

**ROLE OF THE VATICAN IN
INTERNATIONAL LAW**

ROLE OF THE VATICAN IN INTERNATIONAL LAW

**Dissertation submitted to the Jawaharlal Nehru University in
partial fulfillment of the requirement for
the award of the Degree of**

MASTER OF PHILOSOPHY

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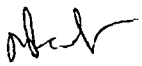
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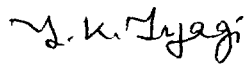
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CONTENTS

Acknowledgements

List of Acronyms

Chapter I

INTRODUCTION	1-13
1. Overview	1-4
2. Review of Literature	4-9
3. Objectives and Importance of Study	9-12
4. Structure of the Study	12-13

Chapter II

2. NATURE AND STATUS OF THE VATICAN IN INTERNATIONAL LAW	14-32
2.1. Nature of the Holy See as Distinct from the Vatican City	15-17
2.2. The Vatican and definition of "State" in International Law	18-30
2.2.1. Population	18-20
2.2.2. Defined Territory	20-22
2.2.3. Government	22-26
2.2.4. Capacity to Enter into International Relations	26-28
2.2.5. Observer Status with (the UN) International Organizations	29-30
2.3. Critical Comments	30-32

Chapter III

3. HIERARCHY AND WORKING OF THE VATICAN	33-58
3.1. The Roman Pontiff	34-35
3.2. The Roman Curia	35-37
3.3. The Secretariat	37-38
3.4. Congregations	38-41
3.5. Tribunals	41-42
3.5.1. Apostolic Signatura	41
3.5.2. Roman Rota	41
3.5.3. Apostolic Penitentiary	42
3.6. Pontifical Councils	42-45
3.7. Administrative Services	46
3.8. Synod of Bishops	46
3.9. Papal Legates	47-49
3.10. Principles Governing the Working of the Church Government	49-54
3.11. Critical Evaluation of the Hierarchy of the Church Government	54-56
3.12. Comment: Functionalism and the Church Organization	56-58

Chapter IV

4. VATICAN INTERESTS AND INTERVENTIONS	59-99
4.1. Vatican Initiatives for Peace	60-68
4.1.1. Beagle Channel Dispute	64

4.1.2. The Holy Land	64-65
4.1.3. The Balkans	65-66
4.1.4. Central Africa	66-67
4.1.5. Iraq	67-68
4.2. Special Interest in Human Rights	68-78
4.2.1. Right to Religious Liberty	69-72
4.2.2. Right to Equality	73-76
4.2.3. Freedom from Torture	76-78
4.3 Position on Certain Issues in International Law	78-98
4.3.1. Prohibition against Use of Force	78-81
4.3.2. Right to Development	82-84
4.3.3. Protection and Preservation of the Environment	84-87
4.3.4. International Trade	87-88
4.3.5. Right to Life	89-93
4.3.6. Rights of Children	93-97
4.3.7. Rights of Women	97-98
4.4. Critical Comments	99

Chapter V

5. VATICAN PARTICIPATION IN DIPLOMACY	100-112
5.1 Cairo Conference	100-101
5.1.1. Vatican Influence and Position	101-105
5.2. Beijing Conference	105
5.2.1. Vatican Influence and Position	105-108
5.3. Official Catholic Church Doctrine on Marriage and Family	108-111
5.4. Critical Views Expressed	111-112

Chapter VI

6. ROLE OF RELIGION-IMPACT AND IMPLICATIONS	113-127
6.1. Law and Morality	113-115
6.2. Natural Law v. Positive Law	115
6.3. Obligations under the UN Charter	116
6.4. Scope for Religion under the UN Charter	116-117
6.5. Vatican Reservations and International Obligations	118-119
6.6. Is Recognition of the Vatican Exclusionary to Other Religions?	119-121
6.7. Religious Rights v. Women's Rights	121-124
6.8. Permissible Limitations to Women's Rights- UDHR Methodology	124-125
6.9. Critical Observations	125-127

CONCLUSION AND SUGGESTIONS	128-133
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SELECT BIBLIOGRAPHY	i-xix
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List of Acronyms

