Regarding dethroned princely Houses and their legal rights

Reference is made to the decision of the United Court of Bari of the 1st April 1952 in the case of the prosecutor vs. Umberto Zambrini and to the decision of the Tribunal of Pistoia of the 5th June 1964 in the case of the appeal against the penal judgment given against Francesco Mario Paternò Castello having found Prince Francesco Mario Paternò Castello di Carcaci, in his capacity as the last representative of a sovereign dynasty (the Royal House of Aragon), entitled to confer titles of nobility (the Court of Bari), respectively being the heir to the House of Paternò Castello Guttadauro di Emmanuel and legitimate holder of the same family's rights, including the power of *ius honorum* which has been preserved by family tradition and which cannot disappear through dethronement (Pistoia).

Further reference is made to the decision of the Ordinary Tribunal of Ragusa of the 9th May 2003, in session as an international court of arbitration, in the case between the Higher Institute of Nobiliary Law vs. Francesco Nicola Roberto Paternò Castello di Carcaci. According to the findings of the court of arbitration the following rights belong to Francesco Nicola Roberto Paternò Castello di Carcaci, in his capacity as consanguineous and descendant in a collateral line of the last sovereign of the Royal House of Aragon as his legitimate successor and as pretender to the throne:

a) the quality of Royal Highness and Royal Prince of the Royal House of Aragon, Majorca and Sicily;
b) the right to designate himself Sovereign and Head of Name and Arms of the Royal House of Aragon, Majorca and Sicily, never renounced, with the right for himself and his successors for an unlimited period, whether male or female, to all the qualities, prerogatives, attributes and styles of that rank and with the possibility to use coat of arms, titles and designations which belong to him by hereditary right;
c) the nobiliary style of Nobleman of the Dukes of Carcaci, Prince of Emmanuel, Duke of Perpignan and by the Grace of God and hereditary right as legitimate Pretender to the Thrones of Aragon, Majorca and Sicily, to the titles of Prince of Catalonia, Count of Cerdagne, Count of Roussillon, Patrician of Catania, Lord of Valencia, Lord of Montpelier, Count of Urgell, Viscount of Carlades, etc, etc, Sovereign Grand Master of the Military Order of the Collar of Saint Agatha of Paternò, Grand Master of the Order of the Royal Balearic Crown, Grand Master of the Royal Order of James I of Aragon, Grand Master of the Order of San Salvador of Aragon and of the Royal Aragonese Order of the Knights of Saint George and the Double Crown;
d) the sovereign prerogatives known as *jus majestatis* and *jus honorum*, with the ability to confer nobiliary titles, with or without predicates, noble arms, honorific titles and chivalric distinctions relating to the hereditary dynastic Orders; and
e) the quality of a subject of international law and of Grand Master of non-National Orders within the terms of the (Italian) Law of the 3rd March 1951, No. 178.

Taking into consideration what has been mentioned above and in particular the declaration that the Head of the Royal House of Aragon, Majorca and Sicily is recognised as a subject of international law, the question has been put to the Stockholm Institute of Public and International Law as to what this may involve within the framework of traditional European public law and which obligations, possibilities or limitations may follow from said recognition. On account of this, the Stockholm Institute of Public and International Law has compiled the following

The reference to traditional European public law requires that the case be put into its perspective.

The first thing that must be said is that the starting point for all lines of argument is the hereditary principality. This may be said to go back to what is called the Salic Law (*Lex Salica*), which was written down during the early 6th century under King Clovis as law for the Salian Franks, and which was the foundation for the empire of Charlemagne. As a current implication of the Salic Law it is still true in respect of the Channel Islands (Guernsey and Jersey), which are a separate feudal remain under British sovereignty within the Duchy of Normandy, so that the Queen of the United Kingdom is there referred to as the Duke of Normandy (never as Queen) and saluted as "the Queen our Duke". In a similar way in the British Isle of Man – an ancient Norwegian Viking realm – she is referred to as "Our Lord". One regulation from the Salic Law would play an important part in European history from the feudal Middle Ages onwards, namely with regard to the inheritance of land. The law prescribed that "hat cometh and hood goeth" as it is expressed in Swedish medieval history. This law prohibited a woman from inheriting Salic land. All land through paternal inheritance should go to the men who are brothers, even if under King Chilperic I some time around 750AD there was an amendment which allowed the inheritance to go to a daughter if there were no male heirs. According to the custom prevailing in the hereditary principalities since the 15th Century, in order to safeguard agnatic succession, the Salic Law is regarded as excluding female succession. There was however also semi-Salic succession, which meant that, when all male heirs were extinct including those in the collateral lines, an inheritance would go the closest female heir (the daughter of the last male heir) and after her revert to male Salic succession.

