

The Holy See, the Order of Malta and International Law

Bo J Theutenberg*
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The Sovereign Order of Malta – a subject of international law

During my period of service as the Swedish Ministry for Foreign Affairs Chief Legal Adviser on international law, besides the Holy See with which Sweden established diplomatic relations in 1982, I became acquainted with another interesting subject of international law, namely the Order of Malta, or to be more precise, the Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes and of Malta.¹

Through its 11 000 members and its government at Via Condotti in Rome the Sovereign Order of Malta provides medical assistance and disaster relief to those afflicted around the world. The order was founded in Jerusalem in Palestine 1 000 years ago.² By virtue of its work in the field, the order is an excellent example of the opinions underlying the rules of international law. The order shows how human rights, which most countries say they want to promote, are promoted in practice. It shows how in practice human individuals are to be safeguarded and taken care of when exposed to disasters. It shows in practice how states should behave to fulfil the rules of the UN Charter, aiming for peace and peaceful coexistence. The sovereign entity which is the Order of Malta has historically taken its place among the members of the community of states. As may be seen, we are indeed discussing a sovereign entity, a sovereign *persona*, or a sovereign subject of international law.

Subjects of international law

The so-called subjects of international law are normally sovereign states. A sovereign state is born, according to the definition in international law, when 1) a well defined territory, 2) a population in that territory and 3) jurisdiction and control over the territory and the population can be discerned. These are the criteria that are usually considered decisive for assessing whether or not a state exists in accordance with

* Ambassador Bo J Theutenberg, LL D, started his career as an attaché at the Swedish Ministry for Foreign Affairs in 1966. He was appointed the Ministry's Chief Legal Adviser on international law (UD:s Folkrättsakkunnige) in 1976 as well as he was Professor of international law at Stockholm University. He has served abroad in Baghdad, New York and Moscow. In 2002 he was appointed Professor of international law at the University of Jordan in Amman, Jordan. In his capacity as the Grand Master's Special Envoy he signed in 2003 in Amman the joint protocol establishing formal diplomatic relations between the Hashemite Kingdom of Jordan and the Sovereign Order of Malta and he later became the Sovereign Order's first ambassador to the Hashemite Kingdom of Jordan.

¹ Concerning the establishment of diplomatic relations between the Holy See and Sweden, see the motion presented to the Riksdag 1980/1981:1207, the Committee on Foreign Affairs report of 1 December 1981 no. 1981/82:14 and Foreign Affairs, documents published by the Ministry for Foreign Affairs, New series I:C.32, Stockholm 1983 page 170. See also my article *Gafet flytta svenska Vatikanambassadören från Rom (Wrong to move the Swedish Vatican Ambassador from Rome)* in the Catholic Magazine no 3/2001, which gives further details of the background and circumstances from the point of view of international law. Concerning the post of Adviser on International Law at the Ministry for Foreign Affairs, see Theutenberg, Bo J, *Folkrättssakkunniga I UD och Folkrätten i Sverige (Advisers on International Law at the Ministry for Foreign Affairs and international law in Sweden)* in Mats Bergquist – Alf W. Johansson – Krister Wahlbäck (ed.), *Foreign policy and history, Studies dedicated to Wilhelm Carlgren*, 6 May 1987, Stockholm 1987 pp 299 – 322.

² See Ordine di Malta, Il grande Ospedaliere, Report on the period April 1994 –May 1999 on the occasion of the Chapter General of the Sovereign Order of Malta, Rome, June 22/23 1999 containing a detailed review of the Order's hospital and charitable operations in different countries as well as the statutes for charitable subordinate agencies answering to the Order.

international law. As we will see, however, there are other elements of international law that mean these specific criteria need not be slavishly followed. It was these “other elements” that determined the inclusion of both the Holy See and the Order of Malta among the sovereign subjects of international law.³

Today, the sovereignty of individual states is limited through the UN and EU systems of rules, with which the UN and EU member states must automatically comply when they decide to become members of these organisations. Membership restricts traditional sovereignty under international law which is seen, *inter alia*, in the drastic measures that the European Court of Justice takes now and again under EU law in relation to intractable member states. This is a new trend in the development of international law, moving away from the maximalist interpretation of sovereignty we have grown accustomed to over several hundred years.

The law sources and development of international law

The period following the Second World war featured interesting developments in international law involving the erosion of the total and exclusive sovereignty of sovereign states. The fact that national conflicts, not least civil war and military conflicts between different ethnic and religious groups, are considered to fall under the regulatory system of international law with its protection of the individual in armed conflicts is also a new trait. In my view a historic change of direction has taken place in international law, away from the maximalist interpretation of the concept of sovereignty towards making the human individual, the private individual, an object of protection in international law.

International law is able to develop in pace with the needs of states and the human race and does not remain at an undeveloped static stage thanks to its structure. Since states are sovereign and equal there is no “supreme legislator” who can prescribe with binding effect how states should act and behave. In former times, alongside the spiritual Pope there was the worldly emperor. Both attempted, each according to his own devices, to “rule the world”. In pace with the development of the nation state this hierarchical political vassal system fell apart. The sovereign states subsequently sought among themselves to develop international mechanisms, attempting both to uphold order in the world community and to protect peace on earth. It is this international system of rules that is designated international law, in Latin *jus gentium*.

But how then does one describe international law? How can a legal system function at all among a number of sovereign states? This is where the sources of international law come in. From what sources does international law acquire the power to bind sovereign states? It is usually said that there are chiefly four international law sources: 1) treaty law, 2) customary law 3) rulings of international courts of law, and 4) the doctrine of international law. In the case of rulings of international courts of law, the International Court of Justice (ICJ) at the Hague is the prime source and nowadays, the rulings of the International Criminal Court (ICC) at the Hague also belong in this category.

³ See J.L.Brierly, *The law of nations*, Oxford 1985 (or later editions) pp 126 – 221. See also Hilding Eek-Ove Bring-Lars Hjerner, *Folkrätten, (International Law)*, fourth edition, Stockholm 1987 pp 26 – 29 .

The first group comprises the agreements – the international treaties – that the sovereign states have voluntarily entered into with each other. This is treaty law. In accordance with the jurisprudential maxim *pacta sunt servanda* (agreements are to be kept), each state is expected to honour the treaty text it has itself signed. The second group of law sources, that is to say customary law, is more complicated and difficult to describe. Here it is a question of how the individual state *de facto* behaves and acts in its international relations. A consistent pattern of legal action constitutes a custom, which in time is perceived to be legally binding and thus becomes customary law. It is the *opinio juris* element that is binding, that is to say that states act as they do because they consider their action to be compatible with international law.⁴

In my view it is the development of practice to become international customary law that affords the greatest opportunities for influencing the establishment of norms. Since it is individuals who control and draw up the action of states, including states' international legal action, it can be assumed that these individuals can be influenced to a high degree by different forms of expression of opinion and pressure. How opinions are formed can be discussed interminably. A broad spectrum of media bodies are involved here, the actions of peaceful and violent demonstrators with express views on the world order. In addition, there are warnings and appeals from religious leaders and calls from prominent figures representing different trends. Opinion moulding is of major significance for the development of the norms of international law.

