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**MISSION OF THE ORDER OF  
MALTA AS A SUBJECT OF  
INTERNATIONAL LAW IN THE  
21<sup>ST</sup> CENTURY**

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## **MISSION OF THE ORDER OF MALTA AS A SUBJECT OF INTERNATIONAL LAW IN THE 21<sup>ST</sup> CENTURY**

The Order of Malta became a subject of international law with the emergence of classical international law in the 16<sup>th</sup> century and the concept of international legal personality and since that period has always been recognised as such. However, the form of its existence has undergone a number of transformations. Today, the Order of Malta constitutes a unique subject and the nature of its international legal personality represents a great scientific and practical interest. The author is of the opinion that both theories of recognition which exist in the doctrine of international law, i.e. the declarative and constitutive theories, apply to the status of the Order of Malta. This paper analyses the nature of international legal personality and the mission of the Order of Malta as a subject of international law in the 21<sup>st</sup> century. Special attention is paid to the Constitution, the Government and the judicial system of the Order of Malta, as well as cooperation between the Order and the Russian Federation.

**Keywords:** The Order of Malta, international law, international legal personality, subjects of international law, recognition in international law

**JEL Classification:** Z

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## 1. Introduction

The Order of Malta is a unique subject of international law in the 21<sup>st</sup> century. The Order was founded in 1099 and became a subject of international law in the Middle Ages when it was operating in an absolutely different historic and legal environment. Through nine centuries, the Order of Malta has managed to retain its international legal personality, recognised by 104 states maintaining diplomatic relations with the Order.

The period between the end of the 18<sup>th</sup> century and the beginning of the 19<sup>th</sup> century saw the history of the Order of Malta closely interrelated with the history of Russia. At the time of trouble, after the Order had actually lost the territory of Malta when invaded by the troops of Napoleon I, the Emperor of Russia, Paul I, became first the Protector of the Order and then the Grand Master de-facto. After a long interval, the cooperation between Russia and the Order of Malta was resumed. The diplomatic relations were renewed in 1992, shortly after the collapse of the USSR. In Russia, the Order of Malta engages in humanitarian activities. The first ever visit of the Grand Master of the Order of Malta to Russia took place in July 2012 and included meetings with the leaders of the State and his Holiness, Kirill Patriarch of Moscow and All Russia<sup>2</sup>.

Though there are a great number of serious studies and publications by Russian academic historians,<sup>3</sup> the Order of Malta has been an underestimated topic of international legal science in Russia for many years. This situation gave rise to multiple delusions and errors, including in the international law textbooks for students of law departments and institutes. The inaccuracies relate largely to the Order's name<sup>4</sup>, its international legal status<sup>5</sup>, the possession of its own territory and the status of its residency in Rome<sup>6</sup>. An twice-told tale of alleged connection between the Order of Malta and masons surfaces from time to time in certain publications<sup>7</sup>. The Order of Malta emerged long before the appearance of the first lodges and has nothing to do with freemasonry.

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<sup>2</sup> <http://www.patriarchia.ru/db/text/2326400.html>

<sup>3</sup> Refer to, for example, V.A. Zakharov. The Order of Hospitaller. SPb.: Aletheia, 2009; (Захаров В.А. Орден госпитальеров. С-Пб.: Алтейя, 2009); I.A. Nastenko, Yu.V. Yashnev. History of the Order of Malta. M. Russkaia Panorama, 2005 (Настенко И.А., Яшнев Ю.В. История Мальтийского ордена. М. Русская панорама, 2005).

<sup>4</sup> International Law. Textbook. M. Urait, 2012. Page 132 (Международное право. Учебник. М.: Юрайт, 2012. С. 132).

<sup>5</sup> Refer to: International Law, under the editorship of A.A. Kovalev, S.V. Chernichenko. M. Omega Publishing House, 2011, page 163 (Международное право. Учебник под ред. А.А. Ковалева, С.В. Черниченко. М.: Издательство «Омега», 2011. с. 163).

<sup>6</sup> Refer to: Getman – I.V. Pavlova. International Law. Textbook for holders of bachelor's degree. M. Urait. Pages 97-98 (Гетьман – Павлова И.В. Международное право. Учебник для бакалавров. М.: Юрайт. С. 97-98).

<sup>7</sup> [http://rodrus.com/news/news\\_1352210168.html](http://rodrus.com/news/news_1352210168.html) ; <http://rublev-museum.livejournal.com/125887.html>;

<http://my.mail.ru/community/rus-2012/10BE574E1C2266DC.html>

The nature of international legal personality of the Order of Malta and its mission as a subject of international law in the 21<sup>st</sup> century is of great scientific and practical interest. To better understand the nature of international legal personality of the Order of Malta in the modern-day period, the following questions must be answered: what is the actual and potential role of the Order in international relations? And why do states and international organisations recognise the Order?

This article is based on the results of a long-term study by the author in historic and contemporary documents, including in the Order's library at via Condotti in Rome, covering various periods of the Order of Malta. It is impossible to grasp all aspects of the Order's activities and, all the more, its centuries-long history in one article. This being understood, the author considered it necessary to focus on the following issues: historic nature of international legal personality of the Order of Malta; higher regulatory bodies and judicial system of the Order of Malta; humanitarian mission of the Order; and the Order's contribution to the development of international law and cooperation with international organisations. The Order of Malta has been not only a military but also a spiritual order for more than nine centuries, and therefore these issues are closely interrelated with the Order's spiritual mission in the present-day world. Furthermore, the author, as a scholar of international law in Russia, could not but touch upon the topic of cooperation between the Order of Malta and Russia.

Special gratitude goes to Mr. Gianfranco Facco Bonetti, the Ambassador of the Order of Malta to the Russian Federation, and Mr. Nicola Savoretti, the First Counselor of the Order of Malta to the Russian Federation, for their great assistance during the work on this article.

Also I would like to express my his deep gratitude to my teacher - an outstanding scientist in the field of international law and a wonderful person, Igor Ivanovich Lukashuk, who has unfortunately passed away.

