



RIVISTA 1994

CHAPTER GENERAL **Work of the Commission for the Reform** **of the Constitutional Charter and Code**

Your Most Eminent Highness, Excellencies, dear Confreres,

This is not the first time that the Chapter General has dealt with a reform of the Order's constitutional documents, although it has never been possible to submit the desired amendments to an Extraordinary Chapter for final approval.

However, the third millennium will not find us unprepared when addressing the many problems caused by the tumultuous changes of the last ten years of the century.

In fact, a detailed survey of the Order's activities world-wide was carried out in 1987/88. The seminar on the Order's strategies was based on the results of this survey, summarised in the "Compte Rendu" published in 1990. The seminar focalised the current situation, indicating the paths the Order will have to follow to accomplish its own institutional ends - not forgetting the necessary reforms - with a renewed spirit and enhanced means and structures.

Today we seem practically to have accomplished this ambitious aim (for example, the development of the Order in the world, thanks to its new diplomatic relations; the Communications Office with its foreign correspondents; (ECOM, for the co-ordination of Civil Protection Corps; the Co-ordination Centre for Aid to Latin America in Boca Raton, and so on).

It will be possible to achieve other goals very soon, if the improvements and up-datings are systematic and if we can count on specific rules, in line with the times and with the already amended Canon Law.

Within this framework, the Sovereign Council - during its session on 14 October 1992, with its decree no. 7915 and the subsequent magisterial decree no. 275/8272 - set up a Commission for the Reform of the Constitutional Charter and Code which I had the great honour of chairing, assisted by its Secretary, Count Kinsky, and with the co-operation of the other members, H.E. the Hospitaller, Baron Albrecht Freiherr von Boeselager, H.E. Ludwig Hoffmann, member of the Sovereign Council, and Count Winfried Henckel von Donnersmarck, joining the Commission as an expert in his capacity as Secretary of the Strategies Commission.



Roma. Villa Magistrale.

Le Alte Cariche ed i Membri del Sovrano Consiglio al Capitolo Generale Straordinario per la Riforma della Carta Costituzionale e del Codice.

Rome. Magistral Villa. The High Charges and the Members of the Sovereign Council at the Special Charter General for the Reform of the Constitutional Charter and Code.

May I express my personal thanks to them. The Commission, set up as indicated above, held several meetings to carry out its work.

First of all, the opinion of all the Grand Priorities and the National Associations was requested on the constitutional changes deemed necessary.

As the replies started arriving, the Commission began studying some of the fundamental aspects, and specifically:

- 1) Adapting the Statutes of the Order of Malta to Canon Law;*
- 2) Training new Knights;*
- 3) New regulations for the admission of Dames and their possible classes;*
- 4) Identifying characteristics of the Knights of Obedience with relation to those of the First Class;*
- 5) Groups of friends and supporters of the Order, with the idea of creating a constitutional body.*

Meanwhile, 26 replies were received with relative proposals from the Grand Priorities, Priorities and National Associations.

After a careful examination of the material received, the Commission carried out a technical revision of current texts, producing a series of proposals for amendments together with a series of interesting documents drafted by the Grand Priorities, National Associations and members of the Sovereign Council.

All this documentation was then submitted to the Sovereign Council of 13 October 1993 which, at the suggestion of the Commission, decided to consult the representatives of the Grand Priorities and National Associations on some important topics, and specifically:

- 1) Relations between the Order's headquarters and its institutions;*
- 2) Structure of the Order's classes;*
- 3) Position of Dames;*
- 4) The Order's charisma and image.*

H.M.E.H. convened a special seminar for this purpose, called the Seminar for the Order's Strategies, which was held in Malta on 10 and 11 December 1993. The Secretary of the Strategies Commission, Count Winfried Henckel von Donnersmarck, will be able to report on the Seminar in greater detail, as he has the authority to speak on the matter to the Chapter, in accordance with Article 200 of the Code.

The Sovereign Council then examined all the documents in its possession, including the decisions of the Malta Seminar. After lengthy discussion it resolved, in its session of 4 February 1994, that the matter had to be submitted to the present Chapter General for it to demonstrate its specific will and enable the constitutional procedures to be put in motion for the definitive compilation of the new Constitutional Charter and Code.

This is a brief outline of the course followed in up-dating the Order's Statutes, a necessary course if we are to face the future with a legal system capable of supporting the actions of the Order world-wide.

