THE MALTESE CORSAIR COURTS

PAUL CARUANA CURRAN

THE COURTS IN THE 17TH CENTURY

Privateering in Malta is known to have existed long before the Order's arrival. Its usefulness became more and more apparent as time passed. As the population of Malta multiplied from the 16th century onwards, commerce and the number of merchants, as also privateering and those who were connected with it, increased proportionately. At the same time, however, abuses, which had always existed, also increased. In 1605, the Grand Master Alof de Wignacourt found it necessary to set up an organisation to control privateering and to give the corsairs a statute to observe.

Thus on the 17th June, 1605, the Magistrato degli Armamenti came into being. It was composed of five Commissioners, all of them nominated personally by the Grand Master and changed in rotation at two-yearly intervals. Three of the Commissioners were Knights Grand Cross, the fourth member being a senior knight. All four were drawn from different 'languages'. The fifth member was a secular learned person, usually a lawyer.

Licenses could be granted by the Grand Master on the corsair's application, but only after the Grand Master had been given a favourable report by the Magistrato as to the quality of the armament, its provisions and its fighting potential. It was also specifically laid down that Christians, and even infidels carrying a Christian passport, were not to be molested. Before leaving port, the corsair captain had to swear not to attack Christians and to provide a solvent surety (*pleggio di bandiera*) to guarantee his obligation.

The Magistrato during the 17th century exercised jurisdiction over all litigation concerning corsairs who flew the flag of the Religion. Those corsairs who flew the Grand Master's flag were subject, however, to the Grand Court of the Castellania, which was a lay court. From both these courts there lay an appeal to the Suprema Curia d'Appello e Tribunale dell'Udienza. The Castellania, whose main concern was the normal litigation of the civilian population, became of great use to the Corso when in the closing decades of the 17th century the corsairs ran into trouble. The fact was (as shall be explained below) that the Maltese corsairs now began to attack Greek shipping and since the Greeks were Christians, they rightly sued the corsairs in the courts of Malta. But while from decisions reached in the Magistrato there lay a second

appeal to the Vatican Courts, no such thing could be done from the Castellania, since this latter court was maintained by the Grand Master in his own capacity as a sovereign prince, and not as head of the Order, which was supposed to be subservient to Rome. Inevitably there was a greater chance, of a prize being declared illegal when the case was referred to Rome.

The Consolato del Mare

In 1697 the Grand Master set up the Consolato del Mare, again in his capacity as a sovereign prince. This was organized on the lines of similar courts in other important commercial centres in the Mediterranean (Messina, Barcelona and Valenzia), and was meant to deal with all matters conceming normal commerce. The 'consuls' of the Consolato del Mare were four merchants of experience in maritime trade, who sat two at a time, and the 'assessore', the qualified judge, who sat only when required. They were all appointed by the Grand Master.

The Maltese Corso, having reached its zenith in the closing decade of the 17th century, was, in the last years of that century, visibly in decline. One reason for this decline was the rise of French influence and commerce in the Levant. The French king was, in the interest of French commercial activities, putting pressure on the Grand Master to restrict the damage being done to Turkish shipping in the Levant by Maltese corsairs because this was leading to violent reprisals by the Turkish authorities on French merchants in the ports of Syria, Phoenicia and Egypt which were ruled by the Sultan. The second, equally important reason for the decline of the Corso was the increased use of Greek shipping by the Moslem merchants of the levantine ports. This was a clever, but at the same time only natural move by the Turks as the Greeks were their subjects. In time this move proved to be the Turk's own undoing as it was through their increasing merchant fleet that the Greeks asserted their claims to nationhood after the long Turkish occupation.

By about 1700 the clash in the east between the Greeks and Maltese became marked. So large a proportion of levantine merchandise was being carried on Greek ships, that it was impossible for the Maltese Corso in the Levant to function without it molesting Greek shipping. The Greek merchants whose goods were plundered by Maltese corsairs were entitled to come to Malta and sue the latter in the Maltese courts.