## **2. Historic nature of international legal personality of the Order of Malta**

Military orders - Order of Saint John of Jerusalem (the Order of Malta), Teutonic Order and Order of Knights Templars – were established during the Crusades to the Holy Land and represented a unique legal phenomenon. They were able to obtain sovereignty and become independent of any secular authorities. The Order of Knights Templars ceased to exist in 1312, although there are other viewpoints to the history of Templars<sup>8</sup>. Having survived numerous

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<sup>8</sup> Akunov V.V. "The history of of military-monastic orders of Europe. M.; Veche, 2012. P. 201-232 ( Акунув В.В. История военно-монашеских орденов Европы. М.: Вече, 2012. С. 201-232).

historical challenges, the Order of Malta and the Teutonic Order successfully still continue their mission in the 21<sup>st</sup> century.

The first question that should be answered in studying the nature of international legal personality of the Order of Malta is when the concept of international legal personality first developed?

Obviously, the conceptualisation of international legal personality was closely interrelated with the development of international law. On the scientific side, there is no agreement of opinion as to when international law came into existence. Before the revolution, Russian scholars of international law thought that the formation of international law was connected with the origin of independent centralised states at the beginning of the 15<sup>th</sup> century. The Soviet doctrine, which was closely associated with the formation of law together with the origin of state, supported the opinion that international law emerged at that period of time. This concept was reflected in many educational books and monographs of the Soviet era. For instance, according to D.B. Levin, international law originated together with the state and with social stratification. Even at the earliest stages of statehood, there were relations between states and rules of law governing such relations<sup>9</sup>.

The author agrees with a number of leading international law scholars that classical international law took its first roots between the 16<sup>th</sup> – 18<sup>th</sup> century<sup>10</sup>. As noted in a number of studies, the Religious Peace of Augsburg – a treaty signed in 1555 between Protestant princes of Germany and Emperor Charles V – played an important role in the formation of international law. The treaty established full religious independence for the Protestant princes of Germany and allowed the princes to select the religion of their subjects. Historiographers of international law believe that the era of classical international law dates back to the end of the Thirty Years' War and the signing of the Peace of Westphalia in 1648.<sup>11</sup> The Peace of Westphalia contained provisions recognising the sovereignty of states. Certainly, international law did not come about in one day. Its development in the interstate practice and within the legal doctrine was a long-term process. It is fair to say that the concept of international legal personality dates back precisely to this period.

The Order of St. John of Jerusalem (current full name, The Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta) was founded in the Holy Land in 1099.

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<sup>9</sup> Refer to E.T. Usenko, *Outlines of Theory of International Law*. M.: NORMA, 2008. pages 48-51 (Усенко Е.Т. Очерки теории международного права. М.: НОРМА, 2008. с. 48-51).

<sup>10</sup> Refer to, for example, I.I. Lukashuk. *International Law. General*. M. BEK, 1997. Pages 47-50 (Лукашук И.И. Международное право. Общая часть. М.: БЕК, 1997. с.47-50).

<sup>11</sup> Hobe S., Kimminich O. *Einführung in das Völkerrecht*. A. Francke Verlag Tübingen und Basel, 2004 S. 36.

Historical sources provide various breakdowns of the history of the Order of Malta by main periods<sup>12</sup>. For the purpose of our international law study, the main periods are as follows:

1. The Order in the Holy Land and in Cyprus (since inception till 1310).
2. The State of the Order in Rhodes (1310-1522).
3. The State of the Order in Malta (1530-1798).
4. Period after the loss of territory of Malta and until the decision of Vienna Congress (1798 – 1814).
5. Period after the decision of Vienna Congress and until obtaining residence in Rome (1814 – 1834).
6. Present days.

The above periodization is based on the existence of doubts and debates regarding the international legal personality of the Order or the change of its territory in the respective period of time.

Pope Paschal II's Bull of 15 February, 1113, played a fundamental role as it gave the Order its independence from local religious authorities, the right to elect its successor to the founder, and exemption from tithe. In subsequent years, the Order saw its gradual development and growth – the expansion of its functions and the creation of a legal base regulating its activities. During the Crusades, the Order's focus shifted to the military component of its activity. Military orders protected pilgrims on their way from Europe to Jerusalem, and thus became a better-trained and battle-worthy part of the crusader troops. When analysing this period of the Order's activity, it is necessary to understand that there were no absolutist states at that period of time. Many monarchs were conferred with powers by either the Pope or Germanic Holy Roman Emperors (*Sacrum Imperium Romanum Nationis Teutonicae*). The Order was dependent on the Pope, but independent from any secular and religious authorities. In fact, the Order was as independent as the then existing feudal states. These constituted the prerequisites for the future sovereignty and international legal personality of the Order.

At the subsequent stages of its development, first in Rhodes and then in Malta, the Order of Malta formed a state with all the attributes of a state (territory, population, sovereignty)<sup>13</sup>. During its Malta period, the Order of Saint John of Jerusalem became the name the Order of Malta.

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<sup>12</sup> Refer to, for example, V.A. Zakharov. The Order of Hospitaller. SPb.: Aletheia, 2009 page 13 (Захаров В.А. Орден госпитальеров. С-Пб.: Алетейя, 2009. С. 13); I.A. Nastenka, Yu.V. Yashnev. History of the Order of Malta. M. Russkaia Panorama, 2005. Book 1. Page 11 (Настенко И.А., Яшневу Ю.В. История Мальтийского ордена. М. Русская панорама, 2005. Книга 1. с. 11).

The author proposes considering the state of the Order in Rhodes and in Malta as a state of a military order. The features of a state of a military order are determined by the composition of its population and the effective laws of the respective state. The population of the state of the Order was composed of the members of the military Order as well as non-members permanently residing in the state. The law of a military order state consisted of the rules of law governing legal relations between the members of the Order and the rules of law governing relations involving non-members permanently residing in the state. These relations were of different nature and required different legal regulations. Non-members permanently residing in the state were in no way discriminated by the rules of law governing their legal relations. The Order created a mature three-level judicial system consisting of courts of general jurisdiction, as well as specialised commercial courts, and tax and customs courts. The author proposes considering the military order state as one of the forms of state.