Religion, ethics and the establishment of norms

Anyone curious about the establishment of norms of international law – how these norms are created, develop and change – may be interested to read the lectures I gave in the early 1980s to the Egyptian Society of International Law in Cairo and to the Hague Academy of international law under the title *Changes in the Norms Guiding the International Legal System – History and Contemporary Trends*. In these lectures I analysed the history of international law up to the present day. Here, two poles emerge. The one tried to steer the norms of international law in a totalitarian and misanthropic direction. The other strove to uphold and strengthen the protection of the individual and respect for human dignity. One pole constituted the misanthropic social system that came to be designated Marxism-Leninism or Communism. In this system, as in Nazism, human rights were trampled under foot.⁵

As the antithesis of this repressive world, the world of ideas rooted in morals, ethics and religion appeared, asserting full respect for the human individual and his/her dignity. After having repeatedly mulled over the legal principles and principles of international law, we end up with the question, where is the very basis for ethics and morals to be found? Where is the core of the doctrine of respect for the human individual and human life? Certainly in the New Testament, as indeed in the

⁴ See Theutenberg, Bo, *Folkrätt och säkerhetspolitik (International law and security policy)*, Stockholm 1986, pp 16 – 94 “Uppförandenormer för jordens stater – stabilitet och förändring i folkrätten” (“Norms of conduct for the earth’s states – stability and change in international law”)

⁵ See Theutenberg, Bo, *Changes in the Norms guiding the International Legal System – History and Contemporary Trends* i.a. *International Law and Security Policy*, pp 45 – 76.

principles of other religions. It is essential to find the base that secures these norms of human dignity in international law. If a common base is not found, there will be problems for international law, because these fundamental norms of human dignity cannot rely solely on conventions or treaties between the sovereign states. They lie much deeper than that. Even though a state may desire to breach the precepts of international law on respect for the individual human, it is bound to respect these rules because they are comprehensive and universal, in other words deeply rooted in human ethics. In international law this is the concept of *jus cogens*. In religion it is expressed as “God’s commandments”.

There appears to be a trend for people to increasingly react in “moral and ethical terms”. You shouldn’t do this or that. You shouldn’t drill for oil in poor countries. You shouldn’t encourage child labour in poor countries. The rich donors should give the poorest countries radical debt relief. There are “ethical funds” in industry and commerce. And so on and so forth. It is remarkable how the public debate is increasingly carried on in moral and ethical terms. Even states and governments are nowadays expected to pursue “moral and ethical foreign policies”. Morals seem to have eliminated state interests! The term international law appears practically every day in news reports. Where do these moral and ethical principles come from? From religion, and ethics conditioned by religions? Many find this difficult to admit, but where else are these ethical values ultimately anchored?

The role of the Holy See in the development of international law

If rules of international law are not merely to exist on paper they must be implemented. Of interest in this context is the link that undoubtedly exists between precepts of international law on the protection of the individual and the ethical, religious and moral edicts that are continually presented by different religious leaders, not least by the head of the Roman Catholic Church, Pope John Paul II, the current incumbent of the throne of St Peter. In this capacity the Pope plays a role in international law. During his pontificate he has continually injected religious, moral and ethical mantra into the debate on international law and foreign policy. He speaks of peace and freedom, of respect for human rights and of respect for the individual, clearly using his opinion-moulding role to further chisel out the UN Charter and the rules of international law – the system of rules to be applied in relations between states, and between individual human beings. It is particularly this latter field that is in process of being taken over by international law, which was previously more or less exclusively a legal order for and between states. In this transformation of international law from an order between states to a legal order focusing on the individual, the Holy See, a subject of international law, plays an important role⁶

Through the Apostolic Nuncios, the Head of the Roman Catholic Church sends messages to the world’s governments and also receives their messages. Some 120 states have Ambassadors accredited to the Holy See in Rome, who begin their duties by handing over their letters of credence to the Head of the Roman Catholic Church.

⁶ See Janne Haaland Matlary, *The Just Peace: the Public and Classical Diplomacy of the Holy See* in Cambridge Review of International Affairs No 1, 2001 and by the same author. *Intervention for Human Rights in Europe* (Palgrave Macmillan), London 2002. The Holy See utilises IT technology to a high degree. The statements made by the Pope in the Vatican and on his many journeys are available at <http://www.vatican.va>

Through the agency of the Ambassadors, messages are exchanged at diplomatic level between equal and sovereign subjects of international law.

Aside from traditional diplomatic channels there is another form of diplomacy the current Pope cultivates, namely the public diplomacy carried out during his visits to all the corners of the earth, which attract a great deal of attention. Before the world media and hundreds of thousands of people, the Pope publicly points out the role of religion and religious ethics in the formulation of individual states' domestic and foreign policy. It may concern respect for human rights in Castro's Cuba. It may concern the abolition of capital punishment in the United States. Through his public, clearly opinion-building statements the Pope's religious and ethical messages find their way into the material of international law. The strength of his message is reinforced by the fact that he does not fight shy of conveying the "historic apologies" he finds necessary for the Roman Catholic Church to make in order to foster the inter-religious dialogue with Judaism and Islam.⁷

Rapprochement between the Roman Catholic Church, Judaism and Islam

In view of the central role of "good examples" in the development of norms of international law, there is reason to pay particular attention to the rapprochement that the Head of the Catholic Church has endeavoured to achieve in relation to Judaism and Islam, the other two major religions that could contribute to a final peace in Palestine. In Palestine and in Jerusalem, the birthplace of the Order of Malta, the three major world religions meet. In connection with his journey to Syria in May 2001, the Pope visited the Great Umayyad Mosque in Damascus and there before the assembled Muslim leaders uttered the words "For all the times that Muslims and Christians have offended one another, we need to seek forgiveness from the Almighty and to offer each other forgiveness". The symbolism of the visit to the Islamic mosque was described as historic and should bode well for the future.⁸

A rapprochement between Judaism, Christianity and Islam can influence the future establishment of norms of international law. It might also contribute to a solution to the Palestine issue. The ongoing violence between Israelis and Palestinians is in total violation of the rules of international law and must be stopped. Is it now time representatives of the three major religions jointly approach the issue of an arrangement for the status of the Holy City of Jerusalem? In history when states were not able to agree on the division of a strategic or symbolically important key area, a condominium solution – of joint governing or "collective joint sovereignty" – often emerged as the only realistic option. In a solution of this nature, representatives of Judaism, Christianity and Islam could play important roles.⁹

It is Jerusalem that historically ties together the three major religions, Judaism, Christianity and Islam. About a thousand years have passed since the founder of the Order of Malta, the Blessed Gerard, walked around Jerusalem with his fellow monks

⁷ See Janne Haaland Matlary *op.cit* note 7.

⁸ See the Vatican website (note 6) "Meeting with the Muslim leaders Omayyad Great Mosque, Damascus. Address by the Holy Father, Sunday 6 May 2001".

⁹ See note 4 *op. cit.* *Folkrätt och säkerhetspolitik (International Law and Security Policy)*, the Chapter "Kolliderande suveränitet" ("Colliding sovereignty") page 147 ff.

and knights and looked after the dead and wounded in the battles of the Crusades between Christians and Muslims. A thousand years later, looking at TV images of the battles in Jerusalem and Bethlehem, you could wish to see the Blessed Gerard and his brothers and sisters with their first-aid resources among the population.

