practice in that period. These hospitals were for the benefit of the travel-worn pilgrims, the sick and those injured by attacks of the Mohammedan rulers who governed the Holy Land at that time.

Baldwin I, know as the King of Jerusalem (a title he never accepted), recognized and confirmed the Brotherhood of Hospitallers as an international corporation A.D. 1104, and Pope Pascal II sanctioned the Constitution of the Hospitallers by a bull in A.D. 1113.

The followers of this hospital, religious and military Order took for their ensign the white cross on an red field-their badge and inspiration in bringing peace and consolation amidst the din and horror of battle-the white cross of peace in the bloodstained field of war.

This plain white cross later (1250) evolved into the famous Maltese Cross of four arms and eight points, known throughout the world as a symbol of Christianity. The virtues of the Beatitudes are symbolized by the eight points of the Cross. The motto of the Order was and is “Pro Fide, pro Utilitate Hominum” and may be translated as “For the Faith and for the Usefulness to Mankind”.

Members of the Order were mostly scions of a proud nobility and were imbued with the Spirit of profound Christian Charity (LOVE). The Hospitallers formally dedicated themselves at the altar as the servants of Christ and of the poor, and they bound themselves to look upon, consider and treat the poor, the pilgrims and the sick, not merely as their equals, but as their “lords and masters”. This ideal Christian attitude prevailed throughout the Order, and hospitality as well as protection was always afforded to Christians and non Christians alike.

For ecclesiastical and charitable service members wore the black robe with a cowl, used by the Order for all those who undertook to observe celibacy, individual poverty and obedience to their superiors. A large white cross of linen was affixed on the left side of the robe over the heart.

The word “Sovereign” in the title of the Order signified absolute freedom from any allegiance to earthly monarch or prince and meant their fealty was to the Saviour.

Having been originally organized for charitable purposes in 1050, the Order successively adopted the character of a hospitaller, military, aristocratic-Chivalric and religious constitution.

Sovereign and international, it is the oldest surviving religious and military Order of Knighthood, and the first body politic to establish an international Code. The Knights maintained the first European government to advocate peace and at the same time practiced peace by absolutely refusing to take up arms against a Christian nation or Christian prince, a doctrine they have

never violated. They have always worked for peace by means of Statemanship and Statecraft.

Expelled from Jerusalem (the Holy Land) in 1291 by an overwhelming horde of antagonists, the Knights wandered westward in search of an operating base. Finally, a convent or headquarters was established, in turn, at Cyprus until 1310 and at Rhodes for two centuries, from 1310 until 1523. On Rhodes they built splendid edifices and fortified their cities. Many of these magnificent structures, having been restored by the Italians, are still in existence and can be visited. It was from Rhodes that the 42nd Prince Grand-Master, Fra Philip Villiers de l'Isle-Adam (1521-1534) conducted the masterly retreat of the Order before the heavy forces of Suleiman I. The Order maintained its headquarters for a short period in Crete, Messina, Baia, near Naples, at Ciruta Vecchia, near Rome, at Nice and for two months on the high seas in the flagship of the Order, La Caracca, the Grand-Master and Council being unable to find a friendly or convenient habitation on land. Pope Clement VII, who had previously been a Knight of the Order, interceded with Emperor Charles V to grant the Order a residence on the island of Malta. It was thus, that in 1530, this famous monarch proferred as a gift to the Grand-Master de l'Isle-Adam and his Knights the island of Malta, mentioned in Scriptures as the island of Melita in the twenty-eight chapter of the Acts of the Apostles. The Emperor executed a charter which vested the Order of Saint John of Jerusalem with complete and perpetual sovereignty over the islands of Malta, Gozo and the City of Tripoli, in exchange for one Maltese Falcon, an indigenous bird of prey.

Gradually the Roman Pontiffs became indifferent to the welfare of the Order. This condition caused the Knights some concern and they began to look elsewhere for a Christian Prince to champion their cause. Such a champion was found in the person of the young Paul I, Czar of all the Russians.

By a convention or treaty between the Order, represented by Count de Litta, their Ambassador, and Imperial Russia, dated January 15, 1797, the Order's Grand Priory of Poland was merged into and styled the Grand Priory of Russia. This brought additional revenu to the Order. Grand-Master Emmanuel de Rohan died on July 18, 1797, and at the first meeting of the Grand Council, held by his successor as Prince Grand-Master, Ferdinand von Hompesch, this treaty was ratified.