With the development of classical international law in the early 16<sup>th</sup> century, the Order of Malta, alongside with and equal to other states, became a subject of international law. Before the invasion of Malta by Napoleon in 1798 and the decision of the Vienna Congress in 1814 by which Malta was finally recognised as a British territory, the international legal personality of the Order of Malta had not been discussed.

It is necessary here to answer an important question about the international legal personality of the Order of Malta in the modern period. Who was the subject of international law – the state of Malta or the Order of Malta? The logic of many contemporary scholars is very simple. During its Malta period, the Order of Malta had all attributes of a state – territory, population and sovereignty. Thus, the Order became a subject of international law. With the loss of Malta in 1798, the Order also lost its international legal personality. This point of view should not be accepted. As fairly noted by G. Biscottini, the legal personality of the Order in Malta was not connected with its territorial sovereignty over the island. The territorial sovereignty over Malta was nothing but a stepping-stone to the Order's objectives. The Order's sovereignty was not connected with the possession of a territory, and accordingly the loss of the territory did not mean the loss of sovereignty<sup>14</sup>. Professor Aldo Pezzana supports this point of view and notes that

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<sup>13</sup> G.B. Hafkemeyer *Der Rechtsstatus des Souveranes Malteser-Ritter-Ordens als Völkerrechtssubjekt ohne Gebiethoheit*. Verlag Fritz Droge Schotmar. 1955. S. 51.

<sup>14</sup> Refer to: Breycha-Vauthier de Baillamont A.C. *Der Malteser-Orden im Völkerrecht*. *Osterr. Zeitschrift für Öffentliches Recht*. Band II, Heft 3-4. Springer-Verlag. Sonderausdruck. s. 405-406.

the loss of Malta did not affect the status of the Order<sup>15</sup>. It is notable that states were exchanging ambassadors and signing agreements with the Order of Malta, not the state of Malta<sup>16</sup>.

If we assume that the territory was not the key to the international legal personality of the Order of Malta, the nature of their international legal personality within the doctrine of international law remains an open question. This paper argues that both theories existing in the doctrine of international law – the declarative theory and constitutive one – apply to the status of the Order of Malta.

The Order of Malta was established in a different way as compared to states. The Order was formed as an institution with the primary objective being to help the injured and the sick, to achieve certain military goals in the Holy Land, but not as a body managing a certain territory and its population. The knights and the priests from all over the world contributed to the formation of the Order of Saint John of Jerusalem, widely known as the Order of Malta. They were united by these objectives. The Order's ability to obtain its sovereignty and build relations *pari passu* with other states in the Middle Ages was not connected with the possession of its own territory. The Order's sovereignty was based on its absolute independency from any lay or religious authorities, except save for the Pope. This position of the Order should be assessed taking into account not only the current legal and political landscapes but the realities of respective historical periods as well. The possession of its own territory and establishment of a state of military order having practically all attributes of a state were the milestones of the Order's development. After obtaining the sovereignty, the Order of Malta has remained sovereign throughout its centuries-long history. However, the form of its existence has undergone a number of transformations. Until the loss of Malta, the Order had been recognised as sovereign based on the declarative theory.

The Order's ability to retain its international legal personality was at risk when they lost their state territory in 1798, and also when the Congress of Vienna decided the fate of Malta in 1814. This was the period of absolutist states, intrinsically similar to modern states. The existence of the Order as an independent subject of international law largely depended on the position of states and the Holy See. During this period, the Russian Emperor Paul I, to whom we devote the next section, played a vital role in helping the Order remain sovereign.

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<sup>15</sup> Prof. Aldo Pezzana The juridical and Historical Foundations of the Sovereignty of the Military Hospitaller Order of St. John of Jerusalem of Rhodes and of Malta. p. 35-36.

<sup>16</sup> D'Olivier Farran Charles The Sovereign Order of Malta in international Law. Reprinted from The International and Comparative Law Quarterly. 1954. p.6.

At this stage of the Order's existence, the constitutive theory of statehood applies. In this case, to be recognised as a subject of international law the Order of Malta did not need to obtain an international legal personality again; it was to prove that it has an international legal personality in the context of the new historical environment. This recognition depended on the Order's capacity to maintain or build diplomatic relations, exchange missions, and enter into equitable international agreement with states. There was no act of simultaneous recognition of continuation of international legal personality of the Order of Malta by all states. This process continued for decades as the recognition of states and governments is not a quick process. By acts of recognition, the states expressed their position on two important aspects:

1. Possession of a territory is not mandatory for the Order of Malta to obtain an international legal personality.
2. States recognise the subject created under different historical conditions and for purposes other than purposes of a state as an equitable subject of international law.

Another question here is how a unique subject that has no comparables could be a subject of international law? The Order of Malta has no territory and population and is not a state. We agree, that there is no such category of subjects as military orders in modern international law, and there is no expressly provided procedure for their establishment clear to a modern international lawyer. However, as is true for all historical periods starting from the Crusades to the Holy Land, military orders have never been a mass phenomenon. The only orders that had sovereignty were the Order of Malta and the Teutonic Order. The Order of Knights Templar was independent for a short time.

States recognising that the Order of Malta continues to have international legal personality act through their sovereign will. This is absolutely similar to the recognition of other states and governments. Is it possible that the doctrine of international law denies the right of states to recognise the Order of Malta as a subject of international law due to the fact that it differs from other subjects, and squeezes it in one of the existing legal categories, such as non-governmental international organisations? In our opinion, it is not possible. It is the sovereign right of states to recognise and have equitable relations with other subjects. More than one hundred states from all over the world and with different legal systems have exercised this right by recognising that the Order of Malta shall continue to have an international legal personality and building equitable relations with it.

Since 1834, the Order of Malta has had its permanent residence in Rome, at via Condotti. The residence has exterritorial status similar to the status of diplomatic representations. Recognition

of the Order's sovereignty by Italy can be consistently traced in the legal regulations<sup>17</sup> and court decisions<sup>18</sup>, starting from the 19<sup>th</sup> century. In 1956, the Order of Malta and Italy entered into diplomatic relations.