The misunderstood Islamic concept of jihad

The inter-religious dialogue and the ecumenicalism which the Head of the Catholic Church is aiming for should help minimise contradictions and misunderstandings. For example, how many misinterpretations of the Islamic concept of jihad have we not seen? This concept, which frequently appears in news reports, is often summed up as the doctrine of “the holy war”. It is the Quran’s ninth Sura, dealing with penitence, that is the basis for the doctrine of jihad, which originally referred to the duty to defend Islamic territory. The doctrine of jihad is really one of the first attempts in history to define the laws of war, one of the very earliest attempts to regulate warfare and acts of war. The jihad concept included a prohibition to attack civilians and to abuse and kill prisoners of war.

According to the early schools of interpretation of Islamic law, the proclamation of jihad, or resort to jihad acts, was hedged in by almost insurmountable obstacles. A jihad, for example, could not be proclaimed by just anybody. This doctrine which was originally intended to humanise warfare, in our time has come on the one hand to be misunderstood and, on the other, to be manipulated for purely political or propaganda purposes. Nowadays, every single terror attack is described as part of a jihad, or is justified in one way or another by the doctrine of jihad. If there had been a joint elucidatory discussion on the correct interpretation of jihad several decades ago, a great deal would probably have been gained in international politics and in discussions of international law. In any case, the West would have avoided fatal misunderstandings of the real meaning of the concept. This shows how important it is to be able to predict the future challenges to be met by the rules of international law in good time. These challenges come not least from religiously coloured over-interpretation of religion and tradition.¹⁰

The Order of Malta and the papal Bull “Pie postulatio voluntatis” of 1113

Even at the time the early fraternity of monks in the Order of St John, which did not become known as the Order of Malta until several hundred years later, was active in Jerusalem and Palestine, the doctrine of jihad was the nucleus of Islamic resistance to the Christian knights seeking to conquer the place of Christ’s tomb. When the crusaders under Godfrey of Bouillon conquered Jerusalem in 1099, they found a hospital run by monks living in accordance with the monastic rules of St Benedict. These monks, who had taken John the Baptist as their patron saint, were dressed in black cowls with a white cross on the front. The fraternity had taken over an old monastery called the Monastery of St John the Baptist. The hospital annexed to it became known as St John’s Hospital, located quite close to the sacred tomb.

¹⁰ See Theutenberg, Bo, op.cit. *Folkrätt och säkerhetspolitik (International Law and Security Policy)*, the chapter “Mellanöstern och folkrättens principer” (“The Middle East and the Principles of International Law”), 498 – 551, and the sources and literature listed there. By the same author *Islamisk rätt (Islamic Law)* Liber förlag Stockholm 1975, the chapter “Pax Islamica och folkrätten” (“Pax Islamica and International Law”) pp 32 –41 and by the same author “*Jihad föbjuder terror*” (“*Jihad prohibits terror*”) Brännpunkt, Svenska Dagbladet 30 September 2001.

Thus, the origins of the Order of St John and of Malta can be followed in documents at least as far back as 1099. Pilgrims and warring crusaders found themselves in the care of the St John monks. Ideal piety in medieval times included setting out on a pilgrimage to the holy land or to some other sacred place or taking part in the crusades proclaimed at that time by the Christian European princes.¹¹ Just as Islam had its doctrine of “the holy war”, jihad, Christianity had its view of “holy wars” which came to take the form of crusades. It was considered that “just wars” could be waged through God’s authorisation. Here, Christianity did not differ to any appreciable extent from Islam which had the same basic view of “just wars”.¹² In the Outremer territory (on the other side of the sea), several Christian crusader kingdoms were created, *inter alia* the kingdom of Jerusalem, the earldoms of Edessa and Tripoli and the principality of Antiochia. The Knights of the Temple, the Knights of St John (later to become known as the Knights of Malta) and the Knights of the Teutonic Order were noticeable among the crusaders.¹³

The St John’s Hospital founded in the 11th century by the St John fraternity in Jerusalem won such renown that in the apostolic Bull, *Pie postulatio voluntatis* of 15 February 1113, which was sent to the head of the Order, Frá Gerard (Blessed Gerard), Pope Pascalis II officially approved and sanctioned the hospital in Jerusalem and its operations on behalf of the church. The right of the fraternity to appoint its highest governor, who was called the Master or later Grand Master from within its own circle and free of external influence was also recognised. Thus, it was through the Bull of 1113 that the Order of St John received its privileges and its official recognition as an Order approved by the church with the right to independently appoint its Grand Master. To this day the Grand Master is the head of state of the Sovereign Order of Malta. Christianity’s oldest religious Order was thereby established. The foundation had been laid that was to result in the present Sovereign Order of Malta, a subject of international law.

After the fall of Jerusalem in 1187 to the forces of the Sultan Salladin, the Order’s hospital and fortress in the town Acre, better known as St Jean d’Acre, fell in 1291. This was the Order’s last contact with Palestine. There followed the Cypriot period in the history of the Order of St John and Malta based on its dominion over Cyprus

¹¹ Extensive literature on the history and status of the Order is to be found in the library of the Order in the Magistral Palace at Via Condotti 68 in Rome and in “the Archives of the Order of Malta”, National Library of Malta. Regarding the latter, see *Catalogue of the Records of the Order of St. John of Jerusalem in the Royal Maltese Library, compiled* by Rev. J. Mizzi, Z. Gabaretta and C.V. Borg, Malta 1966. Here may be mentioned, Baudoin et Naberat, *Histoire de Malte avec exposé des privilèges et status de l’Ordre*, Paris 1643; Helyot, *Histoire des Ordres religieux*, Paris 1731; Saint Allais, *L’Ordre de Malte, ses Grand Maitres et ses Chevaliers*, Paris 1839; Delaville le Roux, *Les Hospitaliers de Saint-Jean-de-Jérusalem*, Library of the School of Palaeography, Paris 1882; Ferdinand de Hellewald, *Bibliographie méthodique de l’Ordre souverain de Saint-Jean-de-Jérusalem*, Rom 1885; Delaville Le Roux, *Les Hospitaliers en Terre Sainte et à Chypre*, Paris 1904; M de Pierredon, *Histoire politique de l’Ordre Souverain de Malte depuis la chute de Malte jusqu’à nos jours*, Paris 1926; Philippe Caffin et Robert Serrou, *L’Ordre Souverain Militaire et Hospitalier de Saint-Jean-de Jérusalem de Rhodes et de Malte*, Paris 1963;

¹² On “bellum justum” see Theutenberg, Bo, *Changes in the Norms guiding the International Legal System – History and Contemporary Trends* in op.cit.. International Law and Security Policy, pp 45 – 76.

¹³ Stephen Runciman, *A history of the crusades I-III*, Cambridge 1951-1954; Amin Maalouf, *Les croisades vues par les Arabes*, Paris 1983; P.M. Holt, *The age of the crusades, The Near East from the eleventh century to 1517*, (Longman), United States 1986; Desmond Seward, *The monks of war, The military religious orders*, London 1995; Claude Lorieux, *Chrétiens d’Orient en terre Islam*, Paris 2001; Pierre Aubé, *Les empires normands d’Orient*, Paris 1991; Joseph Schacht, *The legacy of Islam*, Oxford 1974; Franz Kurowski, *Der Deutsche Orden, 800 Jahre ritterliche Gemeinschaft*, Hamburg 1997; Christopher von Warnstedt, *Svenska riddarordnar (Swedish orders of chivalry)*, in Skandinavisk Numismatik 3, 1982.

