Federico Marti
(adjunct professor of History of Canon Law at the Pontifical University
of the Holy Cross, Faculty of Canon Law)

Short Notes on the International Status of Sovereign Order of Malta 
under International Law. Functional Limits and Dependence upon the 
Holy See in the light of the New Constitution of 3 September 2022

ABSTRACT: The presence of the Order of Malta (acronym SMOM) on the 
international scene, because of its singularity, has been the subject of debate and 
discussion among scholars of international law as well as canon law. In fact, the 
SMOM’s juridical subjection to the Holy See because of its nature as a Catholic 
Religious Institute is a critical point under the traditional international legal 
theory that seems to be inconsistent with the Order’s international subjectivity. 
The aim of this study is to point out that, using a broad and modern notion of 
international subjectivity, there is no incompatibility between the canonical 
nature of the Order of Malta and its membership in the international community.

SUMMARY: 1. Introduction - 2. The SMOM self-qualification as full member of 
the international community: critical notes - 3. The nature and scope of the 
international legal subjectivity of SMOM - 4. The non-relevance of the canonical 
status and the relationship with the Holy See for the international subjectivity of 
SMOM - 5. Conclusions.

1 - Introduction

The presence of the Order of Malta (acronym SMOM) on the international 
scene, because of its singularity, has been the subject of debate and 
discussion among scholars of international law as well as canon law. In 
particular, the legal status of SMOM is a topic mainly affecting Italian 
scholars possibly because the Government of the Order is headquartered 
in Rome. In general, the Italian doctrine identifies the historical origin of

* Peer reviewed paper - Contributo sottoposto a valutazione.

1 The bibliography concerning the Order of Malta is endless. For a general overview 

2 Some international jurists do not mention SMOM when in general exposing the 
subject of the international law system, for example cf. A. REMIRO BROTONS, R.M.
the Order of Malta’s current international status to preferential treatment from the Italian Government\(^3\), which, since the unification of Italy (Risorgimento), has had relations with SMOM, considering it as an entity with international legal personality, despite its nature as a religious order within the Catholic Church\(^4\). It must be pointed out that recently there has been a legal precedent that tends to limit the Order of Malta’s immunity also with respect to Italian jurisdiction\(^5\), but the Italian government’s unwavering policy clearly confirms its traditional attitude towards the Order of Malta and its international status\(^6\). Having said that, the question about the subjectivity/legal personality of SMOM under international law has not as yet been settled although “the Sovereign Order of St John of Jerusalem, of Rhodes and Malta (known as the Order of Malta) is generally accepted as possessing international personality”, both in doctrine and practice\(^7\).

---


\(^3\) Cf. *G. PASCALE*, Su alcune recenti vicende riguardanti i rapporti dell’Ordine di Malta con l’Italia e la Santa Sede, in *La Comunità internazionale*, 2017, pp. 191-212.


\(^6\) On 2013 was signed an agreement between the Italian Republic and the Sovereign Military Order of Malta concerning the updating of the diplomatic notes of 11 January 1960 and the regulation of the bilateral relations, cf. *Gazzetta Ufficiale della Repubblica Italiana* of 11 January 2013, general series n. 9, p. 67. Cf. also the postal agreement came into force on March 2016, and the very recent agreement on matters of cooperation for see rescue operations signed on September 2020, awaiting feedback from the Order of Malta to take effects (cf. https://atrio.esteri.it/).

On its official website, the Order of Malta describes itself as a ‘primary subject’ of international law. First of all, it should be noted that the