Summarising the results of our study, we would like to note the following:

- 1) The Order of Malta has always been sovereign, but the form of its existence has undergone a number of transformations. At certain stages, the Order formed a state of military order which had all attributes of a state but was unique.
- 2) The Order of Malta has been a subject of international law since the inception of classical international law in the 16<sup>th</sup> century and the emergence of the concept of international legal personality. The Order obtains international legal personality simultaneously with states.
- 3) The loss of Malta did not result in the loss of the Order's sovereignty; it just made the Order return to its initial form of existence.

### **3. Cooperation between the Order of Malta and Russia: history and modern times**

The relations between the Order of Malta and Russia began during the time of Peter the Great. Between 1697 and 1698, under the order of Peter I, boyar Boris Sheremetev visited Malta to meet with the Great Master and the knights of the Order. His mission was to establish diplomatic relations and military contacts with the Order of Malta, viewed by Russia as a potential ally in the war against Turkey. From that time on, Russia was in regular diplomatic correspondence with the Order of Malta. In 1769, the first Russian *charge d'affaires*, Marquis George de Cavalcabó, from a noble Venetian family, was sent from Saint Petersburg to Malta<sup>19</sup>.

The relations between the Order of Malta and Russia arrived at their climax during the reign of Paul the First. In 1797, Russia and the Order of Malta signed a treaty regulating cooperation between them and establishing the Russian Grand Priory. The Treaty was signed in full compliance with all necessary procedures set out by the laws of the Russian Empire and the Order of Malta. Pursuant to the treaty, the Russian Grand Priory replaced the Polish Grand Priory in the Order of Malta and belonged to the English language. Moreover, the Order of Malta resolved to give to the Russian Emperor, Paul I, the title of Protector (Patron). The title was

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<sup>17</sup> Pham John-Peter The Sovereign Military Order of Malta: its historical, juridical and canonical profile in the light of the recently-reformed constitutional legislation. 2001. Dissertatio ad ligitiam in Facultate Juris Canonici Pontificia Universitas Gregoriana. p. 316-318

<sup>18</sup> Breycha-Vauthier de Baillamont A.C. Der Malteser-Orden im Volkerrecht. Osterr. Zeitschrift fur Offentliches Recht. Band II, Heft 3-4. Springer-Verlag. Sonderausdruck. P. 405-406.

<sup>19</sup> Refer to: I.A. Nastenko, Yu.V. Yashnev. History of the Order of Malta. Book 2. Pages 10-36 (Настенко И.А., Яшнеv Ю.В. История Мальтийского ордена. Кн.2. С. 10-36).

kindly accepted by the Emperor<sup>20</sup>. On 1 June, 1798, at the initiative of Paul I the Order agreed to establish the Russian Grand Priory for Orthodox noblemen.<sup>21</sup> This decision seems to be unparalleled for the Catholic Order, but it was not an unprecedented one as the Bailiwick of Brandenburg, a protestant branch of the Order, had already been established by that time. The best sons of Russia of that period, belonging to the Orthodox and Catholic churches, became the members of the Russian priories.

Following Napoleon's invasion of Malta, on 27 October, 1798, the knights of the Order sheltering in St. Petersburg elected the Russian Emperor, Paul I as their Grand Master. The Emperor's consent to accept the title was read out at the capitul on 22 November. Academic historians often take diametrically opposed viewpoints on the legitimacy of the Emperor's election as the Master of the Order of Malta. The illegitimacy of the elections is backed by the fact that it was impracticable at that moment to convene the capitul of the Order in full, with the presence of all langues, as many of the knights were in the countries invaded by Napoleon. However, a note should be made that currently the Order of Malta does not deny that Paul I was *de facto* one of the Grand Masters of the Order.

The help and active position of the Russian Emperor, including his foreign policy, was very important for the protection of sovereignty and the international legal personality of the Order of Malta in that dramatic period. Another important fact influencing the Order's history was that Paul I did not challenge the Order's sovereignty. On the contrary, he took all possible efforts to help the Order remain sovereign. The position of Paul I was set out in a Declaration dated 10 September, 1798, adopted in connection with the invasion of Malta<sup>22</sup>. One of his ideas was to bring the Orthodox and Catholic Churches together to stand up to the Turkish threat. Russia's efforts to gradually strengthen the relations with the Order of Malta, help the knights of the Order after the loss of Malta and establish the Russian priories of the Order of Malta were important steps towards making this idea a reality. Due to the tragic death of the Emperor in 1801, however, this and other ideas were not accomplished.

To better understand the historical role of the Russian Emperor, let us draw a parallel between the history of the Order of Malta and that of the Teutonic Order. These orders developed in a similar way until a certain period of time. At a certain stage, both the Order of Malta and the Teutonic Order had sovereignty over their respective territories and created states of military

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<sup>20</sup> For more details refer to: V.A. Zakharov. Emperor Paul I and the Order of Saint John of Jerusalem. SPb.: Aletheia, 2007. Pages 26-39 (Захаров В.А. Император Павел I и Орден святого Иоанна Иерусалимского. СПб.: Алетейя, 2007. С. 26-39).

<sup>21</sup> I.A. Nastenکو, Yu.V. Yashnev. History of the Order of Malta. M. Russkaia Panorama, 2005. Book 2. Page 72-73 (Настенко И.А., Яшнеv Ю.В. История Мальтийского ордена. М. Русская панорама, 2005. Книга 2. с. 72-73).

<sup>22</sup> For more details refer to: V.A. Zakharov. Emperor Paul I and the Order of Saint John of Jerusalem. SPb.: Aletheia, 2007. Pages 85-87 (Захаров В.А. Император Павел I и Орден святого Иоанна Иерусалимского. СПб.: Алетейя, 2007. С. 85-87).

orders with their own specifics. With the development of classical international law, the Order of Malta and the Teutonic Order, alongside states, acquired an international legal personality. Both orders lost their territories during the period of Napoleonic wars once and forever. At the beginning of the 19<sup>th</sup> century, the legal status of the Order of Malta became, and still continues to be, fundamentally distinct from the legal status of the Teutonic Order. After Austria's defeat in the Battle of Austerlitz and the signing of the Treaty of Pressburg on 26 December, 1805, all the possessions of the Grand Master and all the rights, holdings and incomes of the Grand Master and the order were inherited by the male line of the Imperial House of Austria. Thus, the Teutonic Order lost its sovereignty. The Order of Malta, on the other hand, retained sovereignty, the status of a subject of international law, and the knighthood.