1291-1309. Dominion over Cyprus was succeeded by sovereign dominion over Rhodes 1309-1522 and Malta 1530-1798.¹⁴

In the reign of King Knut Eriksson – the Gotland question

As far as Sweden is concerned, it should be mentioned that members of the Order of St John appear in Sweden as early as King Knut Eriksson's reign 1167-1185. King Knut Eriksson was the son of Erik the Saint. It was under the *Dacia* Priory that the fraternity operated in Sweden in the middle ages. The headquarters of the priory was located at Andvorskov on Sjælland in Denmark. The priory, which was under the control of the German Langue – the Order of St John was divided into different Langues or Tongues – covered Denmark, Sweden and Norway. The fraternity came to build a monastery by the grave of Eskil the missionary in present-day Eskilstuna, one of the major cult centres in Sweden in the early middle ages.

Beside the Order of St John, the Order of the Knights of the Sword should also be mentioned, a spiritual Order that existed 1202-1237. When the Order attacked Lithuanian Samogetia in 1236 it suffered serious defeat and in 1237 it became part of the Teutonic Order or *Deutsche Orden*. This was yet another spiritual order of chivalry which had been founded by merchants from Bremen and Lübeck during the siege of Acre in Palestine 1189-1190. As mentioned previously, the St John knights had their large hospital in St Jean d'Acre as the town later came to be called.¹⁵

There is reason to note that Gotland was under the sovereignty of the Teutonic Order in the late 14th and early 15th centuries. In 1806, in the situation that arose in Sweden during the last chaotic years of Gustav IV Adolf's reign, which preceded the 1809 revolution, Sweden actually offered Gotland to the Sovereign Order of Malta. In this context, the Order of Malta was treated as a sovereign state by the Swedish Crown. It may therefore be said that for its part Sweden already recognised the Order of Malta in the early 19th century. The Swedish offer came at a time when the Order had been forced to hand over Malta to the Emperor Napoleon in 1798 and was looking for a new foothold. It is the period between the loss of Malta in 1798 and the final move into the Magistral Palace at Via Condotti in Rome in 1834 that is described as the exile of the Order of Malta. The Swedish 1806 proposal to hand over Gotland to the Order of Malta was discussed by Nils Ihre in an article from 1963 entitled *L'offre du Roi Gustave IV Adolphe de Suède de l'île de Gotland à l'Ordre S.M. de Malte*. He says:¹⁶

"C'est en été 1806, que le projet de donation de l'île de Gotland, située au milieu de la mer Baltique, prit des formes plus concrètes chez le Roi. Celui-ci se trouvait à Stralsund en Poméranie, (à cette époque partie intégrante de la Suède), assiégée à ce moment-là par les troupes de Napoléon. Dans l'entourage le plus intime du Roi se trouvait le Baron Gustave Mauritz Armfelt, Commandeur en Chef de l'Armée suédoise de Poméranie, qui déjà comme Ministre de Suède à la Cour Impériale de Vienne, avait entretenu des relations très suivies avec les dirigeants de l'Ordre de Malte. De plus, il avait été

¹⁴ See the literature referred to in note 11 and Rosita McHugh *The Knights of Malta, 900 years of care*, Dublin 1996, pp 75 – 139; also Marcello Maria Marrocco Trischitta, *Knights of Malta, A Legend towards the Future*, published by the Association of the Italian Knights of the Sovereign Military Order of Malta, Rome 1995.

¹⁵ See note 13 op.cit. von Warnstedt.

¹⁶ Nils E. Ihre, *L'offre du Roi Gustave IV Adolphe de Suède de l'île de Gotland à l'Ordre S.M. de Malte*, Annales de l'Ordre souverain militaire de Malte, Juillet-Septembre 1963, Année XXI:e, Numero III pp 69 - 75.

fait, en 1805, Bailli Grand-Croix, sur les instances du Roi et, en particulier, de la Reine des deux Siciles. C'est en effet, le Baron Armfelt qui rédigea la lettre par laquelle le Roi fit l'offre de l'île de Gotland à l'Ordre de Malte, et c'est très probablement lui qui en fut l'inspirateur.

La lettre contenant la proposition du Roi de céder l'île de Gotland à l'Ordre, en date du 13 juillet 1806, est adressée par le Baron Armfelt au Lieutenant du Grand Magistère, le Bailli Guevara Suardo. Le projet de cette lettre qui se trouve actuellement dans les Archives d'Etat de Finlande, est signé par le Roi pour approbation. Le lettre commence en rappelant 'le suite non interrompue des malheurs qui ont poursuivi l'Ordre de St. Jean de Jérusalem et qui ne lui laisse guère entrevoir l'espérance d'un rétablissement tranquille dans le midi de l'Europe, où la politique des gouvernements paraît exclure pour toujours l'Ordre du séjour indépendant et souverain de l'Isle de Malte'. C'est pour cette raison que le Roi 'rempli des sentiments vraiment nobles et généraux, à voulu fournir une réparation pour les maux qu'a subis une des plus respectables Institutions que l'on connaisse' en proposant de céder à l'Ordre l'île de Gotland en fief moyennant 'le tribut annuel de 15 000 Louis de France pour y établir son Gouvernement'. Le lettre continue en énumérant les diverses qualités de cette île".

The 24 Messidor in the sixth year of the French revolution

The 24 Messidor in the sixth year of the French revolution, that is to say 12 June 1798, seven knights of the Order of Malta signed the documents on the capitulation and surrender of Malta on board the French vessel, the Orient. From the point of view of international law, it should be noted in particular that the Order of Malta was treated as a sovereign state by the Swedish Crown and by the Kingdom of Sicily also during the Order's period of exile. When the Order received sovereignty over Malta in 1530 it was the distribution of a vassal state to a sovereign prince, namely the Grand Master of the Order, very much in the same way as most Italian minor states at that time, for example Parma, Toscana, Modena, Ferrara, Mantua, etc. were sovereign states under the Holy Roman Empire. To be a vassal state under the Pope or the Emperor was part of the political system of the time. Although possession of the island of Malta enhanced the Order's status as a sovereign state, it was not its sovereign possession of Maltese territory that created the Order's sovereignty. The Grand Master of the Order was already a sovereign prince, chiefly through the previous possession of Rhodes from 1309-1522. The sovereign status of the Order of St John or the Order of Malta during the Rhodes and Malta periods 1309-1798, that is to say 500 years, was recognised by contemporary princes and states. Even during the period following the loss of Malta, the Order was de facto treated as a sovereign state, which is illustrated not least by Sweden wanting to give Gotland to the Sovereign Order of Malta in 1806.¹⁷

A "politically correct" Order!