An important scholar as Crawford, provided that only the States have the ‘power’ to claim international personality, distinguishes between ‘objective international personality’ and personality recognized by particular States only, and he says “that the former exists wherever the rights and obligation of an entity are conferred by general international law, the latter where an entity is established by particular States for special porpoeise. States clearly are included in the former category: the Order of St. John of Jerusalem, Rhodes and Malta is an example of the latter”, J.R. CRAWFORD, The creation of States in International Law, Oxford University Press, Oxford, 2006, 2th ed., p. 30; on the same advice is R. NICHOLSON, Statehood and the States-like in International Law, Oxford University Press, 2019, p. 210. Similar but not the same is the advice of Karski who, by considering the Order of Malta’s subjectivity under international law indisputable, points out that its “status, however, is of a secondary nature, stemming from its recognition by the Holy See - the Order’s sovereign - as well as by states that maintain diplomatic and treaty relations with it” K. KARSKI, The international Legal Status of the Sovereign Military Hospitaller Order of St. John of Jerusalem of Rhodes and of Malta, in International Community Law Review, 2012, p. 29.
expression primary subject appears rather problematic from the point of view of international law and internationalist doctrine, where the concept is neither sufficiently determined nor agreed upon. However, precisely by qualifying itself as a primary actor, SMOM claims a position comparable to that of States. Now, if we remain attached to the classic internationalist law concept, according to which the entities that belong to the international community are those that superiorem non recognoscunt and exercise effective territorial control, two arguments undermine the Order of Malta’s self-qualification as a subject of international law in the strict and proper sense as full subjectivity and sovereignty: a) the lack of a territory over which to exercise subjectivity/sovereignty under international law; and b) the dependence on the Holy See.

In the former, the lack of a territory over which to exercise subjectivity/sovereignty under international law, is today not so relevant, since it reflects a classic concept of international subjectivity under which international subjectivity strictly derives from exclusive dominion over a given territory. In fact, such an argument has been criticised in particular by the Holy See, which has constantly claimed its own international subjectivity, even after the end of temporal dominion of the Papal States, and independently from the Vatican City established in 1929; and today no one can seriously deny that the Holy See joins a full membership in the international community.

8 In this regard, precisely the presence of SMOM together with the Holy See within the international community is used as proof of the existence of non-State sovereign entities by E. Allen, M. Prost, Ceci n’est pas un État: The Order of Malta and the Holy See as precedents for deterritorialized statehood?, in Review of European, Comparative & International Environmental Law, 2022, pp. 171-180, and in particular p. 177, which reads “The key point to note then is that, even if the Order of Malta and the Holy See are, to an extent, valuable precedents for the disappearing island community, they are not in actual fact precedents of deterritorialized States but rather of legally proximate non-State sovereign entities. The two precedents may be drawn upon to prove that there is room in international life for some form of deterritorialized sovereign existence. But these precedents are, at best, examples of sui generis entities inhabiting the grey zone between statehood proper and non-State personhood. The idea of deterritorialized statehood in the full sense is theoretically conceivable. But it remains the case that a State without territory is a proposition for which there is, in actual fact, no genuine historical precedent”.

9 In this regard, the preamble of the 1929 agreement between the Reign of Italy and the Holy See is very clear stating that “Since, in order to ensure the absolute and visible independence of the Holy See, it is necessary to guarantee it an unquestionable sovereignty in the international sphere, it has been deemed necessary to constitute, with particular modalities, Vatican City, recognising over it the full ownership and the exclusive and absolute power and sovereign jurisdiction of the Holy See [translation of
The argument worthwhile dwelling on is, therefore, the latter: the Order of Malta’s dependence on the Holy See since it has a more direct impact on the question of the subjectivity/personality of SMOM under international law. If we remain bound to the classic and somewhat restricted concept of international subjectivity, understanding it as limited exclusively to subjects that superiorem non recognoscunt, it necessarily follows that SMOM is not de jure a subject of international law. This is not the place to go into doctrinal insights and suffice to say that this view is not accepted here. Article 4 of the new SMOM Constitutional Charter promulgated by the Roman Pontiff on 3 September 2022, states that “The Order is a subject of international law and exercises sovereign functions in respect of the purpose referred to in Article 2 herein. It maintains

the A.J”, Acta Apostolicae Sedis, 1929, pp. 209-210. This passage affirms that the Holy See is, natura sua, a fully-fledged subject of the international community, but it is considered opportune to cast any doubts or objections to this truth by creating the Vatican City State for this purpose.