ABM- Anti- Ballistic Missile
AIDs- Acquired Immuno Deficiency
AU- African Union
BWC- Biological Weapons Convention
CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women
CERD- Convention Against all Forms of Racial Discrimination
CFFC- Catholics for Free Choice
COP- Conference of Parties
CRC- Convention on the Rights of the Child
CRS- Catholic Relief Service
CTBT- Comprehensive Test Ban Treaty
EC- European Communities
EU- European Union
FAO- Food and Agricultural Organization
GRULAC- Group of Latin American Countries
IAEA- International Atomic Energy Agency
ICJ- International Court of Justice
ITU- International Telecommunication Union
JRS- Jesuit Relief Service
LDCs- Least Developed Countries
NGOs- Non Governmental Organizations
NPT- Non Proliferation Treaty
OAS- Organization of American States
OSCE- Organization for security and Co-operation in Europe
PLO- Palestinian Liberation Organization
RSO- Resolution on Sexual Orientation
TRIPs- Trade Related Intellectual Property Rights
UDHR- Universal Declaration on Human Rights
UN- United Nations
UNESCO- United Nations Educational, Social and Cultural Organization

UNFCCC- United Nations Framework Convention on Climate Change

UNHCHR- United Nations High Commissioner for Human Rights

UNHCR- United Nations High Commission for Refugees

UNICEF- United Nations

UPU- Universal Postal Union

WHO- World Health Organization

WTO- World Trade Organization

Chapter I

Introduction

Chapter I

Introduction

1. Overview

The bitter Thirty Years War (1618-1648) among princes claiming that theirs was the one true dominion authorized by God persuaded Hugo Grotius (1583-1645) to evolve a respect for international law that was based upon natural law. Of course this was nothing new in the realm of international literature in so far as sixteenth century Spanish theologians such as Suarez (1548-1617) and Vitoria (1492-1546) made similar references to natural law. However Grotius differed in his emphasis on natural law in providing a legitimate base for international law under a possibility of denying the existence of God. This secularization of international law by Grotius in contrast to the Catholic Church's medieval theories of natural law was found necessary to induce an element of religious tolerance within the new realities of international politics. Grotius who was primarily Protestant in his thoughts believed that an allegiance to "right reason" rather than any specific religious tradition was more conducive to stability in international relations.¹

As a corollary to the attempts to secularize the legitimacy of international law, Grotius also conceded the right of the state to closely pursue its own religious views without external political interference. The Treaty of Westphalia adopted this understanding in 1648, enshrining it in the principle *cuius regio, eius religio* ("whose the rule, his the religion"). Westphalia's principle of sovereignty, which is now embodied in Article 2(4) of the UN Charter, brought an end to the Thirty Years War between the Protestants and Catholics. However what began as an attempt to harmonize relations between states on the basis of a reciprocal understanding of the sovereignty of each nation to consider and practice its own religion opened the floodgates to violations of personal liberty and rights by the state itself.

¹ Thomas Kunz, "Natural-Law Thinking in the Modern Science of International Law", *American Journal of International Law*, vol. 55 (1961), p. 951.

The history of international events over the last four centuries bears witness to a spate of religious persecutions. Some have estimated that almost 200 million persons have died in the twentieth century alone as a result of “ethnic cleansing”, much of it based on religious antagonism.² Religion in its negative manifestation has inspired slavery, genocide of minorities, forced or compulsory labour (especially evident in China in the early 1950s when Christians, Muslims and Tibetan Buddhists were forced into re-education camps) and other gross human rights violations. Religious and ethnic conflicts that have claimed the lives of millions of men, women and children and the genocides in Armenia (1915), Uganda (1975), Sudan (1989), Bosnia (1992) and Kosovo (1999) continue to haunt the memory of nations. In response to religious persecution, nations have also embarked on numerous occasions to provide assistance by humanitarian intervention. At a time when religious persecution seems to be on the rise in not only theocratic countries but also in secular countries, the role of religion in shaping international relations is significant.

Religion by itself has been a determinative factor in many international and national issues. Thus it no more works only in the sphere of a ‘private’ spirituality. Instead, today religion influences territorial claims, immigration and asylum policies, structuring of political alliances and entry into economic relations. The debate over the entry of Turkey into the European Union instead of being a decision purely guided by economic concerns also revolved around possible conflicts between Christian and Islamic principles.