The Salic Law and its various interpretations lies behind a number of European wars, including the Hundred Years War, but also more recently such as the Carlist Wars in 19th century Spain, the Miguelite Wars in Portugal of the same period and still closer to us the war of 1848 concerning the right to Schleswig-Holstein.

Until the dissolution of the universal monarchy and its emperors and popes, which has characterised the so-called New Age, and the transition to an international community of states and a public law between sovereign princes based on the Peace of Westphalia (1648), political life was characterised by continued dynastic politics carried out between kings and emperors appointed by the Grace of God. Between them there was formed a special public law of the princely Houses, which found its most distinguished expressions in the Treaty of Utrecht 1713. This succession of peace treaties concluded the War of the Spanish Succession 1701–1713, which raged at a time when Sweden was afflicted by the Great Northern War (1700–1721) and thus it followed that the Swedish interest in it was very moderate. The war was primarily between on the one hand Louis XIV of France and Philip V of Spain and on the other the so called Grand Alliance of Queen Anne of Great Britain, the Low Countries, the Duchy of Savoy and others. King Charles II of Spain was childless, sick and himself the last male member of the Spanish branch of the House of Hapsburg. The entire Spanish Empire would therefore be without direct heir when he died (as transpired on the 1st November 1700). Charles had two aunts. Claims to inherit from him were made on behalf of their respective sons, Louis XIV of France and Leopold I of Austria. Furthermore, both were married to the sisters of Charles II, Maria Theresa and Margarita Theresa respectively. It is true that the

former had renounced her claims when she married Louis XIV, but this did not prevent her husband from re-activating those claims and they received a certain recognition. But in order not to stir up bad blood among the opponents both monarchs transferred their claims to relatives, Louis XIV to his second grandson Philip the Duke of Anjou, and Leopold I to his younger son by his third marriage the Archduke Charles. As a possible compromise claims were also made by the Bavarian Prince Elector Joseph Ferdinand, who was the son of Leopold's daughter Maria Antonia.

It was considered permissible according to current public law at that time for a prince to transfer sovereign rights by means of an act of law *inter vivos,* see Hugo Grotius, "*De jure belli ac pacis libri tres"*, book II, chapter VI, numbers 3 and 14, and book I, chapter III, number 12. Thus the prince was entitled to lay down by means of a Will or other provision in the event of his death which succession would be valid for subjects or objects of public law. The testamentary provision made by King Charles II of Spain in favour of the grandson of Louis XIV, a Bourbon, was therefore completely in accordance with this practice. See here Samuel von Pufendorf, "*De officio hominis et civis juxta legem naturalem libri duo"*, book II, chapter 10, number 6 and chapter 7 number 11 (cf. Johann Wolfgang Textor, "*Synopsis iuris gentium"*, chapter IX, numbers 26 and 27).

A preliminary treaty of distribution had been made in October 1698 between France, England and Holland who divided a number of European territories between the claimants to the throne but gave the rest of the Spanish empire to the Prince Elector Joseph Ferdinand, however this settlement came to nought through the sudden death of Joseph Ferdinand. A second treaty of distribution between the same powers was made in 1700, which gave the crown of Spain to Archduke Charles and compensated France with a number of other areas. But then King Charles II died and in his Will he had given the 17 year old Duke Philip of Anjou as the heir to all his states and, with the consent of Louis XIV, Philip accepted the Spanish crown and on the 18th February 1871 entered Madrid. With this the War of the Spanish Succession broke out.