On 7 August 1797, Count de Litta was again named Ambassador Extraordinary of the Order for the purpose of presenting the ratification of the January 15th Treaty to Saint Petersburg. At the same time, de Litta carried new instructions in the form of a treaty from the Knights and Grand-Master van Hempesch, asking Paul I of the Russians to become their chief and Protector of the Order. This was accepted by Paul on 29 November 1797, without objections from the reigning Pontiff. Both Malta and its

Knights continued to prosper until 1798 when the weak-willed 69th Grand-Master von Hompesch, through treachery, allowed Napoleon Bonaparte to occupy the island of Malta, at a time when the Order was in an excellent position to successfully resist the invasion.

Seven months after Paul I, Emperor of all the Russians, had accepted the Protectorate of the Order, Malta had fallen into the possession of the French Emperor, Napoleon, through the weakness of von Hompesch, who had previously granted the Protectorate of the Order to Paul I. Now in disgrace for having "sold out" to the French, and fearful of the wrath of the loyal Knights, von Hompesch left Malta and went into exile in Trieste. From his exile, von Hompesch later sent a formal act of abdication to his successor.

The most loyal and courageous of the Knights, who had opposed the Grand-Master's surrender and had insisted that the Order be perpetuated, joined the refugees from the French Revolution and took refuge in the dominions of Russia under the protection of the Order's Protector, Paul I. The remainder of the discouraged and dispersed Knights left the main Order and returned to their homes in France, in Spain, Bavaria, in Italy and in England, where they joined their brother Knights and arranged separate protection in one form or another, establishing their various groups as independently functioning units, according to their geographical location and religious persuasion.

Although Paul was neither unmarried nor a Roman-Catholic, Pope Pius VI, from the Monastery of Cassini, near Florence, bestowed his Paternal and Apostolic Benediction upon the proposed Grand-Master, Paul I in a letter, prior to the acceptance of Paul I to that office. He thus became the first non celibate, non Roman-Catholic to become Grand-Master of the Order.

Amid an elaborate ceremony, Paul I, Emperor of all the Russians, was elected the 70th Grand-Master of the Sovereign Order of Saint John of Jerusalem on 27 October, 1798. However, Paul I did not accept his election until November 13, 1798 when he made a proclamation of his acceptance. At that time the standard of Saint John was hoisted over the Admiralty at St. Petersburg, and its insignia was officially added to the Imperial coat of Arms.

In this regard, it is interesting to note the well accepted doctrine of Fons Honorum (Fountain of Honor) which, in essence, holds that any head of State or regnant monarch has the prerogative of establishing, creating or recognizing honors, nobles and titles as well as to maintaining traditional Orders of Chivalry. Clearly, the action of Paul I, established or recognized the Sovereign Order of Saint John of Jerusalem.

All of the Courts of Europe were formally notified of his election to his office and the nobility of all Christendom was invited to become a knight of the regenerated Order, and most of the European sovereigns recognized Paul I as the Grand-Master of the Order. To insure perpetual succession of the

Order, Paul I, by letters patent, conferred hereditary knighthood upon many of the Knights.

Men of vision, Knights of Malta and their descendants from Germany, Austria-Hungary, Russia, Italy, France, Spain, Portugal and other countries, began to realize that only in the Republic of the West, the United States of America, was there a safe place of refuge for the non-political ideals of the Knights, a refuge against the growing unrest, revolutions and upheavals of Europe.

The records of the Order indicate that the leading spirit in bringing the Order to America was William Lamb, son of William Wilson Lamb, born in Norfolk, Virginia on the 7th September, 1835.

William Lamb was the direct descendant of General Ivan Lamb of Russia who was appointed Grand Preserver of the Order by Paul I. While at the Court of St. Petersburg, General Lamb also received the honour and rank of a Commander of Military valor, for distinguished service in the Russian Army. As early as 1880, Lamb had begun to select key men for his plan to bring the Order to America. By 1890, the Colonel had built up a working committee of about one hundred distinguished men to back this movement. The steady rally of this knightly spirit was conducted in Europe and in America from as early as 1880. As a result of this discreet rally and with the help of the Sovereign Council of the Noblesse, they secured in the United States approval of their purposes in the form of a legal charter of incorporation which was augmented later by a much broader charter or State certification of incorporation, authenticated by the Secretary of State of the United States of America, with the official treaty ribbons and Great Seal of the United States of America.

The Order in the United States was founded and established by virtue of the authority exercised by the qualified Knights and hereditary Knights whose ancestors had received Letters of Patent of hereditary rights conferred by the 70th Grand-Master and others.

Here then we find the historical link between the original Knights of the Order and their continuation in the Americas and Europe as a non profit religious and charitable organization devoted to Christ and to Christian Charity. Grand Duke Alexander, who was also a Grand-Prior, became the 71st Grand-Master and remained in that office until his death in 1933. In the interim, the Order was led by several Lieutenant Grand-Masters. They were Colonel William Sohier Bryant, M.D., also a Grand Prior, who held that office from 1914 to 1951, when he was succeeded by a Baltic nobleman, Baron de Engelhardt-Schellenstein, who retired in 1955, and was a descendant of two members of the Grand Council during the regime of the 70th Grand-Master in St. Petersburg.