After the death of Paul I, contacts between Russia and the Order of Malta became sparse and were suspended after the Russian revolution of 1917.

Russia resumed its diplomatic relations with the Order of Malta in 1992, and this was one of the first foreign policy steps taken by the new Russia state after the fall of the Soviet Union. Today, pursuant to Russian President's Decree, No. 654, dated 31 May, 2010, the Ambassador Extraordinary and Plenipotentiary of the Russian Federation to the Vatican also acts as Russia's representative to the Order of Malta.

The Order of Malta is officially represented in Russia by a Special Diplomatic Mission, accredited by the Russian Ministry of Foreign Affairs. At the moment, the head of the Mission is Gianfranco Facco-Bonetti, the Ambassador Extraordinary and Plenipotentiary of the Sovereign Military Order of Malta to the Russian Federation. In Russia, the Special Diplomatic Mission of the Order of Malta enjoys privileges and immunity granted to the diplomatic missions in accordance with the 1961 Vienna Convention on Diplomatic Relations.

Under international law, relevant rules are included in the legal regulations adopted by the federal executive bodies of the Russian Federation.

The Sovereign Order of Malta is on the List of Foreign States whose missions enjoy, on a reciprocal basis, 0% VAT on the sale of goods (work, services) for official use by the foreign diplomatic missions or representations of similar status, or for personal use by diplomatic, administrative and technical staff of the missions, together with members of their families forming part of their respective households, approved by joint Order of the Russian Ministry of Foreign Affairs and the Russian Ministry of Finance No. 6499/41n dated 8 May 2007.

In the Letter of the Russian Ministry of Foreign Affairs No. 279/Dgp-ns, dated 22, March 1994, the State Protocol Department of the Ministry clarified that pursuant to the Vienna Convention on Diplomatic Relations, foreign states' embassies, their staff and members of their families forming part of their respective households, if they are not nationals of or permanent residents in Russia, shall be exempt from all national, regional or municipal taxes, dues and charges, including personal and property taxes, save for: indirect taxes of a kind which are normally incorporated in the price of goods or services; dues and taxes on private immovable property situated in the territory of Russia, unless he holds it on behalf of the sending state for the purposes of the mission; estate, succession or inheritance duties levied by Russia; dues and taxes on private income having its source in Russia and capital taxes on investments made in commercial undertakings in Russia; charges levied for specific services rendered. The list of the missions includes the Mission of the Order of Malta.

Pursuant to Order of the Russian Ministry of Internal Affairs No. 282, dated 28 March, 2002 (as amended on 20 January 2011), "On State Registration Signs for Transport Vehicles," the Mission of the Sovereign Order of Malta shall have registration signs with special numeric codes applied to distinguish transport vehicles owned by diplomatic missions, consular offices, including ones headed by honourable consular officials, international (intergovernmental) organisations and their staff accredited with the Russian Ministry of Foreign Affairs.

In the early 1990s, which were the hard times for Russia, the Order of Malta helped Russian citizens in need. During this period, Russia received hundreds of tons of humanitarian supplies: food, medication, and clothing. Currently, the Maltese help service functions in the Kaliningrad region. Volunteer corps of the Order of Malta exist in Moscow, Saint Petersburg, Dubna and Kaliningrad.

Quite recently, on 27 November, 2010, the Ministry of the Russian Federation for Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters, and the Association of the Italian Knights of the Sovereign Order of Malta signed a memorandum of understanding. The purpose of the memorandum is to develop mutually beneficial cooperation programs in the following fields: coordination of the emergency control mechanisms at the national level, and arrangement and management of volunteer work in the field of civil protection.<sup>23</sup>

#### **4. Government and judicial system of the Order of Malta**

The Order of Malta has sovereignty, government, and legislation. It also has its own jurisdiction concerning the members of the Order and Grand Priorities, Priorities, Subpriorities, National

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<sup>23</sup> <http://www.mchs.gov.ru/news/item/232824/>

Associations, Delegations and Commanderies. In 1997, important amendments regarding the sovereignty of the Order of Malta as a military order were introduced to the Constitutional Charter of the Order of Malta. In accordance with the amendments, the election of the Grand Master is to be communicated to the Holy Father, while the old version required the approval of the election by the Holy Father. Those provisions, which could compromise the Order's sovereignty, were deleted from its Constitutional Charter<sup>24</sup>.

The structure and powers of the main bodies of the Order of Malta are set out in the Constitutional Charter and Code of the Order. Higher authorities of the Order of Malta are: the Grand Master; the General Council; the Council Complete of State; the High Offices: the Grand Commander, the Grand Chancellor, the Grand Hospitaller and the Receiver of the Common Treasure; the Sovereign Council; the Government Council; the Judicial Council; the Board of Auditors and the Prelate.

The Order of Malta has its own judicial system comprising the Magistral Court of First Instance and the Magistral Appeal Court<sup>25</sup>.

Each court has its president and two judges. The presidents and judges and clerks of the courts are appointed by the Grand Master with the deliberative vote of the Sovereign Council.

The judges of the Magistral Courts are chosen from among members of the Order who are specially versed in law. They hold office for three years and may be re-appointed. The age limit for judges is 75-years-old. Those who are no longer able to carry out their duties because of disability may be released from service at any time.

Magistral Courts are competent to decide the following categories of cases:

- appeals against provisions relating to the necessary proofs for aspirants to the various classes of the Order;
- appeals filed against conciliar decrees regarding investiture into *ius patronatus* Commanderies;
- disputes relating to the administration of *ius patronatus* Commanderies and of foundations;
- labour disputes brought by employees of the Order or by the public bodies of the Order;

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<sup>24</sup> Bo J Theutenberg The Holy See, the Order of Malta and International Law. Published by Johnny Hagberg and Skara stiftshistoriska sällskap, Sweden. 2003. p. 22-23.

<sup>25</sup> Refer to: 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

- lawsuits between persons as members of the Order, including, on the written request of parties who likewise belong to the Order, disputes concerning the disposition of property over which the parties have the right of disposal;
- disputes between the Order and the public bodies of the Order and between the public bodies themselves.