By consequence, Italian scholars defending SMOM’s full international subjectivity affirm that SMOM is a juridical entity with dual dimension: one as religious order of the Catholic Church and referred to the spiritual activities and one as full sovereign subject within the international community referred to the sanitarian and diplomatic activities; by consequence the canon law and the role of the Holy See doesn’t touch anything affecting the second dimension of the Order of Malta, cf. G. CANSACCHI, Sovrano Militare Ordine di Malta, in Enciclopedia Giuridica Treccani, p. 3, § 4; R. COPPOLA, Natura dell’Ordine di Malta, aspetti di diritto ecclesiastico e canonico, in Archivio giuridico, 2007, pp. 306-307; G. SARLO, Il sovrano militare ordine di Malta modello di persona mixta, in www.ministrativamente.com, fasc. 3-4/2015, p. 6; M. FERNÁNDEZ DE BÉTHENCOURT, La orden de Malta. Estatuto jurídico internacional, Editorial Sanz y Torres, Madrid, 2019, p. 28 and p. 258. Someone even affirms that SMOM is basically a knightly order subject of international law inside which there is a small group of members bound by religious votes enjoying a particular status within SMOM constitutional order; by consequence the relevance of canon law and the role of the Holy See is strictly limited to religious members both as individual persons and group, cf. L. MAZZAROLLI, Osservazioni sulla nuova e vecchia organizzazione dell’Ordine di Malta, in Diritto e Società, 2000, p. 3. A summary on Italian juridical theorises supporting the international subjectivity and true sovereignty of SMOM, and therefore SMOM autonomy form the Holy See is offered by F. TURRIZIANI COLONNA, Sovranità ed indipendenza nel Sovrano Militare Ordine di Malta, LEV, Città del Vaticano, 2006.


diplomatic relations with States and International Organisations”. Article 5 §7 of the Charter states that “The religious nature of the Order does not prejudice the exercise of its prerogatives as a subject of international law recognised by States”. The scope and actual legal meaning of the provisions of the current SMOM’s Constitutional Charter as well as the old Constitutional Charter must not be misunderstood.

First of all, and with reference to the particular relations between SMOM and the Holy See, it must be clearly pointed out that all international doctrine and civil governments are fully aware of the status subiectionis of the Order of Malta with respect to the Holy See. Even if the dependence on the Holy See has never been a problem for the States to engage an equal relationship with SMOM, this is the ground on which many authors develop their criticism about the true international subjectivity of SMOM. The subjectivity of SMOM is contested on the basis of several formal and substantial arguments that prominent Italian scholars summarise as follows:

- the Order remains an entity subordinate to the Holy See and therefore lacks independence, as stated in a sentence passed by a Court of Cardinals ad hoc appointed by Pio XII on 24 January 1953;
- the sovereign prerogatives enjoyed by the Order are granted only as a matter of courtesy and not based on an international obligation;
- observer status at the United Nations is irrelevant since it is granted to various other entities whose international subjectivity is unanimously and uncontroversially excluded;
- the agreements that the Order concludes and has concluded in particular with the Italian State cannot be qualified as true international

---

15 Cf. C. FOCARELLI, Diritto internazionale, cit., p. 94. Focarelli goes on to say that in Italy, the recognition of jurisdictional immunity to SMOM unjustifiably derogates from, and therefore contravenes, Article 6 CEDU (right to a fair trial, criminal profile) and the principle of equality of citizens under Article 3 of the Italian Constitution.
16 Cf. C. FOCARELLI, Diritto internazionale, cit., p. 94.
agreements, but as agreements subject to Italian law, not unlike many
other agreements that Italy concludes with associations and entities
engaged in medical-hospital and humanitarian assistance17;

- for the purposes of subjectivity under international law, it must
generally be considered always and entirely irrelevant that the subject, as
in the case of SMOM, self-qualifies as a subject of international law18;

- the Order of Malta has as its only link with the international
community the fact of having once ruled over Rhodes and then, until the
end of the eighteenth century over Malta, a link that is clearly not
sufficient to attribute full subjectivity or sovereignty as a subject of
international law19;

- the Order of Malta’s main activity, which is of a charitable nature, is
certainly very noble but this does not suffice to justify the possession of
international personality20.

However, regardless of legal soundness of the abovementioned
statements and admitting the Order of Malta’s subjectivity under
international law at least as a fact demonstrated by the diplomatic
relations that SMOM conducts de facto with over one hundred States21, it is
beyond doubt that the international political-legal-diplomatic subjectivity
of SMOM cannot be understood in the proper sense, i.e. as a full and
independent sovereign subjectivity. In fact, international legal doctrine
explains that even after the SMOM’s constitutional reform of 1997, the
sovereignty/independence of the Order of Malta’s ‘legal system’ and
‘organisational structure’ from the Holy See can only be considered
apparent22.