It ended in the same dynastic manner. Leopold of Austria died in 1705 and was succeeded by his son Joseph I, who in turn died in 1711. His closest heir was Archduke Charles. This would have meant a union between Spain and Austria under the same ruler which was not in the interests of the Grand Alliance. Hence in January 1712 the Peace Congresses of Utrecht were initiated, which finally led to the conclusion of peace between England and France on the 11th April 1713. According to this treaty Philip of Anjou kept the Spanish empire, on condition that the crowns of Spain and France were never to be united.

The settlement should also be viewed against the background of the special dynastic structure of Austria. The Austrian monarchy was until the reign of Maria Theresa only a conglomerate of countries that in many cases had nothing in common except the same ruler. To a great extent the empire had been brought together through dynastic liaisons and Austrian dynastic politics were considered especially successful, as is apparent from the well-known maxim *Bella gerant alii, tu felix Austria nube* (Others may make war, you happy Austria get married).

With the Treaty of Utrecht a rule of public law was confirmed which demanded that a prince or princess with hereditary rights should renounce such rights when he or she married into a foreign princely family. The issue has been commented on by Professor J.W.H. Verzijl in "International Law in Historical Perspective", book III, p. 332, as follows:

> The inconvenience of such hereditary acquisitions of territorial sovereignty had already become obvious long ago, owing to the danger of the accumulation of power and the consequent disturbance of the existing political equilibrium. This has led to the express prohibition of concentrating two specific crowns on one head …

According to this rule of common and public law (royal connivance) it became customary within the royal Houses of Europe that when a prince or princess (with hereditary rights in his or her own royal House) married into a foreign royal House, he or she would renounce the hereditary rights in his or her own House in order to enter the royal House of the husband or wife and assume the titles of that House and become the subject of its sovereign, all in order to prevent a union of hereditary claims on different subjects of public law.

Such provisions and agreements made by a sovereign *de jure* in his public capacity are subject to the rules on treaties in public law (Emmerich Vattel, *"Le droit des gens"*, numbers 214 – 215). Testamentary regulations (political testaments) include public unilateral international transactions, see in greater detail Oppenheim-Lauterpacht *"International Law"* 8th ed. vol. I, numbers 486, 488 (cf. J.W.H. Verzijl in "International Law in Historical Perspective" vol. II, p. 17, and vol. III, pp. 304-7). If the person who in this way by means of a Will or other provision has lost his or her hereditary right has failed to protest against the Will or provision, a prescription of public law sets in against every later questioning of such a public legal disposition on behalf of the descendants, see Emmerich Vattel, *"Le droit des gens"*, book II, numbers 145-146 (compare the Vienna Convention from 1969 on the law of treaties, art. 31.3(a).).

Should a dispute arise concerning which succession may be valid it was recommended in the doctrine of public law that succession is lawfully settled by the members of the sovereign house in question, e.g. Samuel Pufendorf, *"De officio hominis et civis libri duo"*, book II, chapter 10, p 135 ff. :

> In case a controversy should arise in regard to the succession in a patrimonial kingdom, it will be best to take the matter before arbitrators among the royal family.

(cf. Hugo Grotius, *"De jure belli ac pacis libri tres"*, book II, chapter 7, nr 27(2)).

An interesting illustration of this practice is offered by the Pragmatic Sanction of the 6th October 1759 which became the constitution of the Kingdom of the Two Sicilies. When King Charles II of the Two Sicilies (later to be King Charles of Spain) was to inherit the throne of Spain after his elder brother's demise he issued this Pragmatic Sanction which defined the relationship between the succession in the royal House of the Two Sicilies and the Spanish royal House. He abdicated from the throne of the Two Sicilies in order to deny Spain any intervention or participation in Italian affairs, in accordance with the principles of the Treaty of Utrecht. Thereby the future King of the Two Sicilies, his son Ferdinand I, whose successors made up the royal House of the Two Sicilies, was liberated from the paternal power and the authority and jurisdiction of the King of Spain. Thus the royal House of the Two Sicilies was established as a new and completely independent royal House.