Among the parchment letters in Sweden's National Archives, several were written by Swedish men and women, who set off for the Holy land to pray at Holy Sepulchre of Christ. Many died during their pilgrimage and wrote their wills on the soil of the Holy land. One famous pilgrim to the Holy Sepulchre of Christ was the Swedish Saint Bridget (Sankta Birgitta). Today, her monastic order is represented in many parts of the world, not least in Sweden. The noble woman Birgitta Birgersdotter was born around 1303, the daughter of the chief judge of Uppland, Birger Petersson of the

¹⁷ See Guy Stair Sainty, *The Order of Saint John, The History, Structure, Membership and Modern Rule of Five Hospitaller Orders of Saint John of Jerusalem*, The American Society of the Most Venerable Order of the Hospital of Saint John in Jerusalem, New York 1991 and Guy Stair Sainty, *The Order of Malta, Sovereignty and International law*, at <http://www.chivalricorders.org/chivalric/smom/maltasov.htm>

Finsta noble family and his wife Ingeborg Bengtsdotter of a side branch of the reigning Folkunga dynasty.¹⁸

As early as the period in Jerusalem, besides the fraternity of monks there were also sisters who swore an oath to the Master or Grand Master. The tradition that developed means that women may become members of the Order on their own merits, with the same rights and obligations as their male colleagues. They win entry to exactly the same classes of the Order as the men. They swear the same oath as male members¹⁹ There are about as many women as men among present day members of the Order. There are no legal or principle impediments preventing women from reaching elevated posts in the Order of Malta.²⁰

A Swedish Foreign Ministry perspective

At this point I would like to present some personal points of view. During the years 1967-1969 I served as a diplomat at the Swedish Embassy in Baghdad. There I had a definite premonition of the increasing role of Islam in the political development, both in domestic and foreign policy. In Moscow, where I served at the Swedish Embassy 1974-1976, that is to say during the worst years of the Communist repression under Brezhnev, the Embassy made the assessment that the “religious forces” along the periphery of the Soviet empire would soon tear the empire apart. Neither the Islamic religious forces in the south nor the increasingly strong Catholicism in the west, particularly in Poland, would in the long term be willing to remain as parts of the atheist Marxist-Leninist Soviet Union. In the final end the repressive system would not manage to oppress the human individual. Thus, religion was a veritable potential tinder box in the Soviet empire.

The Iranian revolution began in 1979, and Islamic so called fundamentalism came into power with Imam Khomeini as the religious governor of the state. There was suddenly a theocracy created in world politics, that is to say a state that in theory was governed by God and in practice by the priesthood, or by “God’s representatives”. The concept of a theocracy was added to democracies, oligarchies and dictatorships. The spiritual leader and the religious supreme National Security Council governed the entire political apparatus. In this situation the question arose as to what expertise the Ministry for Foreign Affairs of Sweden had on religion and history of religions. Clearly these were factors that would direct future world politics to a considerable extent. Consequently, during my period as the Ministry’s Chief Legal Adviser on international law, I often returned to the theme of the role of religion in world politics.²¹

¹⁸ Saint Bridget, *Prophetess of New Ages*, Proceedings of the International study meeting Rome, October 3 – 7, 1991, Rome 1996. See Jarl Gallén, *Finstaätten (The Finsta dynasty)*, in *Äldre svenska frälsesläkter (Old Swedish noble families)*, Ättartavlor utgivna av Riddarhusdirektionen genom Folke Wernstedt, del I (Genealogical tables published by the board of the House of Nobility, through Folke Wernstedt, part I) Stockholm 1957 pp 34 – 38.

¹⁹ Concerning these knights of the Vinstorpa dynasty, see Kjell-Gunnar Lundholm, *Vinstorpaätten och släkter med denna ätts vapen (The Vinstorpa dynasty and the families using the dynasty’s arms)* in op.cit. *Äldre svenska frälsesläkter (Old Swedish noble families)* pp 95 – 105.

²⁰ See Rosita McHugh op. cit. *The Knights of Malta* pp 141 – 145.

²¹ See op. cit. *Folkrätt och säkerhetspolitik (International Law and Security Policy)* p 562 ff “Shiismen och Imanen” (“Shiism and the Imam).

As an expert on international law at the Ministry, I had to tackle the question of human rights in the Communist Soviet Union and its satellite states, not least the Baltic States, in addition to the concrete problems that existed in our relations with the Soviet Union. It was clear to all those who kept their eyes and ears open that ever since the genesis of the Soviet state in 1917, fundamental human rights had been trampled under foot. How many millions of people were killed in the name of Communism? How many millions were killed in the name of Nazism? Two totalitarian systems in our time that totally eradicated all ethical barriers and impediments in international law.²²

On freedom of religion

It was in the aftermath of 1968 radicalism in Sweden that many forces in the 1970s and early 1980s aimed for the establishment of diplomatic relations between Sweden and the Holy See or the Vatican State. The issue had several legal dimensions.²³

The papal curia in Rome, that is to say the papal office or the government, which is led by the Secretary of State, is considered to be among the most well informed in the world. It was therefore considered important for the Ministry for Foreign Affairs of Sweden to have continual access to the curia's assessments. The curia has access to the knowledge assembled in the Catholic Church hierarchy down to parish level, extending as far as the most distant parts of the world. In its pastoral work the church tries to mitigate the pain caused by political oppression. The Church tries to gain political accommodation so that its confessors may enjoy the human right designated religious tolerance and freedom of religion.²⁴

Under Article 18 of the United Nations Universal Declaration of Human Rights adopted on 10 December 1948, everyone has the "right to freedom of thought, conscience and religion". These same fundamental rights are again laid down in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is important to note that the freedom of religion and religious tolerance which is guaranteed the individual includes the right of the individual and that of the church to freely practise religion in the manner prescribed in its articles of faith. It is evident that we feel the demarcation line beyond which the state and state legislation may not go without violating these fundamental human rights. It is the church that interprets the articles of faith and the words of the Bible, not state legislators. The European Court of Human Rights defends the right to freedom of religion and religious tolerance. The Catholic Church is governed by canon law. The most recent edition of canon law (*Codex juris canonici*) was issued by Pope John Paul II on 25 January 1983.²⁵

²² See Theutenberg, Bo, *Folkkrätten i svensk utrikespolitik (International law in Swedish Foreign Policy)*, Royal Academy of War Sciences Documents and Journal no. 1/2002.

²³ See note 1.

²⁴ See Juan Ignacio Arrieta, *Governance Structures within the Catholic Church*, Rome & Toronto 2000 (Wilson & Lafleur Ltée).

²⁵ See Ove Bring – Said Mahmoudi op. cit. *Sverige och folkkrätten (Sweden and International Law)* pp 91 – 130.

More details on the status of the Holy See in international law

When speaking of the centre of the Catholic Church in Rome the term the Holy See (*Sedes Sancta, Santa Sede, Saint Siège*) is used or alternatively the Vatican State or the Vatican. The Holy See is the designation under canon law – as well as under international law – for the highest office of the Catholic Church, the Office of the Pope. The Holy See is the Catholic Church's highest authority in ecclesiastical as well as in temporal respects. The concept of the Holy See has its roots in the apostolic succession according to which an unbroken chain is formed of representatives of Christ from the apostle Peter to our day. The present Pope is the 264th successor of Peter. The Holy See is also a concept in international law, since it is the Holy See that represents the universal Catholic Church in relation to other members of the community of states.