17 Cf. C. FOCARELLI, Diritto internazionale, cit., p. 95.
18 Cf. C. FOCARELLI, Diritto internazionale, cit., p. 95.
19 Cf. B. CONFORTI, M. IOVANE, International Law, Editoriale Scientifica, Napoli,
2021, 12th ed., p. 35
20 Cf. B. CONFORTI, M. IOVANE, International Law, p. 35.
21 Cf. D. CARREAU, F. MARRELLA, Diritto internazionale, Giuffrè, Milano, 2018, 2th
ed., p. 340. On the contrary Focarelli says that “however, relations with other states are
not necessarily ‘diplomatic relations’ capable of proving that the Order is globally
considered an international legal person, the agreements made by the Order are all
bilateral in character. Unlike the Holy See, the Order is not party to any multilateral
treaty. The Order might certainly be seen a ‘relief society’ under the terms of 1949 Geneva
Conventions, but it is not, unlike the Holy See, a party to such Conventions”, C.
FOCARELLI, International Law as Social Construct. The Struggle for Global Justice, Oxford
3 - The nature and scope of the international legal subjectivity of SMOM

The famous aphorism *ex facto oritur ius* should be taken into account when one reflects on the international status of the Order of Malta. Despite one’s attempt to reduce it to a mere fact of courtesy paid to SMOM’s past history, the Order’s diplomatic relations are a really strong indication of its international subjectivity; the large number of bilateral agreements clearly and definitively confirm its membership in the international community or, in other words, that the States recognize SMOM as a peer partner in dealings.

Scholars in general think that, unlike the States, SMOM’s international sovereignty can only be recognised as referring to a very limited sphere, not only due to the absence of a territory and a people, but also due to a competence limited to charitable, healthcare and hospital activities; in fact, the lack of population and territory implies lack of powers and sovereignty necessary to provide for them. In other words, it is a peculiar subjectivity functional to the achievement of the Order’s institutional aims. However, this lack of full sovereignty does not undermine its juridical personality under international law, as the


25 The non-registration of these agreements in accordance with article 102 of the Charter of the United Nations and art. 80 of Vienna Convention on the Law of Treaties (1969) as evidence to deny them the value of agreement under international law (cf. G. PASCALE, *Su alcune recenti vicende*, cit., p. 202) has no relevance because it doesn’t affect their validity from a political and juridical point of view; moreover, the Order of Malta is not bound to this provision because it never signed these two multilateral treaties.


international community’s attitude towards SMOM seems to confirm. The membership in the international community per se should not be affected by differences in the degree and scope of sovereignty in the same way as differences in status and thus differences in rights, duties and in the degree of autonomy per se don’t affect the general citizenship status. Conclusively SMOM, notwithstanding its special relationship with the Holy See and the limited scope of its sovereignty concerning charity, health and hospitaller activities, is a real citizen in the city of the international community.

4 - The non-relevance of the canonical status and the relationship with the Holy See for the international subjectivity of SMOM

29 For example, this was the case of European society before the French Revolution or still today in some Non-Western societies. For a general overview on the topic of citizenship cf. The Oxford Handbook of Citizenship, A. Schachar, R. Bauöck, J. Bloemraad, M. Vink Eds., Oxford University Press, Oxford, 2017.

30 By distinguishing between international subjectivity and sovereignty, Noel Cox affirms without hesitation the international subjectivity of the Order of Malta, but he denies its sovereignty because “Although the Sovereign Military Order of Malta maintains diplomatic relations with many countries and has maintained such relations for centuries, this, of itself is no guarantee of sovereign status. Today many international organizations are recognised as personalities in international law, though they do not claim sovereign status. The Order of Malta is equivalent to such bodies. […] Any immunity enjoyed by the Grand Master of the Order, and by his diplomats, is akin to that now widely enjoyed by representatives of international organisations, rather than that of the princes of sovereign states”, N. COX, The Acquisition of Sovereignty by Quasi-States: The case of the Order of Malta (https://dx.doi.org/10.2139/ssrn.420024), pp. 18-19; later the same author, by using a wider and flexible concept of sovereignty, affirms also the sovereignty of the Order of Malta, cf. ID., The Continuing Question of the Sovereignty and the Sovereign Military Order of Jerusalem, of Rhodes and of Malta, in Australian International Law Journal, 2006, pp. 211-232. SMOM is qualified as humanitarian organisation recognized by a certain number of States by B.A. BOCZEK, International Law. A Dictionary, The Scarecrow Press, Lanham Maryland, 2005, p. 117, footnote 124. A similar opinion is expressed by A.-K. LINDBLOM, Non-Governmental Organisations in International Law, Cambridge University Press, Cambridge, 2005, p. 68: “my definition of ‘non-governamental organisation’ embraces the Order of Malta. The Order therefore provides an interesting demonstration of the flexible character of international law, which can clearly accommodate particular NGOs as international legal subjects if this is accepted by the international community The Order of Malta also illustrates what attributes of international legal personality can potentially be held by non-state entities”. Against the assimilation of SMOM to the NGOs is J. KOVACS, The Country above the Hermes Boutique, cit., p. 50.
The Order of Malta is a *sui generis* institution not only in the international legal system but also in the canonical legal system. In fact, it enjoys a very particular and exclusive status within the Catholic Church, and it is precisely this particular and exclusive canonical status that makes it possible and safeguards SMOM’s membership in the international community.