The issue arose again when Prince Charles, pretender to the throne of the Two Sicilies as second son of the Count of Caserta, married the Infanta Mercedes, elder sister and heiress to

King Alfonso XIII of Spain. Charles renounced his dynastic claims to the succession in the royal House of Bourbon Two Sicilies on the 14th December 1900. Thereby he wished to ensure that his children by his marriage to Mercedes would irrevocably become members of the royal House of Spain and entitled to the Spanish succession.

In accordance with the principles of Utrecht against any such union of royal crowns, Prince Charles of Denmark gave up his claims of succession in the Danish royal House when he in 1905 was elected King of Norway.

The revolutionary frenzy of the Napoleonic era brought many and violent upsets in the dynastic policies of Europe. Emperor Napoleon expelled a countless number of legitimate monarchs and replaced them with his own relatives on their European thrones. There was a completely new set of monarchs and an entirely new French imperial aristocracy. The principality of Pontecorvo in the Papal States was, for example, awarded to Marshal Jean-Baptiste Bernadotte, and the house of Bernadotte has to this day preserved its claim to this princely title. The position of the Napoleonic monarchs was however precarious because it was exceedingly dependant on Napoleon's own power. When this tottered, in most cases the monarch also fell and the end of the story was a special public law treaty made by the powers who were eventually victorious : Austria, Prussia and Russia on the one hand and Emperor Napoleon himself on the other. Professor Frede Castberg (Folkerett /Public Law/, Oslo 1937, p. 36) refers to this as :

> The agreement concerning the abdication of Napoleon I made in Paris on the 11th April 1814 … in article 1 of the treaty Napoleon renounced for himself and his descendants all sovereignty over France, Italy and all other countries. In article 3 he was granted "sovereignty and proprietary rights" over Elba, and a series of other personal rights. This agreement must be viewed as a treaty and hence subject to the rules of public law in terms of interpretation etc.

The dynastic politics would however get a splendid revenge at the Congress of Vienna of 1815, the leading principle of which was legitimacy and which aimed at reinstating the rulers previously removed from their thrones by Napoleon. The continuity in the dynastic system was dependant not least on the central position of Austria in the Europe of the Congress of Vienna and the statesmanlike genius of Prince Metternich. Henry Kissinger describes Austria in those days in the following manner:

> A vestige of feudal times, Austria was a polyglot empire, grouping together the multiple nationalities of the Danube basin around its historic position in Germany and Northern Italy ("Diplomacy", p. 82).

As for Sweden there is reason to recall the marriage treaty made on the 8th November 1822 between the princely Houses of Bernadotte and Leuchtenberg, which stipulated in article 3 that the Princess Joséphine retained the right, in spite of the decree about strict evangelical doctrine in the Constitution of 1809, to the free exercise of her Catholic religion as Crown Princess and Queen of the united kingdoms of Sweden and Norway. King Charles John Bernadotte, whose position in post-Napoleonic Europe was somewhat precarious, wanted through this dynastic liaison with the house of Leuchtenberg (and hence with the ancient house of Wittelsbach) to confirm his recently acquired legitimacy. Thanks to the marriage treaty a Catholic chapel was arranged in Stockholm Palace and Joséphine was given a Catholic confessor. This state of things continued until 1862, when the dissenter law was

passed in Sweden which included freedom for all Christians to practice their religion in the country, after which the treaty lost its purpose.