Over the last century, the atrocities committed in the name of religion have persuaded the international community to safeguard religious liberty not only in international law but also to hold states accountable for possible violations. Contemporary human rights norms such as the Universal Declaration of Human Rights (UDHR, Articles 2 and 18), International Covenant on Civil and Political Rights (ICCPR, Articles 2.1 and 18), International Covenant on Economic, Social

² Mark Janis, “Religion and International Law”, *American Society of International Law*, November 2002, available at <http://www.asil.org/insight/>

and Cultural Rights (ICESCR, Article 2.2) and UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religious Belief (Articles 1 and 2) guarantee freedom of conscience and religious liberty and prohibit discrimination on the basis of religion.

It is in the backdrop of all these facts and experiences that a question arises as to what is the extent to which today religion finds expression in the law making process. At a time when religion is pursued either with fanaticism or general ambivalence it becomes interesting to identify a particular entity in international law which pursues its religious doctrines independently, yet influences the law making process in international law. The answer to such a search is provided for in the Vatican, a state created by the Lateran Treaty of 1928 between Italy and Rome.³ The City was created in the aftermath of the annexation of papal territories in Rome during the Italian reunification process.

The Vatican presents itself as a “state” with the minimalist requirements of statehood. It consists of a small territory of around 109 acres, population of a just a little over 1000 persons, government with the Pope as its head and has extensive diplomatic relations with over one hundred and eighty states. It is however not the temporal dimension to this “state” that directs the course of this particular study. It is instead the attempt here to show the duality of its existence as expressed in the seat of the Pope who is the temporal head of the Vatican and as the Holy See is the spiritual leader of the Catholic Church.

The unmistakable religious mandate of the Holy See is witnessed in the holy scripture of the Christians, wherein the Holy See traces its legitimacy to the institution of the Church by Jesus Christ himself.⁴ The whole issue of the

³ The Lateran Pacts contained three sections: the Treaty of Conciliation (27 Articles), which established the Vatican City as an independent state, restoring civil sovereignty to the Pope as the monarch, a position lost during the annexation of papal states in the Italian reunification process in 1870; the Financial Convention annexed to the Treaty (3 Articles), which compensated the loss of papal states; and the Concordat (45 Articles), which deals with the Roman Catholic Church’s ecclesiastical relations with the Italian State.

⁴ The Holy See is expressly witnessed in the scripture: “You are Peter and upon this rock I will build my church.”(Mathew 16:18). The Church calls the “See” holy because it is the holy task of Peter and his successors to sanctify the faithful and to strengthen them by providing leadership in the areas of faith and moral teaching (Luke 22:32).

Church's presence in international law and politics needs to be however viewed in the light of the fact that the Church had been forced to change her ways especially during the Reformation and the 18th century political and capitalist movements that threatened the spiritual authority of the Church. The Reformation was the religious outcome of the Renaissance, which preferred the "natural" to the "spiritual", and thus proclaimed civil liberties of the individual. This was believed to be a challenge to religion and priests who were considered as the violators of liberty, which was inherent in every human being. This was of course followed by the Hundred Years' War (1337-1453) and the birth of nationalism, which ultimately weakened the papacy then installed in Avignon.

The Pope who was earlier given the unquestioned authority to exercise the "right of truth", which functioned as the justification for the Crusades and later the colonization of the Americas and parts of Asia, was challenged by the new Renaissance thought of the supremacy of the "natural."⁵ The last two centuries have however witnessed to a greater presence of the Church in the field of human rights. Although her attitude towards human rights has been characterized by its shares of hesitations and objections, papal authority on issues of national and international concern has grown.

The differentiating factor in the presence of the Holy See in international law today lies in the fact that papal authority and the spiritual mission of the Catholic Church is no more left solely to diplomatic relations between states and the Holy See. The Holy See today has received a platform in the United Nations and therefore been given a wider ambit of influence on the law making process. Her acceptance as a Permanent Observer at the United Nations in 1964 helped achieve such a result.

2. Review of Literature

The present study on the subject involves a review of the work of scholars who have viewed the Holy See through various prisms of thought. The literature

⁵ See Thomas O'Dea, "Church Reform and Society in Evolutionary Perspective", *Concilium*, March 1972, pp. 11- 23.

relied upon bears historical perspectives on the role of the Church, theological reflections on papal influence, considerations rooted in the impact of the Holy See on international relations and finally academic debates over the status and implications of the presence of the Vatican in international law.