The universal Catholic Church today comprises about one billion Catholics spread over different states throughout the world, who confess to being the Church's spiritual subjects governed by the Holy See and by the Catholic Church's canon law. The supranational Catholic Church holds legal rights under international law and it has no territorial limitation. It has been likened to an elected monarchy. Its head, the Pope, has full powers to legislate, judge and administrate within the Church's own community – that is to say the universal Catholic Church. Thus, the Church itself has international law subjectivity, which, however, both rests upon and supports the Holy See as a subject of international law. Historically, the Catholic Church has been recognised as equal to the sovereign states. At the same time, in his capacity as incumbent of the throne that exercises authority over the Church, the Pope has been recognised as competent under international law to represent the Catholic Church. The Holy See can therefore be said to be the direct partner of other states under international law in their relations with the Catholic Church. In his book *The Vatican* Göran Stenius gives the following description.²⁶

“The Holy See is the earthly central organ of the Catholic Church, represented by the Pope and his government, the Roman curia. It has been defined as a state-like institution without territory that derives its rights from the Pope and therefore its status in international law is comparable with that of an independent state. As such it has the right to send and receive diplomatic representatives, conclude treaties with foreign powers and even declare war if it wants. The Vatican state on the other hand is merely the residence of the Holy See and a visible sign of the Pope's worldly authority, or to quote one of the Vatican's own diplomats: “The Holy See *is not a state, it has a state*’.”

The Papal States, the Lateran Treaty and the Vatican State

The concept of the Vatican or the Vatican State – derived from the Vatican Hill with the Vatican Palace – is of geographic significance. It refers to the 44 hectare state in which the incumbent of the Holy See – the Pope – is the elected monarch/head of state. Also from the perspective of the Vatican State the Pope has the status of head of state under international law. The conclave is the college of electors who elect a

²⁶ See note 24 and 25. See also E Caparros – M Thériault – J Thorn, *Code of Canon Law Annotated*, Montreal 1993, pp 263 – 292 “The Supreme Authority of the Church”. See also Göran Stenius, *Vatikanen (The Vatican)*, Helsinki 1947, p.17 ff. Also Joseph T. Martin de Agar, *A Handbook on Canon Law*, Rome & Toronto 1999 (Wilson & Lafleur Ltée) and Gerard Noel, *The Anatomy of the Catholic Church*, London, Sydney, Auckland, Toronto 1980. See L. Oppenheim – H. Lauterpacht, *International law, A Treatise*, Vol I Peace, 8th ed (or later) New York 1967, pp 250 – 255 as well as op. cit, Eek – Bring – Hjernner pp 28 and 220.

new pope from among themselves. The college of electors is made up of Cardinals that have not yet reached the age of 80 at the start of the conclave. Each Cardinal in the consistory is entitled to take part in the conclave even if he has not yet received the outward insignia of the office of Cardinal.²⁷

After Italy's King Victor Emmanuel in 1870 had conquered what remained of the formerly far flung Papal States – the Popes had reigned over these states as temporal princes since the 8th century – the territory of the Papal States was incorporated into Italy. Not until the Lateran Treaty signed on 11 February 1929 between Pope Pius XI and Italy's Prime Minister Mussolini, were the Pope's state functions reinstated in that the Vatican State was established. Through the Lateran Treaty – three separate treaties are actually involved – Italy recognised the full sovereignty of the Vatican State and its right to uphold diplomatic relations with the world community. In the Treaty, the Pope is recognised as the head of state in "Stato della Città Vaticano", that is to say the State of the Vatican City. The Concordat between the Republic of Italy and the Holy See is included in the Lateran Treaty, which regulates the position and status of the Catholic Church in Italy. The term Concordat is used to describe international agreements between the Holy See and other states for the purpose of regulating the temporal conditions of the Catholic Church in a specific state.²⁸

The territorial issue

From the perspective of international law it should be noted that the Holy See was without territory from 1870 until 1929. Thus, in the period prior to the establishment of the Vatican State there was a state entity named the Holy See. This was a state entity without territory whose sovereignty was recognised by most powers despite its lack of territory and with which states continued to maintain diplomatic relations. It may be seen from this, that public international law, as expressed in customary law, or in other words the repetitive de facto acts of states, accepts that a sovereign subject of international law may be without territory, without a territorial *imperium*. Historic traditions and the de facto action of other states in relation to the Holy See 1870-1929 compensate, so to speak, for the absence of the element of international law that presupposes possession of a territory if a sovereign subject of international law is to be considered to exist. The de facto action of states "remedies" the absence of an otherwise necessary criterion. Precisely the same may be asserted as far as the Sovereign Order of Malta is concerned. The legal assessments of the sovereign status of the Order of Malta largely follow the legal assessments regarding the sovereign status of the Holy See.

²⁷ See note 26 op. cit. *Code of Canon Law Annotated* p. 275 ff.

²⁸ See Noel op. cit. the chapter "the Church that became an Empire" p. 20 ff. Henry Chadwick, *The early Church*, London 1967. A wide view of the early church is obtained by reading the end of Edward Gibbons famous book *The Decline and Fall of the Roman Empire*. For a list of the concordats entered into between the Holy See and other states, see José T. Martín de Agar, *Raccolta di Concordati 1950–1999*, Città del Vaticano 2000 and the same author's additional list *Concordati del 2000*, Città del Vaticano 2001. In Stenius op. cit. p. 80 the fall of the Papal States in 1870 is described as follows: "At ten the message came that after a short exchange of fire claiming a death toll of some forty and about twenty of the defenders, the attackers managed to force the famous breach at Porta Pia. The Holy Father left to issue the last order of papal military history, to hoist a white flag. He returned uttering the words 'consummatum est' and asked the diplomatic corps to witness that the enemy had forced its way into his city".

The Holy See does not exchange diplomatic representatives with other states on the basis of its possession of the Vatican territory in Rome. It does so on the basis of its historic status recognised by international law and by other states. Although the establishment of the Vatican State through the Lateran Treaty in 1929 ended the constitutional confusion that had prevailed ever since 1870 in relations between the Holy See and the Italian state – where the situation was characterised by “the popes’ inner exile and imprisonment in the Vatican” – it is maintained that from the historical and legal perspectives a new sovereign subject was not added since the Holy See was already a sovereign subject of international law when, in the Lateran Palace in 1929, the See signed the treaty that created the Vatican State. The same thing may largely be asserted for the Sovereign Order of Malta which in the same way as the Holy See can point to a well-nigh 700-year tradition as a sovereign subject recognised by international law and by other states, totally irrespective of possession of territory. The Holy See maintains diplomatic relations with some 120 states and the Order of Malta with more than 95 states. While the Holy See, like Switzerland, has the status of observer state at the United Nations, since 1994 the Order of Malta has had the status of permanent observer at the UN.²⁹

Relations with Sweden

At the time the Swedish Ministry for Foreign Affairs was increasingly of the view that it was necessary to establish formal relations with the Holy See, the same signals came from the Swedish Riksdag (parliament). In my capacity as the Ministry’s Chief Legal Adviser, I visited the Vatican in October 1981. In my talks there it was stressed that “Sweden’s position and policies were of the kind that the Vatican would feel honoured if diplomatic relations were established”. Thus, the Holy See considered Sweden an important counterpart in world politics. In the Committee on Foreign Affairs report 1981/82:14, dated 1 December 1981, “the Riksdag presented a request to the Government that Sweden should establish diplomatic relations with the Vatican State”. As the Ministry’s Adviser on international law I stated in a memorandum of 11 December 1981 that there were no impediments under international law to the Government’s proceeding to establish diplomatic relations.³⁰

Although the Holy See has existed from time immemorial, it was not until 1982 that Sweden came to move itself to establish formal relations with the Catholic Church represented by the Holy See as a subject of international law. As a sign that a new relationship under international law had commenced, formal diplomatic relations between Sweden and the Catholic Church’s highest authority were established in July 1982. The Swedish government proposed the establishment of diplomatic relations in a note verbale to the Secretariat of State of the Holy See, dated 30 June 1982. In a note verbale in reply of 12 July 1982, the Holy See confirmed the establishment of diplomatic relations. In this connection, attention may be given to the following statement: “The Holy See feels certain that, in the context of religious freedom happily existing in Sweden, the Catholic Church will continue to make its contribution to the good of the national community in the spiritual, cultural and social

²⁹ See Guy Stair Sainy op. cit. in note 18 and *Annuaire 2001/2002*, Ordre Souverain Militaire Hospitalier de Saint-Jean de Jérusalem de Rhodes et de Malte, publié 2001 par la Chancellerie, via Condotti 68, 00187 Rome.