During the Congress of Vienna of 1815, on the initiative on Tsar Alexander, Russia, Prussia and Austria formed the Holy Alliance, which designation would stand for more than a century as a symbol for powers united to suppress revolutionary movements. What the Tsar proposed was in reality only a personal union of sovereigns in order to apply the principles of Christian morality in both domestic administration and international activities. Understood in this manner, the Alliance later won adherence from most of the states in Europe apart from Great Britain which refrained, not so much because of its aims as because of its ties with the persons of the enlightened despots. However, in opposition to this idealistically conceived Alliance, the so-called Quadruple Alliance was reborn which had been brought about in the previous year to fight Napoleon. With this the alliance of the great powers of the 20th November 1815 was formed in order to keep the European calm, a sort of a directorate of states which, without formally opposing the equality of the members of the international community of states, awarded to themselves quasi-legislative authority and by and large decided how Europe should be governed. The Quadruple Alliance or Tetrarchate of 1815 became with the entry of France 1818 the Quintuple Alliance or Pentarchate. At the congress of Aix-la-Chapelle in 1818 a declaration was signed in which the assembled powers recognised public law as the foundation of the international relations and committed themselves to act in future in accordance with its rules. At the Congress of Troppau in 1820 the Alliance was reduced to three by the defection of France and Great Britain, but decided to declare the principle of armed intervention. The famous Troppau protocol declared that "states, which have undergone a change of government due to revolution, the result of which threatens other states, ipso facto cease to be members of the European (Holy) Alliance and remain excluded from it until their situation gives guarantees for legal order and stability". The three remaining allies, Russia, Prussia and Austria, committed themselves to take up arms to return the malefactor to the bosom of the Holy Alliance, if on grounds of such revolutionary changes there was immediate danger to other states (see Hayes, "A Political and Social History of Modern Europe", II, pp 13 ff).

The Congress of the super power Alliance in Aachen (Aix-la-Chapelle) in the autumn 1818 was of significance for the negotiations between Sweden and Denmark regarding the implementation of the regulations of the Peace of Kiel. Notes in favour of the Danish claims were exchanged, conferences held and pressure applied on Sweden. At last the issue was raised in Aachen, in spite of the fact that neither Denmark nor Sweden was represented there, and the sovereigns of Russia, Prussia and Austria each issued an identically worded communiqué to King Charles John with the rather harsh request to bring the conflict with Denmark to an end before long. "It now falls to Your Majesty not to fail our expectations" was the last phrase in the communiqué.

The Norwegian Parliament (the Storting) raised yet another intervention by its decision to cancel existing nobiliary privileges. King Charles John had, however, refused his assent and in 1821, when the Storting renewed its decision and thus intended to carry through the law against the will of the King, the European reaction was obvious. The super power Alliance in the congresses of Troppau (at the end of 1820) and Laibach (at the beginning of 1821) laid down the principle of intervention as a universal rule against revolutionary movements in other states. Revolutions had broken out in Spain, Portugal and Naples, and Austria began its armed incursion into Italy. Because the nobility was seen as a mainstay of the monarchy, the Norwegian decisions aroused the concern of the cabinets of the super powers and, faced with

the threat of armed intervention, Charles John requested among other things a larger loan in order to put his kingdom in a state of defence, if need be. None the less, with a small majority, the Storting passed the Norwegian law for the third time.

The repercussions of the protocol from Troppau were far-reaching. The interventions in Naples and Spain passed indeed without protest, but when the Alliance went further and offered Spain support in a war to re-conquer her colonies in America, which had declared themselves independent, the United States discovered their interests were deeply implicated and this caused President Monroe on the 2nd December 1823 to announce the so-called Monroe Doctrine. This declared the American continents no longer open to the colonisation of European powers and that the United States would regard every attempt from the Alliance "to expand its system" to the Western hemisphere as a danger to its own peace and security.

The principle of intervention was thus a reality, while at the same time dynastic disputes provoked bloody armed conflicts in some places. The losing side normally never surrendered its claims to the throne and thought themselves, in spite of the dethronement, to have reasonable hope of future reinstatement. The esteem in which the surviving dynastic principle was held was of course dependant on the central position in Europe held by Austria. As Henry Kissinger in his above mentioned analysis of the days of the Holy Alliance described Austria and the term "the European concert":

> A vestige of feudal times, Austria was a polyglot empire, grouping together the multiple nationalities of the Danube basin around its historic positions in Germany and Northern Italy … Austria sought to spin a web of moral restraint to forestall tests of strength. Metternich's consummate skill was in inducing the key countries to submit their disagreements to a sense of shared values.