At first glance, according to Article 1 §2 of the new constitution that reads “It is a lay religious Order, recognised by Pope Paschal II with the Bull *Pie postulatio voluntatis*, and is a subject of international law”, SMOM seems to be a regular religious order and thus fully subject to the regular canonical legislation, especially the Code of Canon Law like any other religious order, but it is not so. In fact, the Order of Malta is a true religious order from a canonical point of view, but it is not entirely regular.

Firstly, it must be said that a lay religious order under canon law is a species in the genus of the institutes of consecrated life\(^{31}\) and, in case of a male institute of consecrated life, members can be indifferently laics and clerics, in short priests or not\(^{32}\). The main and specific feature of a religious order within the framework of the institutes of consecrated life is that its members, according to the proper law of each order, pronounce public vows, either perpetual or temporary which are to be renewed, however, when the period of time has elapsed, and lead a life of brothers or sisters in common\(^{33}\). So, members of a religious order are exclusively men or women bound by religious vows. Of course, there may be laic (i.e., non-religious or consecrated) men or women sharing the same spirit of a

---

\(^{31}\) The consecrated life “through the profession of the evangelical counsels, is a stable form of living by which the faithful, following Christ more closely under the action of the Holy Spirit, are totally dedicated to God who is loved most of all, so that, having been dedicated by a new and special title to His honour, to the building up of the Church, and to the salvation of the world, they strive for the perfection of charity in the service of the kingdom of God and, having been made an outstanding sign in the Church, foretell the heavenly glory” Code of Canon Law, Can. 573, § 1.

\(^{32}\) Cf. Code of Canon Law, “Can. 588 § 1. By its very nature, the state of consecrated life is neither clerical nor lay. § 2. That institute is called clerical which, by reason of the purpose or design intended by the founder or by virtue of legitimate tradition, is under the direction of clerics, assumes the exercise of sacred orders, and is recognized as such by the authority of the Church. § 3. That institute is called lay which, recognized as such by the authority of the Church, has by virtue of its nature, character, and purpose a proper function defined by the founder or by legitimate tradition, which does not include the exercise of sacred orders”.

religious order however living a secular life, but they never enjoy membership in that\textsuperscript{34}. The Order of Malta, on the contrary, is the only religious order having laic members (i.e., non-religious or consecrated) as true members and, also, having laic female members with exactly the same rights and duties of laic male members\textsuperscript{35}.

Secondly, a unique constitutional framework derives directly from the aforementioned peculiar membership\textsuperscript{36}. To preserve the ontological nature of the Order of Malta as a true religious laic Order but also to reflect its current way of being characterized by the decisive contribution of the laic members, the central government of SMOM is now split in two different but coordinated command-lines: one under the exclusive responsibility of the religious members and the other shared by religious and laic members\textsuperscript{37}.

\textsuperscript{34} They may establish their own associations called Third Orders, but these are clearly distinguished by the related religious Order. In this regard, the Code of Canon Law Can. 303 states that “Associations whose members share in the spirit of some religious institute while in secular life, lead an apostolic life, and strive for Christian perfection under the higher direction of the same institute are called third orders or some other appropriate name”. For its part, a Religious Order having associations of the Christian faithful joined to it, has the duty to assist them with special care so that they are imbued with its genuine spirit of its charism, cf. Code of Canon Law, Can. 677, § 2.