Procedure in the Magistral Courts is regulated by the norms of the Code of Civil Procedure of the Vatican City State, subject to the provisions of the Code of the Order of Malta.

On the written request of both parties, even if they are not members of the Order, the Court of First Instance can assume the functions of a board of arbiters to settle disputes. This is according to the law of equity, concerning the disposition of property over which the parties have the right of disposal. The activities of the Court are to be without charge except for reimbursement of actual expenses. The decision of the arbiters may be appealed before the Magistral Appeal Court<sup>26</sup>.

Cases falling within the jurisdiction of the ecclesiastical forum are submitted to the ecclesiastical Tribunals, in accordance with Canon Law.

Legal assistance to the Order of Malta is provided by the Office of Advocate General, made up of independent members of the legal profession of eminent repute who are experts in law and versed in the traditions and customs of the Order.

The Office of Advocate General is composed of the Advocate General and two alternates who are appointed by the Grand Master with the Sovereign Council for a period of three years renewable.

The organisations of the Order should seek the advice and the assistance of the Office of the Advocate General whenever necessary and especially in cases which involve complex legal issues.

One of the provisions of the Constitutional Charter of the Order of Malta, which is of great interest for the purpose of this study, is the provision pursuant to which the Magistral courts, on the written request of states or subjects of international law, can function as an arbitral tribunal competent to resolve international disputes.

Even among international law experts, little is known about the rule of law of the Order of Malta.

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<sup>26</sup> Refer to: 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. P. 129-130.

Lack of credibility towards arbitrators and mediators represents one of the most serious issues when it comes to interstate disputes; there are concerns that arbitrators and mediators may wittingly share the interests of one or another party to the dispute. Independent and unbiased courts of the Order, composed of highly qualified lawyers who rely upon the highest moral standards and centuries-long authority of the Order, could resolve interstate disputes in a very efficient manner. States that recognise the Order of Malta as a subject of international law and maintain diplomatic relations with the Order could mutually agree to refer disputes to the Magistral courts of the Order.

## **5. Humanitarian activities**

The main activities of the Order of Malta in the 21<sup>st</sup> century are spiritual, humanitarian, medical and social aid. These activities are carried out in more than 120 countries.

The Order's programmes include: medical and social assistance; disaster relief in the case of armed conflicts and natural catastrophes; emergency services and first aid corps; help for the elderly, the handicapped and children in need and the provision of first aid training; and support for refugees and internally displaced persons. It is important to note that the Order of Malta helps people regardless of their race, origin or religion.

One of the most important humanitarian programmes of the Order of Malta is disaster relief in the case of disasters and natural catastrophes. The Order of Malta helped people who in the Republic of Belarus suffered from the Chernobyl disaster. The Order arranged humanitarian supplies and rehabilitation programmes abroad for children living in or near Chernobyl. From the beginning of this century, the Order implemented the following programmes: refugee relief in Afghanistan (2001-2007); refugee aid in the Democratic Republic of Congo (2003); earthquake aid and reconstruction aid in Bam, Iran (2004); refugee relief in Darfur, Sudan (2004); tsunami relief in South- and South-East Asia (2005); help to the starving populations of Niger and Mali (2005); aid for hurricane victims, New Orleans, USA (2005); help for earthquake victims, Pakistan (2005); medical assistance for earthquake victims Java, Indonesia (2006); relief for earthquake victims in Peru (2007); emergency aid after the flooding in the Mexican state of Tabasco (2007); emergency relief measures after the earthquakes in Haiti and Chile (2010); and relief for victims of typhoons in the Philippines. The Order carried out a three-year humanitarian relief and reconstruction programme called "Linking Relief, Rehabilitation and Development" to

mitigate the consequences of Cyclone Nargis in Myanmar, Burma, on 2 May, 2008. As a result of the programme, the Order helped 200 villages and more than 120,000 people<sup>27</sup>.

On many occasions, the Order has taken over the medical care of UN peace missions, in particular, in Kuwait, East Timor, the Balkans, and Afghanistan.

The Order's activities include services of relief for the elderly and disabled. The Order of Malta manages numerous specialised centres for old people in Austria, England, Germany, Spain, Mexico, the United States, and Chile. In various countries, there are a variety of services for old people. This includes providing meals on wheels, transport services, visiting services, shopping help and the operation of emergency call systems. In certain countries, the Order maintains specialised medical centres for the disabled, and offers targeted rehabilitation and training pathways, computer courses and summer camps, as well as special pilgrimages.

The Order provides wide-ranging medical aid to people in a number of countries. The Order runs 11 medical centres in Lebanon, providing 250,000 medical services a year to the local populations of all of the four main religious groups, regardless of their religion. In the Democratic Republic of Congo, the Order supports more than 350 health centres, provides medical and psychosocial care for abused women, assistance for trauma patients, as well as the rehabilitation of many of the country's health facilities and public infrastructure.

The Order helps the terminally ill. For example, in 2009 the German Association ensured care for 8,000 terminally ill<sup>28</sup>. Similar special units of care for the terminally ill work in England, Argentina, Australia, Italy, the United States, and South Africa.

The Order's programmes are implemented with the involvement of its members, as well as approximately 80,000 volunteers and 20,000 employees, the majority of whom are medical personnel<sup>29</sup>.

It is symbolic that the Order runs a maternity hospital in Bethlehem, providing the population with an indispensable service. Since 1990, more than 50,000 babies have been born there.

Malteser International, the Order's worldwide relief service, supports around 200 programmes and projects in more than 30 countries in Africa, Asia, America and Europe. These programmes have supported more than 8 million people<sup>30</sup>.

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<sup>27</sup> [www.orderofmalta.org](http://www.orderofmalta.org)

<sup>28</sup> Tätigkeitsbericht 2010, s. 51.

<sup>29</sup> [www.orderofmalta.org](http://www.orderofmalta.org)

<sup>30</sup> Tätigkeitsbericht 2010, s. 76.

Notably, the Order helps people in need in those countries with which it does not have diplomatic relations, subject to the countries' consent to accept the help.

We can see that nowadays the Order of Malta fulfils the mission for which it was created in the Holy Land many centuries ago, helping millions of poor, sick and needy people around the globe.