In the light of this, the importance of the Consolato del Mare during the 18th century becomes clear. All corsairs who were licenced to sail with the flag of the Order, as had generally been the practice in the 17th century, were subject to the Magistrato and ultimately to an appeal to Rome. In answer to this the corsairs were being licenced in increasing numbers to sail with the personal flag of the Grand Master. These were subject to the jurisdiction of the Castellania.

Within a few years of its establishment the Consolato took over the responsibilities of the Castellania with regard to the corsairs flying the flag of the Grand Master. As with the Castellania before 1697 the decisions reached in the Consolato were only subject to the appeal to the Tribunale dell'Udienza and there was, therefore, no possibility of a second appeal to Rome.

The competence of the Consolato allowed for flexibility of manoeuvre and it was quite perfectly in order that it should deal with the effects of privateering on commerce. It was provided in the Statutes of the Consolato that in case of doubt or conflict as to whether the cognisance of a law-suit belonged to the Consolato or to another court of Malta, it was the Grand Master who was to decide which court was competent. On the whole it was obvious that the Consolato had a general jurisdiction over all maritime affairs while the Magistrato had a special one over privateering.

For over three decades the Consolato del Mare remained of paramount importance, dealing with all litigation concerning corsairs flying the Grand Master's flag. The Pope, however, through the Inquisitor on the island, began to exercise pressure on the Grand Master and the corsairs flying his flag. He had taken it upon his shoulders to protect Greek shipping from attack by fellow Christians. He refused to recognize the Consolato del Mare as a prize court. In 1733 the Grand Master had to give up the use of his personal flag. This meant the end of the Consolato del Mare as a prize court, for now all corsairs had to fly the Religion's flag and were responsible to the Magistrato degli Armamenti, which was ultimately subject to the feared appeal to Rome. This remained the situation for the next half century, which was largely a period of decline for the Corso.

A second remedy sought by the Maltese corsairs in order to interrupt the process of the decline of their activity in the Levant was to sail under the flags of foreign princes, usually that of the Grand Duke of Tuscany or that of the King of Spain. These princes

had altogether different rules regarding the Greeks. The decisions of their courts were not subject to appeal to the Vatican courts and it seems that the Greeks were not given quite as fair a chance as they were in the Maltese courts. Of course in these cases the Greek merchants could not sue in any of the Maltese courts since these did not claim jurisdiction over the corsairs of Tuscany and Spain. By 1732, however, the Grand Master, as a result of diplomatic pressure from the Pope had to prohibit the use of foreign flags by Maltese corsairs.

The Tribunale degli Armamenti under the Code de Rohan

The Magistrato degli Armamenti, now known as the Tribunale degli Armamenti, was reconstituted in 1784, when the Code de Rohan came into force. It substantially improved the position of the Corso. This was made possible by a thorough reorganization, as far as privateering was concerned, of the entire juridical structure and machinery that existed at that time. Of interest here is the reorganization of the Magistrato or Congregazione, which now became the Tribunale, and that of the appeal court. The Consolato del Mare was reduced to a shadow of its former self. It now had its name changed to Tribunale Marittimo dealing exclusively with normal peacetime commerce. As may be noticed, many of the old names were changed, though for no apparent reason. But it is clear that the transformation of the prize court from Magistrato to Tribunale had a definite meaning.

From 1784 there actually came into being not one tribunal but two, or perhaps more exactly two sections of the same tribunal. One was the Tribunale degli Armamenti con Bandiera del Nostro Ordine, while the other became the Tribunale degli Armamenti con Nostra Bandiera (i.e. of the Grand Master). The former remained constituted on the same lines of Wignacourt's law of 1605 with five commissioners and observing the statutes and regulations which had been valid for the old Magistrato. The Tribunale degli Armamenti con Nostra Bandiera was really a new court altogether. It was composed of only three officials. One was the *ricevitore pro tempore* who was a senior knight in charge of the collection of sums due to the Treasury, including the important 10% share (or tithe) of the value of the booty always paid to the Grand Master, known as *Diritti di Ammiragliato*. This fee was also paid by foreign corsairs who came to Malta to sell their booty. The second member was the *consultore*, most commonly a lawyer. The third

member was the *cancelliere* or *mastro notaio*. All three were nominated by the Grand Master and could be removed by him.[1]