³⁰ See note 1.

³¹ See note 1. Quotations from the Vatican’s note no 4021/82 of 12 July 1982. See also Yvonne Maria Werner, *Världsvid men främmande (Worldwide but Foreign)*, Uppsala 1996 and Gerhard Robbers, *Staat und Kirche in der Europäischen Union*, Baden-Baden 1995.

fields." An Apostolic Nuncio was accredited to Sweden and a Swedish Ambassador was accredited at the Holy See. It had been 450 years since, following the Reformation, Sweden had left Catholicism and become a Protestant country.³¹

Another exchange of notes of a principle nature between Sweden and the Holy See took place in November-December 2001. In a note verbale of 24 November 2001, the Holy See presented its desire to have the legal status of the Catholic Church in Sweden confirmed in a diplomatic exchange of notes with Sweden. The Swedish government replied to the note from the Holy See in a note verbale of 13 December 2001, in which it was particularly underscored that the Swedish government considers the Catholic Church in Sweden to be part of the universal Catholic Church, the subject of international law. The exchange of notes was preceded by a Government decision dated 13 December 2001, in which the position of the Catholic Church as a subject of international law was confirmed for Sweden's part. It should be emphasised that the Code of Canon Law is the body of laws that governs the Catholic Church. It is this law that regulates, *inter alia*, the admission of members to the Church. In respect of law, all Catholics are under the jurisdiction of the Code of Canon Law and the administration of justice is carried out by the Church's own judiciary.³²

The Sovereign Order of Malta has also several times expressed an interest in establishing diplomatic relations with Sweden, not least bearing in mind that the Order of Malta and Sweden are both among those who contribute most rapidly to alleviating distress and difficulties for the sick and wounded in areas afflicted by war and crises. Both are dedicated to giving health and medical assistance to poor countries. The many hospitals and extensive ambulance operations of the Order of Malta should be particularly mentioned in this context. Diplomatic relations do not yet exist between Sweden and the Sovereign Order of Malta, but should proposals be made, it is to be hoped that Sweden attach importance to the Sovereign Order's assiduous work for the upholding of human rights and its concrete work among the dead, wounded, sick and refugees on battlefields around the world.

Further details of the status of the Order of Malta under international law

As mentioned by way of introduction, the Order of St John received its status as a self-governing monastic order as early as the papal bull of Pope Pascalis II in 1113. The Order was active in Jerusalem and Palestine up to 1291. The Cyprus period followed from 1291-1309, the period on Rhodes 1309-1522, the period on Malta 1530-1798 and the period in exile 1798-1834. As from 1834 up to the present day the Order of Malta has resided in its palace at Via Condotti in Rome (the Magistral Palace). The Order enjoys extraterritorial privileges and rights for its buildings, churches and property. In the publication entitled "The Constitutional Charter and

³² Exchange of notes see Excerpts from records, series I:2 of Cabinet meeting 13 December 2001 (UD01/1623/FMR) and annexes. The wording of the Swedish Government's note is as follows: "The Ministry for Foreign Affairs of the Kingdom of Sweden has the honour to inform the Secretariat of State of His Holiness that the Government of the Kingdom of Sweden has arrived at the conclusion that the newly registered Roman-Catholic Church in Sweden is a part of the universal Catholic Church being a subject of international law".

Code of the Sovereign Military Hospitaller Order of St. John of Jerusalem, of Rhodes and of Malta” which was issued in 1998 following the extra General Chapter that was held on 28-30 April 1997, the Order is described as sovereign and a subject of international law.³³

On account of some arguments presented in the 1950s, to the effect that the ties with the Holy See in a constitutional and international law context were so close and frequent that the true sovereignty of the Order could be called in question, constitutional changes were made by the Order. These were established in 1997. While the previous constitution laid down that the Order of Malta was a “legal entity solemnly recognised by the Holy See”, this formulation has now been removed from the Order’s constitution. The previous constitution prescribed that, after being elected, the head of state of the Order of Malta, that is to say the Grand Master, must be approved by the Pope, the new wording in the constitution only prescribes that after election the Grand Master shall inform the Pope of his election. The requirement of approval has gone and is replaced by a simple communication on the part of the Grand Master. Changes have been implemented throughout to show that the Order is independent of the Holy See from the constitutional and international law perspective. Based on theoretical reasoning pertaining to laws on sovereignty it may be stated that while the Order of Malta is endeavouring to weed out from its constitution anything that may be perceived to be limitations on its sovereign status, EU member states are voluntarily limiting their sovereignty by deferring to the Union’s system of rules and the EU Court of Justice. However, no one would ever dream of questioning the sovereignty of these countries. This shows that the concept of sovereignty can no longer be defined in the traditional manner.³⁴

The constitution and government of the Order of Malta

As described above, the Order of Malta has a form of government regulated in its constitution. It issues its own laws, has its own legal and judiciary system. Through its membership fees and contributions from its some 11 000 members worldwide it has a stable economy. In addition to its members, there are 100 000 voluntary workers in the Order’s charitable organisations in Europe, North and South America, Australia and Asia. It has about 1.5 million donors in Europe alone. With its various aid programmes the Order of Malta operates in 114 countries. It makes considerable efforts for the sick, suffering and those in distress, particularly in armed conflicts. It attaches no importance to denomination but assists everyone in need irrespective of religion, race and gender.³⁵

The Order’s operations are organised by the Grand Master and the officials and bodies under him. Among the agencies that coordinate the international aid activities

³³ For the international status of the Order of Malta see *Constitutional Charter and Code of the Sovereign Military Hospitaller Order of St. John of Jerusalem of Rhodes and of Malta*, Promulgated 27 June 1961 revised by the Extraordinary Chapter General 28 – 30 April 1997, Rome 1998. The wording of Article 3 of the Constitution of the Order of Malta is: “The Order is a subject of international law and exercises sovereign functions”.

³⁴ See the works included in note 17.

³⁵ See notes 2,11,14 and 33.

³⁶ See notes 2, 11, 14, 17 and 33.

of the Order of Malta should be mentioned: AIOM (Action International of the Order of Malta), ECOM (the Emergency Corps of the Order of Malta), CIOMAL (Comité International de l'Ordre de Malte). To these may be added the Latin-American Coordination Centre in Coral Gable, Florida, and the Project Coordination Office in Brussels which coordinates all aid action partially financed by the EU Commission. There are plans to join these agencies into one central agency, called the Malteser International.³⁶

The governing body of the Order of Malta may be defined as follows:

- The Council Complete of State, which elects the Grand Master. He is elected for life.
- The Chapter General, the highest decision-making assembly.
- The Government Council, a consultative body on central issues, made up of six Councillors from different geographic areas.
- The Sovereign Council which assists the Grand Master in governing the sovereign Order and which comprises himself or his deputy (the Lieutenant) and the four High Offices and six Councillors.
- The four High Offices are:

The Grand Commander who in his capacity as Lieutenant replaces the Grand Master in the event of death or incapacity.