\textsuperscript{35} The profession of religious vows reserved to the knights is the only existing difference based on sex within the Order of Malta. In order to avoid sexual discrimination, the current Constitution and Code generally use the generic reference member instead of knight or dame.

\textsuperscript{36} The Order of Malta has three different classes of members with different juridical status according to SMOM’s Constitution Art. 9: “§ 1 - The Sovereign Military Order of Malta comprises members who participate, according to their state of life, in fulfilling the charism and mission of the Order. The members of the First Class, or Knights of Justice also called Professed, and the Professed Conventual Chaplains, who have taken both temporary simple and solemn religious vows, are the essential core of the Order. They are accorded full duties and rights. Given, however, the lay nature of the Order, the Professed Chaplains can only vote except as provided in Article 29 § 1 d) according to which they can also be voted. § 2 - The members of the Second Class, who are bound to the Order through the promise of obedience, and the members of the Third Class, by reason of their status are given specific duties and rights”. It is certainly coherent with its nature of catholic religious Order that only the members of First Class possess the fullness of rights within the Order of Malta because they are burdened with the fullness of duties in virtue of their religious profession.

\textsuperscript{37} This is not the time to discuss SMOM’s current constitutional order. Here it is sufficient to highlight the presence of two different Cabinets (the Sovereign Council and the Council of Professed Members, cf. SMOM Const. Art. 25 and Art. 26) and two different Estates-General (the General Chapter and the Chapter of the Professed Members, cf. SMOM Const. Art. 28 and Art. 31).
Lastly, SMOM is unique in the panorama of the Catholic Church not only because of its membership or its constitutional framework but also and above all because of its *sui generis* status as religious order within the canonical legal system. In fact, the Order of Malta enjoys such strong autonomy, i.e. some prerogatives, privileges and immunities towards the Holy See that place it at a much different level compared to all other religious orders. 

With reference to this last point, it must be said that the promulgation of a new Constitution and Code directly by the Roman Pontiff on 3 September 2022 has the opposite meaning from what might appear at first glance. Instead of an undue interference infringing upon the autonomy of the Order of Malta and its right to be a member of the international community, the papal ruling is strictly aimed at safeguarding SMOM’s special status within the canonical legal system and thus its international status. In fact, the *ius proprium* of the Order of Malta, because it is granted directly by the Roman Pontiff as *lex specialis*, prevails over *lex generalis*, namely all canonical legislation and even the Code of Canon Law itself.

By the peculiar nature of SMOM, it follows that a constitutional and structural independence must be radically excluded, i.e. the independence of both the legal system of SMOM (in its founding principles at least) and of the Order of Malta’s governing organisation (in its apex and central structure at least) with respect to the Holy See, i.e. the body at the head of the universal Catholic Church to which SMOM belongs, and on which its very existence basically depends. The new and current Constitution

---

38 For example: unlike all other canonical entities, the Order of Malta is not required to obtain the permission of the Holy See in case of alienation of goods which exceeds the amount defined by the Holy See for each country but only in case of alienation of things given to the Church by vow, or things precious for artistic or historical reasons (cf. SMOM Const. 56, § 1, compared with Code of Canon Law Can. 638, § 3); notwithstanding the Code of Canon Law Can. 1405, § 3, n. 3°, which states that it is reserved to the Apostolic Tribunal of Roman Rota the judgement over “dioceses or other physical or juridic ecclesiastical persons which do not have a superior below the Roman Pontiff”, the Apostolic Tribunal of Roman Rota has no jurisdiction over the Order of Malta (cf. SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, sentence of 13 April 2018 Prot. N. 50773/15 CG unpublished). On the canonical regulation of the privilege cf. B. ESPOSITO, *I privilegi apostolici. Commento sistematico-esegetico alla seconda parte del can. 4 del CIC/83*, in Lex rationis ordinatio. Studi in onore di Patrick Valdrini, V. BUONOMO, M. D’ARIENZO, O. ÉCHAPPÉ Eds., Luigi Pellegrini, Cosenza, 2022, vol. II, pp. 617-665.