As to the appeal after 1784, the Code brought into existence a much more complex system which was of great use to the Maltese corsairs. The old Suprema Curia d'Appello e Tribunale dell'Udienza now became known as the Tribunale della Publica Udienza. This, with a much more limited competence, took over the duties of the old appeal court. It was to it that the appeals of the Tribunale con Bandiera dell'Ordine went, as had been the case before 1784.[2] The decisions and judgements of the Tribunale della Publica Udienza were, of course, still subject to a final appeal to Rome, although this was not mentioned in the Code de Rohan. The Tribunale degli Armamenti con Bandiera dell'Ordine, according to the Code, had to observe all the regulations which had been made by the Consiglio Compito and the Consiglio di Stato[3] and this made it automatically subject to the appeal to Rome.

A new court of appeal had meanwhile been created in 1782, styled the Supremo Magistrato di Giustizia and designed to take over some of the duties of the overworked Suprema Curia d'Appello e Tribunale dell'Udienza. From 1784, it became known as the Tribunale Collegiato. This new court was to hear all appeals from the Tribunale degli Armamenti con Nostra Bandiera.[4] The decisions reached by the Tribunale Collegiato could not have the force of law until approved by the Grand Master himself.[5] Rome is not mentioned, and since there were no previous statutes binding either the Tribunale degli Armamenti con Bandiera or the Tribunale Collegiato, as both were newly established courts, it is clear that the new Code did not recognise any appeal to Rome in their re-

[1] Diritto Municipale di Malta (Code de Rohan), Book I, Chapter XXXV, Articles I and II.

[2] Diritto Municipale di Malta, Book I, Chapter XXXVII, Article I.

[3] The Consiglio Compito was the supreme authority of the Order, being the tribunal of appeal from the Consiglio di Stato. It was composed of all the ordinary state councillors together with another sixteen knights, two from each *langue*, all over 25 years of age and members of the order for at least five years.

[4] Diritto Municipale di Malta, Book I, Chapter VIII, Article XX: The distinction between the two sections of the Tribunal is brought out very clearly by the fact that Appeals from their decisions lay to different courts.

[5] Diritto Municipale di Malta, Book I, Chapter VIII, Article XL.

gard. It is to be noted that the Code de Rohan is completely silent on the question of the appeal to the Pope and that of the independent jurisdiction of his Inquisitor on the island.

Thus the Corso found good backing in one or two subtly thought out provisions of the new Code. The Code de Rohan and the Tribunale degli Armamenti it constituted in 1784 were partly behind the revival of the Corso in the late 18th century. They could not, of course, guarantee that the corsairs would win all their cases, but they did give them protection from undue interference by Rome.

As before 1784 the Tribunal had both judicial and administrative functions and exercised detailed supervision over the ships, crews, equipment, provisions, disposal of booty, and the considerable litigation connected with the Corso.

During this period the *ricevitore* of the Order, who was the presiding member of the Tribunal, was the Balí Fra Gioacchino de Britto, of the Langue of Castille. His family had old connections with the Order.

The *consultore*, or legal expert, was Raffaele Crispino Xerri, one of the *Uditori*. He had a distinguished career also under British rule, being made a member of the Supreme Council of Justice and knighted in 1818. The high rank of the two leading members of the Tribunal shows the prestige of the Corso.

The *cancelliere* or *maestro notaio*, was Giuseppe Vella, a notary from Burmola, who practised from 1761 to 1800. This official had very onerous duties, keeping the records of prize cases, drawing up inventories of the booty arriving in Malta, inspecting and searching ships and keeping a separate account of the transactions handled through the bank of the Tribunal.

Under these three there were an assistant notary, an accountant and other officials.

The procedure of the Tribunal, as can be seen from the records, was kept as simple and short as possible. No holidays were allowed excepting those required 'in honour of God'.[6]

Two Important Cases

In the last twenty years of the Order's presence in Malta and hence of the Corso's existence, there was in fact a revival of Maltese privateering in Barbary (North African) and Levantine waters. If, however, the effort of the Corso in the Levant was to

[6] Diritto Municipale di Malta, Book I, Chapter XXXV, Article III, and the note by Sir Antonio Micallef.

be sustained it was imperative for the corsairs to have at least some good lines of defence in the law suits instituted against them by the Greeks.