The Order's programmes are implemented with the financial aid of its members and other persons supporting humanitarian activities, and with the help of its volunteers. In our opinion, states could agree to entitle the members to pay income taxes to the budget of the Order by including relevant provisions in the bilateral agreements with the Order of Malta and their respective national laws. Moreover, the amount of taxes shall not be lower than the amount of taxes payable to the budget of the respective country. These initiatives are unlikely to significantly affect the budget revenues of the countries while at the same time thousands of suffering and sick people supported by the Order all over the world will be given help. This idea belongs solely to the author of this article and does not reflect the position of the Order of Malta or any of its officials.

## **6. The Order's involvement in the activities of international organisations and its contribution to the development of international law**

The Order of Malta takes an active part in the development of international cooperation at multilateral and bilateral levels in the areas relevant to the Order's mission.

The Order has permanent observer missions to the United Nations, Food and Agricultural Organisation of the United Nations (FAO), International Atomic Energy Agency (IAEA), International Fund for Agricultural Development (IFAD), United Nations Environment Programme (UNEP), United Nations Educational, Scientific and Cultural Organisation (UNESCO), United Nations High Commissioner for Human Rights (UNHCHR), United Nations High Commissioner for Refugees (UNHCR), United Nations Industrial Development Organisation (UNIDO), World Food Programme of the United Nations (WFP), and World Health Organisation (WHO).

Some academic historians note in their studies that in the framework of its observer missions in the UN, the Order of Malta acts not as a state but as a non-governmental organisation, which significantly affects the Order's status<sup>31</sup>. We are inclined not to agree with this point of view.

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<sup>31</sup> V.A. Zakharov, V.N. Chibisov. History of the Order of Malta. M. 2012, page 380 (Захаров В.А., Чибисов В.Н. История Мальтийского ордена. М. 2012, с. 380).

The status of a permanent observer is not defined in the UN Charter. The participation and powers of permanent observers to the UN are governed by the customary rules of international law, dating from 1946. The first observer to the UN was Switzerland. Currently, permanent observers to the UN are divided into several categories: non-member states; international intergovernmental organisations with or without permanent offices at UN Headquarters; and other organisations with permanent representative offices at UN Headquarters. The third category encompasses the observers not included in the first or the second category. The Order of Malta is not a state. Nor it is an international intergovernmental organisation – the Order has never had states among its founders. However, the fact that the Order of Malta is included in the third category of observers does not mean that the UN considers the Order a non-governmental organisation. UN documents describe the third category of observers as “other entities having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at Headquarters”<sup>32</sup> («другие организации, которые получили приглашение выступать в качестве наблюдателя на сессиях и во время работы Генеральной Ассамблеи и которые имеют постоянные представительства при штаб-квартире ООН – в русскоязычной версии документов ООН»<sup>33</sup>). The term “non-governmental organisation” (non-profit organisation, public organisation) in relation to the third category of observers is used neither in English nor in Russian (“общественная организация”). The Order is included in the third category of observers in accordance with the provisions of the doctrine of international law, pursuant to which the Order is a state-like entity. This does not mean that the Order’s status is in anyway compromised by the UN. Moreover, states do not establish diplomatic relations with non-governmental organisations, which, as opposed to the Order of Malta, are not recognised as subjects of international law.

As part of its cooperation with the UN, the Order of Malta participates in the work of the General Assembly and its main committees, especially in those fields of international cooperation that are relevant to the Order’s mission. For example, representatives of the Order participate in the meetings of the Third Committee concerned with humanitarian, social and cultural problems, and the Sixth Committee concerned with legal problems. They regularly express the Order’s position on international humanitarian law<sup>34</sup>, combating poverty and hunger<sup>35</sup>, protection of

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<sup>32</sup> <http://www.un.org/en/members/intergovorg.shtml>

<sup>33</sup> <http://www.un.org/ru/members/intergovorg.shtml>

<sup>34</sup> Refer to, for example: 6th Committee 61st session (2006) - Summaries of work.htm

<sup>35</sup> Statement by H.E. Ambassador Robert L. Shafer, Permanent observer to the High – level Plenary Meeting of the 65 Session of the UN General Assembly on the Millennium Development Goals 22.09.2010  
[www.un.org/en/mdg/summit2010/debate/SMOM\\_en.pdf](http://www.un.org/en/mdg/summit2010/debate/SMOM_en.pdf)

women's rights<sup>36</sup>, healthcare, and the fight against HIV/AIDS<sup>37</sup>. The Order's representatives also participate in the work of the ECOSOC Commission for Social Development<sup>38</sup>.

The Order of Malta has official diplomatic relations with the European Commission.

Starting from the first conference held in 1869, the Order has regularly participated in international conferences devoted to the activities of the International Committee of the Red Cross.

It should be noted that by participating in the work of international organisations, the Order of Malta contributes to the development of international cooperation. When finding a solution, states often pursue short-term, first of all economic, interests. For objective reasons, it is challenging for them to take a more global look at many of the world's problems, in particular those concerning international security, ecology, healthcare. As opposed to states, the Order of Malta does not pursue its own economic objectives. Therefore, the involvement of the Order of Malta in the work of international organisations – their discussions of solutions to urgent world problems and in the development of recommendations – may be beneficial to the world community as a whole. Without having the need to address immediate political and economic issues, the Order could explore the existing problems from a long-term, global perspective and come up with new ideas to help states solve the existing problems.

Today the Order of Malta is party to a considerable number of agreements with various states. The majority of these agreements are for humanitarian cooperation, especially in the field of medical and social assistance and charity. Some of the agreements are in the field of technical cooperation.

Agreements to which the Order of Malta is a party are not subject to registration with the UN Secretariat. The question now arises whether the agreements signed by the Order qualify as treaties in accordance with modern international law? To properly assess the agreements of the Order of Malta we need to determine whether the effective provisions of international conventions on the law of treaties apply to the Order's agreements; whether the fact that the agreements have not been registered with the UN Secretariat affect the validity thereof; and, finally, whether the agreements with the Order of Malta govern international public or private relations.