Many international law treatises discuss the international status of the Holy See. These include the works of Brownlie (1973),⁶ Henkin (1993)⁷ and Oppenheim (1992).⁸ Scholarship on the subject also includes articles by Fenwick (1929), Ireland (1933)⁹ and Kunz (1952).¹⁰ The early works of scholars on the nature and status of the Holy See involved a choice of positions on the legal personality of the Holy See before and after the annexation of Papal States in 1870. While some scholars totally denied the subsistence of legal personality of the Holy See until the creation of the Vatican City in 1929, others argued that the spiritual and historical importance of the Holy See was not abdicated to the Italian reunification process in 1870. The middle path was taken by scholars like Oppenheim who held the Holy See in a “quasi-international position.” Fenwick believed that the signing of the Treaty of Conciliation between Italy and Rome technically speaking, allowed a new state to enter the family of nations and “take its place beside other independent sovereignties which are subjects of international law.”¹¹

Much of the early discussion on the status of the Holy See was to buttress the spiritual authority of the Pope or to highlight the unique status afforded to it in international law. This trend continued with later writings on the subject. However

⁶ Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1973), edn 2

⁷ Louis Henkin and ors., *International Law Cases and Materials*, (1993), edn 3

⁸ Jennings and Watts eds., *Oppenheim's International Law* (Longman, 1992), edn. 9

⁹ Gordon Ireland, “The State of the City of Vatican”, *American Journal of International Law*, vol. 27 (1933), p. 271.

¹⁰ Josef L. Kunz, “The Status of the Holy See in International Law”, *American Journal of International Law*, vol. 46 (1952), p. 308.

¹¹ See C.G. Fenwick, Editorial Comment, “The New City of the Vatican,” *American Journal of International Law*, vol. 23 (1929), pp. 371, 374.

contemporary writing also testifies to a paradigm shift in the treatment of the subject in so far as considering the active presence of the Holy See as a Permanent Observer to the United Nations and the implications thereof. The position adopted by the Holy See in UN conferences such as the Cairo Conference on Population and Development (1994) and the Beijing Women's Conference (1995) led to a clear division among scholars regarding the statehood claims of the Vatican. The writings indicate academic debates primarily guided by personal perceptions of scholars on issues regarding reproductive rights in particular and the rights of women in general. Some scholars by placing reliance on the definition of "statehood" in the 1933 Montevideo Convention on the Rights and Duties of States have proposed that the "Holy See is ultimately not a state but a religion."¹² These scholars have made a compelling case to show that the "Holy See's designation as a Non- Permanent State Member provides it with access and advantages unavailable to NGOs and religious organizations involved in UN Conferences."¹³ Others have argued that the "Holy See bases its international status on its religious and spiritual authority and not the territory of the Vatican City."¹⁴ Contemporary writings of Abdullah (1996), Bathon (2001) and Johnson (1995)¹⁵ have also provided valuable insights into the diplomatic position of the Holy See adopted in the Cairo and Beijing Conferences.

The attempt to understand the working and the hierarchy of the Church government at the Vatican was facilitated by the work of Muthig (1990). Muthig through his writing clarifies that the "Holy See does not refer to a place, but to the ministry and authority of a person, the Pope. His ministry is shared by those who

¹² Yasmin Abdullah, "The Holy See at the United Nations Conferences: State or Church?," *Columbia Law Review*, vol. 96 (1996), pp. 1853-1875.

¹³ *Ibid.*, p. 1842.

¹⁴ Matthew N. Bathon, "The Atypical International Status of the Holy See," *Vanderbilt Journal of International Law*, vol. 34 (2001), pp. 597, 628.

¹⁵ Stanley Johnson, *The Politics of Population: Cairo 1994* (Earthscan Publications Limited: London, 1995).

staff the Roman Curia and the growing diplomatic corps.”¹⁶ Heston (1954)¹⁷ in his writing shows the importance of the organization of Papal diplomacy in the mission of the Catholic Church.