The two cases related here were typical of the litigation in Maltese courts resulting from the intense Greeco-Maltese rivalry in the Eastern Mediterranean. On the 20th March, 1796 Captain Giorgio Mitrovich[7] left Malta for Barbary, and subsequently sailed to the Levant, in command of the xiabec *Santissimo Crocifisso e la Beata Vergine del Carmine* (almost all corsair vessels bore religious names) with a crew of 37 men. In the course of his cruise Mitrovich seized two vessels. The first he captured off Navarino. This ship was a cutter or palandra and was commanded by a Greek Teophilius of Negroponte, who said that he was carrying his cargo from Trieste to Samos. He produced a recommendation of the Order's consul in Trieste requesting Maltese corsairs not to molest him. Mitrovich sent his clerk aboard to carry out the *visita* or search. The cargo was found as described by the Greek captain but in addition the clerk found some munitions of war, a Turkish flag, a Turkish passport and a Turkish contract relating to the purchase of the cutter. Mitrovich decided to arrest the cargo ship and to bring her to Malta so that it would be decided whether it was legal prey or not.

The second vessel Mitrovich captured off Cape Spartivento. On being sighted by the corsair, the Greek captain, Dimitri Liodi, hoisted a Greek flag, then lowered it and hoisted a Turkish flag. The merchant ship, a pollacca, when called to obedience, took to flight. She was soon overtaken by Mitrovich. Liodí said he was carrying wheat from Alexandria to Marseilles, but had changed route to Malta and that he had a recommendation from the Papas of Mykonos asking Maltese corsairs not to molest his ship. He also showed a Turkish passport. Mitrovich, however, found she was carrying four cannons and other minor weapons. She also carried a Turkish pennant. In view of these circumstances and for lack of proof of the Christian ownership of the vessel and cargo, Mitrovich

[7] Mitrovich was the best anown among a large number of Slavs resident in Malta at the time profiting from the business of privateering. He was the grandfather and godfather of the future Maltese patriot (his namesake) of the 1830's who was born in 1795, when Giorgio the elder was at the height of his career, and who pleaded so much for Press liberty and more education for Malta. See Parochial Registers, Senglea, Births, 1775-1796, fol. 452 and Catholic Greek Parish Church, Valletta, Baptism, fols. 19-20.

brought the vessel to Malta for examination.

The validity of the depredations was strongly contested by both Liodí and Negroponte. The case Liodí vs Mitrovich is unique because it contains the complete record of the appeal by the advocate Salvatore Chapelle on behalf of Mitrovich. It is here reported first because the Tribunal decided this case before that of Negroponte.

Chapelle's argument was developed on the following lines. Cases of depredations of Greeks by Maltese corsairs were not to be viewed principally under the *Jus Comune* but under the *Diritto Municipale* (Code de Rohan), the relevant provisions[8] of which were based on the Clementine Bull of 1738. Both the Bull and the Code as statute laws made it clear that it was for the Greek claimant to prove that the depredation was unlawful. He had to bring strict and conclusive proof that both the vessel and the cargo were Greek-owned. If he failed to do so the Tribunal's decision was clear. In any case Mitrovich would prove that the vessel was Turkish.

Chapelle referred to the fact that the pollacca had first put up the Greek flag, then hurriedly replaced it with the Turkish flag. He argued about the Greeks' habit of cheating and their innate characteristic of colluding with their Turkish masters. He submitted that no proof of Greek ownership was produced and that Liodí was not covered by any passports, except for some ineffective letters of recommendation. Consequently, he said that the prey was lawful under the Code de Rohan. With regard to the *Jus Comune* Chapelle submitted that in previous cases Greek claimants had never been successful when the vessel had been carrying both a Turkish flag and a Turkish pennant.