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<sup>36</sup> [http://www.un.org/womenwatch/daw/documents/ga67/Order\\_of\\_Malta.pdf](http://www.un.org/womenwatch/daw/documents/ga67/Order_of_Malta.pdf)

<sup>37</sup> [http://www.un.org/en/ga/aidsmeeting2011/sov\\_milit\\_malta.shtml](http://www.un.org/en/ga/aidsmeeting2011/sov_milit_malta.shtml)

<sup>38</sup> Economic and Social Council. Official Records, 2009. Supplement 6.

In accordance with Article 1 of the Vienna Convention on the Law of Treaties of 1969, the Convention applies to treaties between states. Thus, as the Order of Malta is currently not a state, the provisions of the Vienna Convention are not mandatory for governing the relations arising out of the international agreements to which the Order is a party.

However, pursuant to Article 3 of the Vienna Convention on the Law of Treaties, the fact that the Convention does not apply to international agreements concluded between states and other subjects of international law or between other subjects of international law shall not affect the legal force of such agreements and the application of the Convention to the relations of states as between themselves under international agreements to which other subjects of international law are also parties. Therefore, bilateral international agreements between the Order of Malta and states are not governed by the 1969 Vienna Convention, but have the same legal effect as treaties between states. Such international agreements are exempt from registration with the UN Secretariat. Accordingly, the fact that the agreement to which the Order is a party has not been registered does not affect its validity. The fact that the Order of Malta is a party to multilateral agreements shall in no way affect the application or prevent the participating states from the application of the provisions of the Vienna Convention on the Law of Treaties of 1969 to the relations between states.

Finally, it is necessary to review the content of international agreements signed by the Order of Malta. We analysed an Agreement between Portugal and the Order of Malta dated 14 May, 1983, governing the cooperation in the field of research & technology and humanitarian aid. As stated in the preamble to the Agreement, the parties enter into the Agreement with the intent to develop and diversify their long-term relations in the field of research & technology and humanitarian aid in accordance with the principles of friendly international relations. We see that the parties initially agreed to formalise their relations as international public relations and not as private relations. Pursuant to Article 2 of the Agreement, the parties shall approve and facilitate the development of projects and performance of agreements for the cooperation in research & technology and humanitarian aid between Portuguese organisations and organisations subordinate to the Sovereign Order of Malta using their best endeavours to create favourable conditions for the realisation of such projects. As follows from the content of this article, the parties to the Agreement create a public law framework for further cooperation between subjects of private law. The Agreement also contains provisions regulating customs duties for imported

medical equipment and drugs. To ensure proper practical implementation of the Agreement, the parties decided to set up a Joint Committee to hold meetings by turn in Lisbon and Rome.<sup>39</sup>

There are a great number of agreements between the Order of Malta and the Italian Government for cooperation in the medical field. An agreement dated 21 December, 2000, governs the relations between the National Medical Service of Italy and structures of the Order of Malta in the field of charitable activities in accordance with and primarily in pursuance of clause 13 of Article 4 of the Italian Legislative Decree No. 502 dated 30 December, 1992, covering the provision of services to Italian citizens and other persons eligible for such services in accordance with the state structure of Italy. In 2006, the Order of Malta signed an agreement with the Republic of Italy for cooperation in the research of neuromotor rehabilitation and metabolic syndrome, diabetes and associated disorders<sup>40</sup>. Pursuant to an agreement between the Order of Malta and the Italian Ministry of Internal Affairs represented by the Department for Civil Liberties and Immigration dated 8 April, 2009, the Order provides necessary medical aid to migrants arriving to Italy<sup>41</sup>. The new agreement between the Order of Malta and Italy on diplomatic relations and the status of residence of the Order in Rome was concluded on 17 May, 2012<sup>42</sup>.

The Order of Malta enters into international agreements for cooperation with states from different continents. For instance, in 1986 the Order signed a cooperative agreement with the Cuban State Committee for Economic Cooperation.<sup>43</sup>

A content analysis of agreements between the Order of Malta and states shows that these agreements govern public law relations and do not differ from treaties between states covering similar fields of cooperation.

## **7. Conclusion**

In the 21<sup>st</sup> century the Order of Malta renders spiritual and social assistance to the sick, the needy and the elderly, and arranges Christian educational programmes for children and youth. It continues to accomplish the objectives for which it was created many centuries ago.

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<sup>39</sup> Text of the Agreement can be found in the Library of the Order of Malta

<sup>40</sup> Accordo Quadro tra la Repubblica Italiana e il Sovrano Militare Ordine di Malta in material di ricerca nel settore della riabilitazione neuromotoria e della sindrome metabolica, del diabete mellito e delle patologie correlate 29.03.2006

<sup>41</sup> Convenzione tra Ministero dell'Interno – Dipartimento per le liberta Civili e l'Immigrazione e Associazione dei Cavalieri italiani del Sovrano Militare Ordine di Malta C.I.S.O.M. – Corpo Italiano di Soccorso dell'Ordine di Malta 08.04.2009

<sup>42</sup> Accordo tra Governo della Repubblica Italiana e il Sovrano Militare Ordine Ospedaliero di San Giovanni di Gerusalemme di Rodi e di Malta 17.05.2012

<sup>43</sup> Acuerdo de Colaboracion entre el Comite Estatal de Colaboracion Economica de la Republica de Cuba y la Orden Soberana, Militar y Hospitalaria de San Juan de Jerusalem, de Rodas y Malta 1986

Having reviewed numerous sources in the process of writing a monograph and this article, the author could not help but ask himself a question not related to the strictly legal area of the study. Why were military orders so efficient over a lengthy period of time during the Crusades and the subsequent defence of Europe? What united the knights belonging to different languages of the Order of Malta? After all, they came from different countries and spoke different languages. In our opinion, it was largely due to the spiritual and ideological affinity of the members of military orders. We never stop trying to find new values in the modern world and get disappointed when sometimes our efforts come to no good. However, the fact that the Order of Malta, which has more than nine centuries of history is recognised by modern states as a subject of international law and renders assistance to millions of people in all over the world, proves that many spiritual values that have united the best sons of Europe as members of the Order many centuries ago are still relevant. The charters of knights contain such principles as serving the people, honour, generosity, and respect for one's promises. Probably, these are the values that we need to embrace today.

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