39 It should be pointed out that dependence on the Holy See affects both the Order of Malta as an institution and each individual member. In this regard, the Code of Canon Law Can. 590 is very clear by stating that “§1. Inasmuch as institutes of consecrated life
confirms that by stating that “Order of Malta has, ipso iure, a public juridical personality in the Church” (SMOM Const. Art. 5, § 1) and by consequence it is inserted in the canonical legal system so much so that the canon law and the binding acts of the Roman Pontiff are sources of law within the Order of Malta (cf. SMOM Const. Art. 6, nn. 1 and 2).\(^{40}\) Even with reference to the abrogated 1997 Constitution and Code, that one scholar described as a Copernican revolution granting full independence from the Holy See and thus full international sovereignty to the Order\(^ {41}\), the international doctrine clearly pointed out that “the constitutional reform of 1997 has allowed the Order to assume greater confessional autonomy [translation by the A.]”\(^ {42}\), but certainly not such autonomy as to sever its ties with the Holy See from which it clearly remains dependent\(^ {43}\). Other authors define the relationship between the Holy See and SMOM in terms of subordination or lack of independence\(^ {44}\). But, either way, the Holy See, especially in case of agreements between SMOM and States, does not have direct jurisdiction on the Order’s activities, although these must be carried out in accordance with the inalienable principles of Catholic morality.

Whatever kind of relationship SMOM has with the Holy See, the current international legal position of the Order of Malta is first and foremost a fact that depends on the willingness of a considerable number of members of the international community to consider SMOM as a peer interlocutor, albeit sui generis, because of historical reasons and, moreover, for the particular importance and characterisation of its activities at
international level. In addition, SMOM’s sovereignty is not boundless like that of the States but it is limited to the management of its activities (which can be defined as a functional sovereignty)\(^{45}\).

At the same time, however, the subjectivity of SMOM under international law is also a fact of law, in the sense that the exercise of its international subjectivity recognised de facto by the States is closely linked to the centuries-old and ever-present desire of the Holy See to grant SMOM, which by its own nature is nothing more than a religious Order of the Catholic Church and a juridical person under canon law, the right to enjoy its membership with related duties and rights in the international community\(^{46}\).

5 - Conclusions

The subjectivity or juridical personality attributed to SMOM at international level is different from the subjectivity/personality under international law enjoyed by States that are political and juridical entities to which SMOM is in no way comparable. While the international legal personality of States is connatural to them and is to be understood in the full sense, i.e. as full sovereignty and independence, the same is not in the case of the Order of Malta. First, its international subjectivity/sovereignty is accidental. In fact, it arises from a common consensus within the international community to consider SMOM, by its very nature a juridical entity within the canonical legal system, as a peer partner in dealings for historical reasons and, moreover, for the great importance and particular characterisation of its activities at international level. Secondly, the sovereignty of SMOM is functional, because its scope, i.e. its independence or autonomy, is limited to the aforementioned activities. By consequence,

---


\(^{46}\) “given the fact that the Order of Malta is an order of the Roman Catholic Church, i.e., part of another entity it, therefore, cannot be regarded as a sovereign subject under international law. This is despite the fact that it lays claims to such a status, which is reflected, among others, in its name. […] Yet it undoubtedly is a subject of international law, a secondary subject whose status is determined by the recognition by primary subjects, i.e. by the Holy See and various states”, K. KARSKI, The international Legal Status, cit., pp. 31-32.
this *sui generis* subjectivity is not such as to make SMOM sovereign and fully independent from the Holy See to which it remains organically connected. In this sense, it would perhaps be more correct to define SMOM as a *de facto* international entity with international juridical subjectivity. The Order of Malta’s international juridical personality is only *functional* insofar as it is limited to its institutional functions - charitable and assistance - and not extended to its legal system and governance structure, which cannot but remain subject to the Holy See which, however, grants to the Order a particular and exclusive status within the canonical legal system. Hence the full legitimacy under international law of the Holy See’s intervention to protect the Order of Malta’s founding charisma and its existence. But still this dependence on the Holy See doesn’t affect SMOM’s international subjectivity at all.\(^{47}\)

\(^{47}\) A similar advice is expressed by Bonet Navarro who affirms that the “Sovereign Order of Malta is an entity with strong link to the Holy See, due the fact that it is a religious order. However, unlike other religious orders, it has the status of subject of international law, the right to send its own diplomatic mission, and the right to sign agreements with other subjects of international law”, J. BONET NAVARRO, *Religious Confession in International Order*, in *Integrazione e politiche di vicinato. Nuovi diritti e nuove economie*, G. DAMMACCO, B. SITEK, A. URICCHIO Eds., Cacucci Editore, Bari, 2012, p. 313.