The Grand Chancellor, in practice the Order's head of government and head of the office at Via Condotti in Rome.

The Grand Hospitaller who presides over the Order's medical and charitable activities.

The Receiver of the Common Treasure.

Four secretaries answer to the Grand Chancellor, namely the Secretary for Foreign Affairs, the Secretary for Internal Affairs, the Secretary for Communications and the Secretary for Special Affairs. These functions may alter in accordance to existing needs and directives.

After the move to Rome in 1834 the Order was reorganised and reconstructed in the old spirit that prevailed when the Order emerged in the 11th century, that is to say as a caring and charitable entity. It is to the countries in need that the Order of Malta has concentrated both its diplomatic relations and its aid programmes. The Order of Malta exchanges ambassadors with some 95 states, including Russia and other East European countries. Practically all countries of South and Central America have diplomatic relations with the Order as also a majority of the African states. Several Islamic countries have also established formal diplomatic relations with the Order. For the sake of efficiency and speed, the Sovereign Order of Malta wishes to speak directly by means of its diplomacy and its ambassadors to other governments, the UN and the EU.³⁷

³⁷ See note 29.

The operations of the Order of Malta may be roughly described as follows:³⁸

- disaster relief under its own auspices and in cooperation with other organisations
- the collection, dispatch and distribution of medicines and pharmaceuticals to countries afflicted by war and natural disasters
- running hospitals and ambulance corps in many countries
- leprosy research and treatment of lepers
- holiday camps for young people with disabilities
- visits to old people
- visits to people who are dying
- soup kitchens for the homeless
- day centres for the homeless
- lodging houses for the homeless
- assistance to people in the final stage of life
- running AIDS institutions and hospitals
- running residential homes for old people
- taking care of abandoned children
- residential homes and day centres for people with disabilities

The Order's 11 000 members, spread all over the world, are organised in a number of Grand priories, Sub priories and National associations and it is in this latter category the Scandinavian association (covering Sweden, Denmark, Norway, Finland and Iceland) with some thirty members belongs. Together, the members constitute the Sovereign Order of Malta which is governed by the Grand Master and his subordinate bodies in accordance with the constitution and laws of the Order. Just as in the case of the Vatican State, the Order of Malta has no population or citizens in the true sense of the word. Although the Vatican provides persons who live and work in the Vatican with their own passports, the fact is that all the people who reside or serve in the Vatican are at the same time citizens of other states. All except the Pope who is not a citizen of any state.³⁹

In the same way, the officials and members of the Sovereign Order of Malta are citizens of other states. No one relinquishes his citizenship because of becoming a member of the Order of Malta. Although not directly relevant to the Order of Malta and its members, it should be mentioned in this context that since 1 July 2001 Sweden permits dual citizenship, meaning that a person can have strong ties with two states. The prevailing circumstances for both the Holy See and the Order of Malta have been accepted by the world community which is manifested by the establishment and maintenance of diplomatic relations with the Holy See and the Sovereign Order of Malta by a large number of states. When foreign ambassadors hand over their letters of credence to the Sovereign Order of Malta, they do so to the Grand Master at the Magistral Palace in Rome.

³⁸ See note 2 and Rosita McHugh op. cit. p. 7 ff.

³⁹ See the works included in note 17.

The population and citizens issue

In this context it may be pointed out that major supranational organisations, for example the United Nations and the European Union, have evolved into sovereign apparatuses with a large number of officials and employees equipped with special UN and EU passports. These organisations act independently at the diplomatic level through their own representatives and ambassadors. These organisations and their representatives have been provided under international law with the same kind of diplomatic immunity and privileges as is accorded sovereign states. Neither of the organisations has its own territory nor its own citizens. Officials and employees are citizens of other states and alongside their UN or EU passports hold, for example, a Swedish passport (either a standard passport or a diplomatic passport). Thus, the situation is entirely comparable with the circumstances that apply to the Holy See and the Sovereign Order of Malta.

Although the requirement of a population on the territory of the sovereign state is not fulfilled, over the years this has not affected states' de facto treatment of the Order of Malta as a sovereign subject of international law. The status of the Order in this respect, as in other respects, resembles that of the Holy See.

In the light of the history of the Sovereign Order of Malta as a sovereign member of the community of states and taking into consideration the special role and position of the Order as an international Order comprising members from many different states, international customary law has reached the conclusion that the Order is treated as a sovereign subject of international law included in the community of states. Most states consider the Sovereign Order of Malta a good and peace-loving model in the world community and a strong advocate of respect for human rights. In practical and concrete ways, the Sovereign Order of Malta comes to the rescue of the sick and people in distress. In other words, it practises the virtues of international law that many states ought really to practise themselves among the sick, wounded and dead on the battlefield, instead of continually breaching the rules set out in the UN Charter and initiating wars and misery. Such a "good state" as the Sovereign Order of Malta one must pay tribute to and support by different means.



Den Suveräna Malteserordens befullmäktigade emissarie Professor Dr. Bo J Theutenberg och den jordanske utrikesministern Dr Marwan Moasher undertecknar i Amman den 29 juni 2003 avtalet om upptagande av diplomatiska förbindelser mellan den Suveräna Malteserorden och det Hashemitiska kungadömet Jordanien. För mig personligen var nog detta höjdpunkten av alla mina diplomatiska uppdrag. Någon högre ambition än att kunna få bidra till att normalisera förbindelserna mellan det Hashemitiska huset – Profetens ättlingar – och en nästan 1000 år gammal korsriddarorden kan man knappast ha. Men genom mig tog parterna varandra "formellt i hand". Allt detta inom ramen för mitt 30-åriga arbete med "Dialogen med Islam".

The Plenipotentiary of the Sovereign Order of Malta Professor Dr Bo J Theutenberg and the Foreign Minister of the Hashemite Kingdom of Jordan sign in Amman, Jordan, on 29 June 2003 the agreement on establishment of full diplomatic relations between the Sovereign Order of Malta and the Hashemite Kingdom of Jordan. For me personally this was probably the peak of all my diplomatic missions. Higher ambitions than to contribute to a normalisation between the Hashemite House and a nearly 1000 year old Crusader Order one cannot possibly entertain. Through me the old adversaries "shook hands". All this was done within my 30 year old work with the "Dialogue with Islam".



Professor Dr Bo J Theutenberg överlämnar den 8 mars 2004 i det kungliga Ragadanpalatset i Amman sina kreditivbrev till Hans Majestät kung Abdullah II – profetens ättling – som den Suveräna Malteserordens förste ambassadör till det Hashemitiska kungadömet Jordanien. Foto: Royal Court

Professor Dr Bo J Theutenberg presents on 8 March 2004 in the Royal Ragadan Palace in Amman his Credential letters to His Majesty King Abdullah II of the Hashemite Kingdom of Jordan – a descendant of the Prophet – as the first ambassador of the Sovereign Order of Malta to the Hashemite Kingdom of Jordan. Photo: Royal Court