Theological deliberations of scholars like Leuba (2003),¹⁸ Meslin (2001),¹⁹ Ricca (1999)²⁰ and Sesboue (2003)²¹ help in ascertaining the role of the Pope in the Church’s magisterium. Their works have shown the underlying perceptions within the Catholic Church regarding the absolute supremacy of the Pope over Church affairs. The work of Koenig (1954)²² is resourceful in his exposition on the peace efforts made by the Popes of the Holy See prior to the formation of the United Nations. Hebblethwaite (1988)²³ outlines the changes in the Church organization since the Second Vatican Council in 1965. Fernandes (1978)²⁴ provides a brief historical understanding on the Church’s interests in human rights.

¹⁶ John Muthig, “The Roman Curia: How the Church is Run,” in Jordan Nite and Daniel J. Ward, *Readings, Cases, Materials in Canon Law: A Textbook for Ministerial Students* (St. John’s Abbey, Collegeville, MN: The Liturgical Press, 1990), revd edn, pp. 221, 222.

¹⁷ Edward L. Heston, “Papal Diplomacy: Its Organization and Way of Acting”, in Waldemar Gurian and M. A. Fitzsimons eds., *The Catholic Church in World Affairs*, (University of Notre Dame Press: Notre Dame, Indiana, 1954), pp. 33-47.

¹⁸ J.L. Leuba, “Change in the Papacy”, *Theological Digest*, vol. 50 (2003), pp. 221-228.

¹⁹ Michel Meslin, “Reflections on Primacy and Power”, *Theological Digest*, vol. 48 (2001), pp. 143-148.

²⁰ Paolo Ricca, “New Possibilities for the Papacy”, *Theological Digest*, vol. 46 (1999), pp. 48-52.

²¹ Bernard Sesboue, “The Relationship of the Roman to the Ordinary and Universal Magisterium”, *Theological Digest*, vol. 50 (2003), pp. 53-57.

²² Monsignor Harry Koenig, “The Popes in the Twentieth Century”, in Waldemar Gurian and M.A. Fitzsimons eds., *The Catholic Church in World Affairs* (University of Notre Dame Press, Notre Dame, Indiana, 1954), pp. 48-66.

²³ Peter Hebblethwaite, “Changing Vatican Policies 1965-1985: Peter’s Primacy and the Reality of Local Churches”, in Thomas M. Gannon, ed., *World Catholicism in Transition* (Macmillan Publishing Co.: New York, 1988), pp. 36-53.

²⁴ Walter Fernandes, S.J., “The Church and Human Rights”, in *Vidyajyoti, Journal of Theological Reflections*, vol. 17, January 1978, pp. 500-512.

An evaluation on the role of religion in the law making process and the ramifications of the entry of the Vatican into the UN required a review of the works of scholars like Little (1993) and Greenawalt (1987). These writings consider the moral dimension to the law making process. Little pays special attention to Hugo Grotius and carefully analyses his interest in the relation of religion to law. He reveals contradiction in the Grotian concept of natural law and his assumption of secularism enshrined in human rights law. Little concludes his writing on the note that Grotian ideas of religion and law incompatibly combined “the language of both absolutism and liberty by “advocating passivity and acquiescence in the face of the derelictions of the state.” Thus Little shows the Grotian concept of law as clearly opposed to contemporary human rights understanding.²⁵ He emphasizes that the secularity of human rights is a corollary to the principle of non-discrimination. Greenawalt dwelves upon the plausibility of deference to higher authority in moral claims and juxtaposes the same against the demands of lawful obedience.²⁶

The pro-life debate and the position of the Vatican on reproductive rights and matters relating to sexual orientation have remained unchanged over centuries. The presence of the Vatican in Conferences at Cairo (1994), Beijing (1995) and Durban (2001) saw a reiteration of the doctrinal stance of the Catholic Church.

²⁵ See David Little, “Religion- Catalyst or Impediment to International Law? The Case of Hugo Grotius,” *Proceedings of the American Society of International Law* (1993), pp. 322- 339.

²⁶ See Kent Greenawalt, *Conflicts of Law and Morality* (Clarendon Law Series, Clarendon Press: Oxford, 1987).