The violent changes for the sovereigns of Europe brought about by Napoleonic politics and the restitutions entailed by the legitimacy principle of the Congress of Vienna also included the situation of the Pope. The Papal States were abolished and re-introduced, the Pope fled from Rome and found a place of refuge in Naples after which the Papal States were re-created and the Pope returned to Rome under French protection, until the city was conquered by the Piedmontese forces in 1879 and the Pope lost all his territorial possessions. Although thus dethroned he preserved his sovereign position as a subject of public law, and the new Italian kingdom under the House of Savoy found itself forced out of consideration for the Catholic powers, who refused to accept the dethronement, to grant him by the so-called Law of Guarantees of the 13th May1871 the position in public law which perhaps the loss of the Papal States would have nullified.

A country which made the most of dynastic politics was Denmark, which had ended up on the losing side in the dynastic dispute over Schleswig-Holstein. Through an assiduous matrimonial policy King Christian IX acquired the epithet of Europe's father-in-law. His first daughter became Queen Alexandra of England, his second daughter became Empress Dagmar of Russia, his second son became King George I of Greece, his grandson Charles became King Haakon VII of Norway, not to mention other alliances at lower levels. Because of this Danish literature has not surprisingly devoted much attention to the legal position of princely houses, see e.g. Knud Berlin, "Den Danske Statsforfatningsret" (The Danish Constitutional Law), part 1, 1916, p 263 ff, with references to H. Rehm "Das landesherrliche Haus, sein Begriff und die Zugehörigkeit zu ihm" (The Sovereign House, its Concept and Membership

of it), 1901 and "Modernes Fürstenrecht" (Modern Princely Law), 1904. (Cf. the judgment of the German National Court 28.9.1891 (XXII Entsch. Reichsgerichts in Strafsachen 141).

During the rest of the 19th Century the unification activities of top level politics in the wake of triumphant nationalism would lead to a total transformation of the map of Europe. Germany and Italy established themselves as great European powers under their own princely Houses. The old dynasties became subordinate and some gave up their claims. Others did not, such as the Bourbons of the Two Sicilies and the royal Houses of Prussia and Würtemberg.

It is against this background that one should see the words in C.A. Reuterskiöld's textbook on public law ("Folkrätt, särskildt såsom svensk publik internationell rätt", p. 47 f, /Public law, especially as Swedish public international law/, published as late as after the 1927 edition of Strupp: Elements; compare Reuterskiöld, "Stater och internationella rättssubjekt"/States and subjects of international law/, 1896).

> The most important of these [subjects of public law] is the Papal Church, which, even after the loss of the Papal States, through the Italian Law of Guarantees of the 13th May 1871 is recognised as sovereign, that is completely independent of the Italian state, on the site where the Pope has his residence, and which like other states has both right to ambassadors and the conclusion of agreements (concordats) with other subjects of international law. To this category of subjects of international law belong also dethroned sovereign princely Houses. In as much as they are kept together as princely Houses with claims of sovereignty and have not become subjects of a particular state; it is usually thought that those only "par courtoisie" are treated as still sovereign, but in reality this is a consequence of the non-intervention principle, which since the cessation of the Holy Alliance is generally recognised concerning the internal matters of states - as long as the princely House has not given up its claims, the question of its rights is left open, even when the actual head of state, who has come in its place, is recognised as the actual representative of the state in question.