This case did not go too well for Mitrovich, however. The Tribunal decided that the captured pollacca should be restored and that the Greeks should be paid the auction price of the cargo as damages and interest. They must have been impressed by two practical arguments raised in defence of the Greeks by Giovanni Calcedonio Debono. The first was based on the justification of the pollacca's attempt at flight. The Greeks declared that they believed Mitrovich's xiabec to be a Barbary corsair and that they only fled for that reason. The second argument was directed against Chapelle's point regarding the Greek variations of flag. They ar-

[8] Diritto Municipale di Malta, Book VI, Chapters XIV and XV.

gued that they had no choice, as Ottoman subjects, but that of flying the Turkish flag, which protected them from Turkish and Barbary corsairs; while they had to carry a Greek flag in order to protect themselves from unlawful attack by fellow Christians. Thus the Tribunal had to recognise the usage of the Greeks of flying two flags, which was a great advantage to the growth of Greek shipping. The Greeks, as Christians and Ottoman subjects, were, in fact enjoying the best of both worlds.

In the other case, Negroponte vs Mitrovich, the Greeks only scored a narrow victory, as can be seen from the decision of the Tribunal given on 28th April, 1797. The Tribunal held that the vessel and cargo were owned by Christians and that there was not enough proof that the cargo would be used by Turks rather than Greeks. The destination of the cargo was the island of Samos, which the Maltese interests claimed to be inhabited by Turks and Greeks, while the Greeks contended that it was inhabited by their co-nationals except for the Aga who collected taxes, and a small garrison. The Tribunal took the latter view. It also held that the arms and munitions of war on the vessel were too small to be of any assistance to the Turks. The Tribunal ordered Mitrovich to return the vessel and cargo, but it dismissed, in this case, all Greek claims for damages and interest on the grounds that the provisional arrest of the vessel was justified under several aspects, such as the original presentation of insufficient and contradictory documents as well as the presence of what were, strictly speaking, munitions of war. It was worth noting, however, that as late as February 1798, Nicola Calafatti, a relative of the ship's owner, was still in Malta trying to obtain execution of the decision reached. The Maltese financiers frequently adopted delaying tactics in order to make things as difficult as possible for the Greeks.[9]

Legal practice and tradition owe the Maltese Corso a debt of gratitude for there was a sincere effort by the judges and officials

[9] The sources for the two reported cases are –
Archives Courts Malta,
Tribunal Armanentorum,
Acta Originalia,
Vol. B. 26, Case 20, fols. 2-6, 36-58 for the case Liodi vs Mitrovich; and
Vol. B. 29, Case 1 for the case Negroponte vs Mitrovich.
See also the thesis by the writer of this essay – 'The Last years of the Maltese Corso', Chapters I and III and Appendix III.

of the Tribunals, as well as by the Maltese Lawyers practising in that court, to put things right wherever justice and equity so required. Many illustrious Maltese lawyers such as Chapelle, Bonavita, Torregiani, Calcedonio Debono and Giovanni Nicolò Zammit took part in its proceedings. The Magistrato, or the later Tribunale, was a true and proper prize court administering the law of nations as then already acknowledged by enlightened international legal opinion, and especially as recognised by the relevant provisions of the Code de Rohan. The records of the corsair courts of Malta, if we may call them so, are still excellently preserved in local archives. They provide reliable evidence of the understanding and appreciation of this branch of the law in Malta even in those far off, swashbuckling times.

DOCTORS AND WOULD-BE DOCTORS IN THE LAW REPORTS

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J.J. CREMONA

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DOCTORS (and, following the order in the title of this lecture, I shall come to would-be doctors later) figure in our law reports in several guises – as plaintiffs or defendants in civil actions, as persons charged in criminal actions, as witnesses and, lastly and more commonly, as experts. For the purposes of this lecture, I am confining my interest to doctors *qua* doctors as otherwise there are, of course, numerous instances of doctors figuring in the law reports as ordinary litigants. Obviously there is nothing to preclude doctors from joining in this national pastime which is court litigation and, as I said, there are several reported cases of doctors, even some of the most reputable ones, suing or being sued for damages in connection with traffic accidents, whereas in relation to traffic accidents I am obviously more concerned with doctors as experts