In order to consider the objections to the role of the Vatican in international law especially advanced by international lawyers in favour of reproductive and women's rights persuades recourse to the works of Abdullahi (1994),²⁷ Fleishman (2000)²⁸ and Howland (1997).²⁹ Abdullahi underscores the cultural legitimacy of international human rights and suggests stimulating "internal discourse" and "cross cultural dialogue" between different sectors of the society to broaden and deepen the concept and normative content of women's rights. Howland makes a forceful study of the way major religions of the world have made women subservient in status and rights in a patriarchal social system. She employs legal tools to analyze the provisions of the Universal Declaration of Human Rights (UDHR) and the UN Charter to build a case of violation of international obligations against states and groups using religious perceptions and doctrines to deprive women of their international human right to non-discrimination.

3. Objective and Importance of the study

The proposed study is intended to:

- (a) Explore the nature and special status afforded to the Vatican in international law and the understand the distinction between its spiritual influence and the impact made by a secular entity;
- (b) Examine the Vatican's initiatives and impediments in the implementation of various international obligations;

²⁷ Abdullahi Ahmed An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws", in Rebecca J. Cook, ed., *Human Rights of Women. National and International Perspectives* (University of Pennsylvania Press: Philadelphia, 1994), pp. 167-188.

²⁸ Rishona Fleishman, "The Battle against Reproductive Rights: the Impact of the Catholic Church on Abortion Law in both International and Domestic Arenas", *Emory International Law Review*, vol. 14 (2000), pp. 277-314.

²⁹ Courtney W. Howland, "The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter", *Columbia Journal of Transnational Law*, vol. 35 (1997), pp. 271-377.

- (c) Assess whether the Vatican exercises as much influence in the United Nations as in other international organizations such as the European Union (EU) and the Organization of American States (OAS); and
- (d) Identify the consequences of the presence of a religious identity such as the Vatican in the process of law making in an international forum such as the United Nations.

The study involves a reopening of the debate on the status of the Holy See in international law and considers the same according to the guiding principles of international law. The study hopes thus to identify ideological and theoretical divides in the international law scholarship. A further analysis of the hierarchy and working of the Vatican and the elucidation on the peace efforts initiated under the mantle of the Pope is necessary to determine the role of the Vatican in international law. This study is vital to consider the reservations expressed against the Observer status achieved by the Holy See in the UN and other international organizations. A revisit of the diplomatic presence of the Holy See in the Rio Earth Summit (1992), the Cairo Conference on Population and Development (1994), the Beijing Women's Conference (1995) and the Durban Conference on Racism (2001) is essential to understand the issues in international law that have received a close scrutiny of the Holy See and invited the indignation of some members of the international legal fraternity. The study among other things wishes to consider questions like:

- a) Is the presence of the Vatican in international law an impediment to the law making process?
- b) Is the presence of the Vatican as a Permanent Observer at the UN an unjust exclusion of other religious entities?
- c) Is the contribution of the Vatican to international law only in the realm of "moral pronouncements"?
- d) What is the place for the functional approach to international law with regard to the Vatican?

In the pursuit of the abovesaid objectives, the study involves a consideration of some of the interventions and statements made by the Vatican at the United

Nations. The study also examines relevant Vatican documents, especially of the Second Vatican Ecumenical Council held in 1965 in order to obtain an indication of the Church's social teaching on issues that the Holy See refers to in international law. The Second Vatican Council is considered a landmark in the relationship between the Catholic Church and other Christians, Muslims and in particular the Jewish people.³⁰ Documents such as the Declaration on Religious Liberty, *Dignitatis Humanae*, and the Pastoral Constitution of the Church and the Modern World, *Gaudium et Spes* especially are found helpful in this regard. The study also refers to other sources of law relied upon by the Holy See to justify its position in international law matters. The infallibility of the scriptural commands of the Bible and the authority of interpretation and teaching by the Pope are primary sources. Other sources include the Papal addresses and messages, Papal encyclicals and exhortations and the charters proposed by the Papal government and the Canon law as pronounced in the New Code of Canon Law 1981. The Code is considered a fundamental legislative document of the Church in so far as it is based on the juridical and legislative heritage of revelation and tradition and is considered necessary for the preservation of right order both in individual and social life and in the Church's zeal.³¹

In the course of the study certain terms shall be used which are particular to the reality in the Holy See. The same need to be clarified at the outset. These include:

Apostolic- pertains to the divine commission of preaching of the Gospel set upon the Pope as successor to Peter, an apostle of Christ.