In 1956, Dr. F.H. Graf von Zeppelin was elected Lieutenant Grand-Master of the Order. He is a descendant of a very distinguished member of the

Order, Johann Carl Count von Zeppelin, who served as a diplomatic minister from the Court of Wuertemberg to the Imperial Russian Court at St. Petersburg in 1800.

The Order has been reconstituted with an International Headquarters Establishment at Castello Dei Baroni Wardija, Malta. However, the Grand Chancery remains in Toronto, Ontario, Canada. It is in this city that the 75th Prince Grand-Master, H.S.H. Frendo Cumbo, keeps his office and his residence. It is interesting to note that he is the first and only Prince Grand-Master who is a native of Malta and is descendant of two members of the Order. Today, our Order is protected by International Patent Law.

Presently, this international Order, heir of an historical and sacred patrimony, is still recognized as a Sovereign Order, its uniform and insignia, the famous and respected Cross of the Order, is not worn as a bauble, but as an outward sign of sincere Christian purpose, and it is certainly as genuine a symbol of true nobility as any patriot or philantropist can aspire to earn. The Chivalry of the Order prides itself, not in its ribbons, medals, jewels or stars, but in Faith, Hope and Charity carried into all the relations and habits of daily life.

It is an organisation of those who in every sphere and department of social usefulness seek to give strength and effect to the motto of the Order. In other words, it is an embodiment of earnest Christian working to serve humanity while wrestling against all that dishonors the memory of the past and all that obstructs the opportunities of the present, and all that damages the hopes of the future. Continuing its humanitarian programme of more than nine centuries this non-profit religious, military and charitable Order of Knighthood, according to its Constitution and tradition, and in the same spirit of dedication and devotion to Christian principles which inspired the first members of the Order, seeks to aid the needy, the lame, the ill and the afflicted, sponsers homes for the aged and supplies aid to all, without restriction as to colour, race or religion.

The present officers of the Order maintain that true nobility cannot be enacted or judged by the usual law, parliaments or legislative bodies, and in certain cases, even that nobility which has been conferred for purely political, unfair favouritism, probably without noblesse foundation, and consisting of certain rights and privileges respected only within the borders of a particular State or regime. However, this is not to be construed as a reflection upon any merited nobility conferred or confirmed by any monarch, ruler or prince of the past or present.

In summing up the merit of the foregoing analysis of nobility as it is promulgated by the Order of Saint John, it is not difficult to understand why the officers insist that they are able and willing to defend their definition and the general subject of nobility before the courts and tribunals of any nation or nations."

ANNEX 2 Legitimacy criteria draft		The Ecu. Order	Joh. Order NL	Balley of Brandenb.	Most Ven. Order	SMOM
A1	Name not confusing	Not confusing	Not confusing	Not confusing	Not confusing	Not confusing
A2	Actively advising the public of its identity	Sufficient	Sufficient	Sufficient	Sufficient	Sufficient
A3	Fulfilment of laws	?	?	?	?	?
A4	Democratic content	Autocratic	Semi-Democratic	Semi-Democratic	Autocratic	Semi-democratic
A5	Accountability	No data available	?	?	?	?
B1	25 % costs maximum	No data available	?	?	Data available	?
B2	Voluntary character of gifts	?	?	?	?	?
B3	Uniform accounting in entire organisation	No data available	Not applicable	?	?	?
B4	Independent boards	No	No	No	No	No
B5	Annual Plan and Charitable budget	Yes	?	?	?	?
B6	Comparing with others	Yes	Yes	Yes	Yes	Yes
B7	Complaints procedure	No	No	?	?	?
C1	Substantial traditional activities	?	?	Yes	Yes	?
C2	Fons Honorum	Yes	?	?	Yes	?
C3	Military element	Yes	Yes	Yes	Yes	Yes
C4	Code of Conduct	Yes	Yes	Yes	Yes	Yes
C5	Hospitaller traditions	Yes	Yes	Yes	Yes	Yes
C6	Spirituality	?	?	Yes	?	Yes
C7	Independence	Yes	No	No	No	No
C8	Nobles republic element	No	Yes	Yes	No	Yes
(C9)	Direct historical Roots	No	No	No	No	No
(C10)	Religious Order	?	No	?	No	?
(C11)	Majority noble members	No	No	No	No	No
(C12)	“Recognised”	No	No	No	Yes	Yes
(C13)	Intern. public law legal person	No	No	No	No	Yes

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