The Order of St. John - also called the Order of Malta - is recognised as a sovereign subject of public law in the modern sense ever since Emperor Charles V awarded the Order the island of Malta, after its former tenancy of Rhodes was lost to the Muslim Turks. The Order participated, for example, with its own naval force in the battle at Lepanto in 1571 and with its own delegations at the Peace of Westphalia of 1648 as well as in the peace negotiations of Utrecht of 1713. France under Louis XIV even gave to the Order in 1653 the West Indian islands of St. Christophe, St. Martin, St. Bartholomé and Ste. Croix, although in 1798 when Napoleon conquered Malta, they returned to French sovereignty. On the occasion in 1653 the issue of protocol was regulated in as much as the envoys of the Order were given precedence immediately after the king's own ambassadors and this issue of protocol was brought up again inter alia in 1747. The Grand Masters of the Order were regarded and treated after the loss of Malta as a dethroned princely House and kept their diplomatic representation at a number of European princely courts. The Order still has a special status at the Holy See, which once created the same (letter of confirmation from Pope Paschal II of 1113AD) and has diplomatic relations with the Pope and the Order nowadays has bilateral diplomatic relations with about 80 states. When the Italian kingdom prepared to conquer Rome and abolish the Papal States, in 1868 Count Cibario made a special report which established "that the Order according to European public law has never ceased to be sovereign" (see Georg B. Hafkemeyer, "Der Malteser-Orden und die Völkerrechtsgemeinschaft", p. 448-456, at p. 455 with further

reference, in Adam Wienand, ed., "Der Johanniter-Orden, der Malteser-Orden", 2 ed, Cologne). It has observer status at the UN since 1994 and enjoys the same privileges as the Red Cross, including the right to address the General Assembly. In the Swedish textbook Eek-Hjerner-Bring, "Folkrätten" ("The Public Law"), 4 ed., they have - setting aside the historic elements - explained the status of the Order as a subject of public law as follows:

> Its exceptional position is connected with the task of being an association for bringing help to casualties of war and therefore being active within the state community and on its behalf. In the final part of the diplomatic conference which accepted the Geneva Convention of 1929 about the treatment of wounded and sick among armed forces in the field of battle a statement was made according to which the Order of Malta was to be regarded as a recognised relief organisation in aiding the casualties of war…. At the diplomatic conference on the rules of war 1974 - 1977 the Order of Malta had observer status. (p. 220).

The First World War brought further upsets to in the European system of states which were not less than those in the Napoleonic period and a multiplication of dethroned princely Houses, above all arising from the collapse of the dynastic Empires (the German Empire, the Austro-Hungarian monarchy, Tsarist Russia). Many of the princely Houses accepted dethronement by means of abdications or in other ways (the House of Habsburg), others such as the House of Hohenzollern did not.

In the new Europe anti-clericals and republicans had their days of glory after the dissolution of the Metternich state system and their positions of power were used as much as possible to repudiate nobility and princes. A French prefectorial decree of the 16th February 1894 prohibited the use of all flags, except the French and those of foreign powers' national colours and the insignia of authorised or approved associations. At the canonisation of Joan of Arc on the 4th July 1909 a number of buildings in the French city of Mans were decorated with the papal flag (yellow and white with the papal keys in black) but this bravado led to an indictment against those responsible in accordance with the decree, however they were acquitted in the court of first instance because the personal flag of a sovereign had the same privileges as that of a state, and all foreign powers undisputedly recognised the Pope's sovereignty until the issue of a new French law on the 9th December 1905. Changes in the French political leadership in that year led to France withdrawing its recognition of the Papal See. The Court of Cassation overturned the outcome in its judgment of the 5th May 1911 with the argument that the papal flag was no longer the national colours of a foreign power since the pope's sovereignty had come to an end through the incorporation of the Papal States into the kingdom of Italy (see the case Gustav Gaultier et alii, ref. in Scott, "Cases on International Law", nr. 49; cf. Philippe Simonnot, "Les papes, l'église e l'argent, Historie économique du christianisme des origines à nos jours" , Bayard).