Encyclical- letter issued by the Pope for wide circulation.

Episcopacy- refers to the nature of a government formed of a collectivity of Bishops.

Magisterium- refers to the teaching authority of the Church.

³⁰ Remark by Rabbi Marc Tannenbaum at the International Conference on Religious Liberty, *World Affairs*, vol. 147 (1985), p. 287. Rabbi Tannenbaum was the former Director of International and Inter-Religious Affairs for the American Jewish Committee

³¹ See *The Code of Canon Law*, prepared by the Canon Law Society of Great Britain and Ireland (Published by Collins for Theological Publications, Bangalore, 1983), p. xiii.

Primacy- the special authority of the Pope in his hierarchical position in the Church and shows his preeminence over and above all other bishops of the Church.

4. Structure of the Study

The study is divided into seven chapters. **Chapter I** comprises of the Introduction, outlining the importance, objectives and the structure of the study. **Chapter II** traces the strong influence of the Vatican on international law to its nature and status in international law. This Chapter among other things considers the claim of statehood for the Vatican in the light of relevant international law principles and literature. It also provides for a clarification on the subtle, yet important difference between the Vatican, the Holy See and the Catholic Church. These in fact are shown in the nature of concentric circles within themselves in so far as their zone of influence and power is concerned, starting with the Vatican forming the innermost circle and the Church at the outermost ring. **Chapter III** attempts to outline the hierarchy of the papal government at the Vatican and explores the working of the government in order to consider whether the interests of the various sections of the government allude to similar temporal works adopted by other nations of the world.

Chapter IV seeks to identify the role of the Vatican in matters relating to peace and security and consider its contributions in the field of human rights. The Chapter briefly deals with the presence of the Vatican in international law especially seen in the light of its Permanent Observer status in the United Nations. It considers the special interest of the Vatican on issues such as the right to life, right to religious liberty, prohibition against torture and use of force. The Chapter aims to consider how far the moral precepts and “preaching” by the Holy See are translated into action, if at all.

This fact leads to **Chapter V** that explores the position adopted by the Holy See in recent UN international conferences such as the 1992 Rio Earth Summit, 1994 Cairo Conference on Population and Development, the 1995 Beijing Conference on Women and the 2001 Durban Conference on Racism. The Chapter also reveals the means adopted by the Holy See to influence the law

making process at some of these conferences, the reaction of the international community and the final outcome upon the documents drafted in these conferences.

Chapter VI in the light of the preceding chapters seeks to dwell upon the role of religion in shaping international law. The Chapter concedes to the effect of the Vatican in shaping international law and goes further to analyze whether this influence is welcome. Theoretical considerations of the emphasis on the use of religious principles in the interpretation and application of international law are also reflected upon. The Chapter considers issues such as law and morality and examines the place of natural law in the positive legal order as enshrined in international human rights instruments such as the UDHR and obligations of states under the UN Charter.

Chapter VII concludes the study with suggestions.

Chapter II

Nature and Status of the Vatican

Chapter II

Nature and Status of the Vatican

The Lateran Treaty of 1929 established the Vatican City. The Treaty recognizes the sovereignty of the Holy See over the Vatican City (Citta del Vaticano) wherein the Holy Father may exercise with full liberty and independence the mission of the Papacy. The Treaty had the object of liquidating once and for all the “Roman Question”¹ and bringing about reconciliation between the Holy See and Italy.² It however still remains disputable whether since then the Vatican can be regarded as a state in international law.

The international status of the Holy See, as personified by the Pope of the Roman Catholic Church has given rise to deeply divided theoretical viewpoints. The active participation of the Holy See in world affairs has also been followed with debates which have for all practical reasons centered upon the prudence involved in recognizing a religious entity such as the Holy See in the place of a state.

Of course the problem of what constitutes a ‘state’ has been discussed and examined with differing conclusions. Therefore to put the claim of statehood of the Vatican under scrutiny one may apply traditional international law criteria as recognized under the 1933 Montevideo Convention on the Rights and Duties of States. Here, ‘the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.’³

¹ The “Roman Question” dated back to 1870 when the troops of King Victor Emmanuel II seized Rome and the Papal States from Pope Pius IX. The unification of Italy led to the annexation of Rome to Italy.