But let us come to the essential. The Order's Statutes, that is, the Constitutional Charter and Code, are already out of date. This is proved by the many interpretative difficulties encountered not only in the institutions' daily life, but also especially in the last State Complete Council and last Chapters, during which doubts and uncertainties on the electoral mechanisms meant an increasingly frequent recourse to the opinions of the State Legal Advisory Office and the Consultative Juridical Council.

This created a kind of «material Constitution», thus creating further perplexities, at a time when the Order is being affected by the recent, great transformations. On one side, the increasing diplomatic recognition of the Order's status in the sphere of international law and, on the other, the entry into force of the new Codex iuris canonici in the sphere of Canon Law.

A certain inadequacy of the Statutes in regulating the internal life of the Order must also be admitted.

We have to realise that the Constitutional Charter and Code are thirty years old. Albeit this is not an advanced age in terms of codification, it must be remembered that the judicial and constitutional assumptions on which the codification was based can now be considered out-of-date and, in any case, requiring revision.

The approval of the present Constitutional Charter and Code on one side concluded a period of difficult relations between the Order and the Sacred Congregation of the religious, but on the other inevitably froze the position of the Order with regards to the Holy See, as set down in the Cardinal's Judgement of 1953 and referred to in Article 4 (1) of the same Constitutional Charter.

The first function of the Order's Statutes is therefore precisely to specify and place these relations within the framework of the Order's International-Law status, bearing in mind its religious characteristics.

It would be advisable to reconsider the problem by writing new regulations, in line with the changed times, yet allowing a surer identification of its International-Law status, without prejudice to its dependence on the Holy See for matters pertaining to the religious sphere.

These are not revolutionary changes but in accordance with how internationalist doctrine has interpreted the system. Naturally, the drafting of these rules must be accompanied by the appropriate consultations with the Holy See, to ascertain the exact range of the approval of the Statutes.

It should be said right now that the Order made its acceptance of the aforesaid Cardinal's judgement conditional on a «specific interpretation» of three points, the second of which asserted that the «Order's religious nature is limited to professed Knights and to the Chaplains composing it».

This interpretation was notified to the Holy See through diplomatic channels, and the Holy See advised, again through diplomatic channels, that it «had taken note of what had been written».

The path we must follow is thus the one indicated at the time by the parties in their interpretation.

The comments made so far pertain to International Law aspects, but it is also necessary to update the Statutes in accordance with amendments to Canon Law, especially with regard to First Class members (for example their being answerable only to the Grand Magistracy or to a Council made up of religious for matters pertaining to their vocation).

The Order's regulations are not autonomous in this sense, since they must adapt to Canon Rules as they evolve. The Order's internal life must also be taken into consideration. Many gaps can be found in the regulatory structure, including the establishment of the quorum for the election of the Grand Master and members of the Sovereign Council. Other regulations also need to be re-drafted, such as those on access to the second class, besides the importance to attribute to the participation of women in the Order's life.

Finally, it is indispensable to have a regulatory approach which defines correctly and with far-sightedness the relations between the Grand Magistracy and Order's bodies, especially the National Associations which, jointly with the Grand Priors and Priors, are the supporting framework of the Order. They must have a place and a relevance corresponding to the functions they carry out within the constitutional system.

Their autonomy must be rigorously guaranteed within the sphere of regulations and deliberations, in line with constitutional principles and with an increasing functional decentralisation. The role they perform on an operational level for the attainment of the Order's institutional aims must also be clearly recognised, matched by an appropriate participation in the decisions directly affecting the institution's life.

These and other problems should be tackled in a structural manner, and not through sporadic episodes. It is necessary to lay the foundations for preparing a complete, systematic project, to be submitted to an Extraordinary Chapter General, specially convened for the purpose within a reasonable estimate of two years. The constitutional procedure entails giving the Sovereign Council, in its new composition, a mandate for appointing a legislative Commission with the task of drafting the project, obviously authorised to consult experts, especially for matters pertaining to Canon and Malta Law, without prejudice to the final opinion of the Consultative Juridical Council with regard to its own sphere of competence. It now only remains for me to thank His Most Eminent Highness the Prince and Grand Master and the Sovereign Council for having given me the possibility of enjoying, in the Order, this experience of legislative co-ordination.

I would also like to thank their Excellencies the Venerable Grand Priors, the Priors, the Regents, the Presidents of National Associations and their representatives, for their zeal and punctuality in sending me their proposals, and for having participated in the Malta Seminar. The work carried out, for which all must be given credit, will not be in vain. May the Holy Virgin of Fileremo and St. John the Baptist illuminate us in this Assembly, and may they assist us in the steps the Order will take along the path of constitutional reforms, in view of the third millennium.