The period between the World Wars saw a number of attempts to abolish nobiliary titles which normally were granted by a sovereign being in possession of *fons honorum*. Thus in the constitution of the Weimar Republic it was declared that nobiliary titles were only recognised as part of the surname and that no new such titles were to be conferred. In a similar manner it was prescribed in the constitution of the new state Czechoslovakia that no titles were to be conferred unless they showed an occupation or profession. In connection with the assumption of power by Mussolini in Italy a prohibition was issued on the 28th October1922 against the granting of new nobiliary titles. This was then reflected in the post-fascist Italian constitution of 1948 which in Art. XIV prescribed that nobiliary titles should not be recognised, but that

titles and designations in existence before the 28th October 1922 were valid as part of the name ("*valgono come parte del nome*"). In the Italian law of the 3rd March 1951 the constitutional prohibition was reinforced. Art. 7 declared that Italian citizens could not within the territory of Italy use honorific distinctions and chivalric distinctions which had been conferred upon them without having previously been authorised by the Italian President, however the awards of the Holy See and the Order of Malta were exempt from this. To the regulation were joined penalties by Article 8. In Italian legal usage the rules and regulations have however been interpreted to mean that they only prohibit Italian civil servants from referring to nobiliary titles in their work. Titles which had been conferred before the 20th October 1922 have a life of their own and thus exist, but cannot be used in the Italian territory without express permission of the President. It is the same thing with titles conferred by non-national Orders or foreign states. It was however possible subsequently to have a surname revised to include in such manner titles created or pre-existent.

The dethronement which previously had been characteristic of the various princely Houses of Europe characterised by dynastic rule (monarchical Heads of State) would with the transition of many states to republican forms of government entail a new type of dethronement, namely so-called governments in exile. Such appeared already during the First World War. The Czech Legions entered an agreement with certain states and in 1917 France recognised the Polish National Committee in Paris as an "organisation officielle polonaise". Corresponding recognition by the Allied Powers was given to the National Committee of "Free France" in 1941 which made public law agreements with various states at war. The German Neuordnung during the Second World War and the Communist revolutions in Europe during the time thereafter multiplied of course the number of dethroned princely houses.

After the Great War there was, however, a change in attitude which is reflected in the 2nd edition (1950) of Halvar Sundberg's textbook of public law in the following words:

> As is apparent from the above, subjects other than states can also act as subjects of public law, i.e. as parties in public law relationships. This is however not generally recognised in public law literature. One reason for this has been that when individual subjects appear, the foundation for this is usually a treaty made between states, in which case the capacity of the subjects of private law is derived from this treaty. This undisputed case can however not prevent that the individual subject, who with the support of the treaty brings a claim of public law to bear, just as undeniably appears as a subject of public law to the extent determined by the treaty and for its duration.

The judgment pronounced in the interwar period by the Upper Silesian court of arbitration in the case of Steiner and Gross v. Polish State is usually seen as a predecessor of a more general change of attitude, where the court rejected the objection that an individual subject according to international law could not enter a dispute with its own state (in this case thus the state of Poland) before an international instance (Annual Digest 1927-1928 nr. 188). But after the war this situation became very common. Professor Frede Castberg expresses in his book "Studier i folkerett" (Studies in public law) p. 17:

> That private individuals can have public law claims against their own or foreign states may now be said to have reached an extended recognition. The international protection for human rights may well in principle be thought of as established in the shape of a system of public law rules which only gives rights

to states and international institutions. But it is a reasonable consequence from the political ambitions one here faces that the individuals themselves can assert their rights, independent of the agencies of the states. The last witness to this tendency of development is “the convention for the protection of human rights and fundamental freedoms”, as adopted under the auspices of the Council of Europe in 1950.

Today, 50 years later, the Europe convention in question has developed into an enormously extensive system which covers an area between Reykjavik and Vladivostok and has had an influx of complaints from private individuals to an extent which has entailed 85,000 cases in balance. Among the plaintiffs has been a number of representatives of dethroned princely Houses, who also in this manner have won recognition as subjects of public law, e.g. former King Constantine of the Hellenes, Prince Sigvard Bernadotte and Princess Caroline of Hanover (née of Monaco). To the extent that dethroned princely Houses previously have been recognised as subjects of public law “par courtoisie”, they have in any case not lost their position through the later development.

As far as the head of a dethroned, formerly ruling princely house is concerned, in this particular case the Royal House of Aragon, Majorca and Sicily, which was once of massive importance in the Western Mediterranean, has had its position as a subject of international law recognised, this should imply that the person concerned may on this account be considered as having rank equal to a head of state and such rights and obligations which go with it.

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