² Pursuant to Article 2 of Lateran Treaty, 11 February 1929, Italy recognizes “the sovereignty of the Holy See in the international field as an attribute inherent in its very nature, in conformity with its tradition and with the exigencies of its mission in the world.” See English translation of the treaty reprinted in the *American Journal of International Law*, vol. 23 (1929), suppl, pp. 187- 95; Byrnes MacDonald, *The Italo-Vatican Accord: An Analysis*, (Princeton: New Jersey, 1932), pp. 85- 95.

³ Article 1, Montevideo Convention on the Rights and Duties of State, 26 December 1933. See also Restatement (Third) Of The Foreign Relations Law Of The United States § 201 (1986), in Louis Henkin and ors., *International Law Cases and Materials*, (1993), edn 3, p. 112.

However before embarking upon an examination of the criteria for statehood under the Montevideo Convention one must understand the subtle yet profound difference between the Holy See and the Vatican.

2.1. The Nature of the Holy See as Distinct from the Vatican City

Though it may seem that the terms “Vatican” and the “Holy See” may be used interchangeably, there exists a definite difference between the two. The Holy See claims its sovereignty based upon the Catholic Church’s “conception of itself as a sovereign state.”⁴ The papacy and authority of the Holy See is not dependent upon the territorial integrity of the Vatican.⁵ The tiny city-state of the Vatican was created so as to provide a secular domain and to allow autonomy in the exercise of the spiritual mission of the Holy See.⁶ Because the Vatican was set up to further the ends of the Holy See, it “cannot be conceived separately from the visible Head of the Church, the Holy See and the Church herself.”⁷ The government of the Roman Catholic Church and of the Vatican City are inextricably linked. It is the Holy See and not the Vatican City that conducts relations with other states.

Even in the United Nations, the Pope conducts relations as the Head of the Holy See, a religious organization, and not as head of the Vatican City.⁸ Pope

⁴ Mark T. Van Der Molen, Note, “Diplomatic Relations Between the United States and the Holy See: Another Brick from the Wall”, *Virginia University Law Review*, vol. 19 (1984), pp. 197, 199.

⁵ It is observed: “If the Vatican City State were to sink into the Mediterranean Sea tomorrow and the Pope were to lose his independent ‘state’, the Church would still actively participate in international life under the banner of the Holy See- as it did from the fall of the Papal States in 1870 until the establishment of Vatican City in 1929.” See John Muthig, “The Roman Curia: How the Church is Run”, in Jordan Nite and Daniel J. Ward, *Readings, Cases, Materials in Canon Law: A Textbook for Ministerial Students* (St. John’s Abbey, Collegeville, MN: The Liturgical Press, 1990), revd edn, p. 223.

⁶ See Maria L. Heckler, Note, “Constitutional Issues Raised by Diplomatic Relations Between the United States and the Holy See”, *Hastings Constitutional Law Quarterly*, vol. 15 (1987), pp. 101, 103.

⁷ Hyginus Eugene Cardinalc, *The Holy See and the International Order* (Gerrard Cross, England: Colin Smythe, 1976), p. 99.

⁸ See Van Der Molen, n. 4, p. 204.

John Paul II affirmed the distinctive spiritual mission of the Catholic Church in the United Nations.⁹ The Pope stated “the nature and aims of the spiritual mission of the Holy See and the Church make their participation in the tasks and activities of the United Nations very different from that of the States, which are communities in the political and temporal sense.”¹⁰ He further stated that the Holy See, unlike other states, which are linked with territory and people, is the representative of the Catholic Church. The Holy See’s Permanent Observer Mission at the UN wrote “[a]s a full member of the international community, the Holy See finds itself in a very particular situation because it is spiritual in nature. Its authority ... is religious not political ... The real and only realm of the Holy See is the realm of conscience.”¹¹ Dag Hammarskjold, former United Nations Secretary- General, said, “When I ask for an audience at the Vatican, I am not going to see the King of the Vatican City but the Head of the Catholic Church.”¹²

A reading of the Lateran Treaty also leads to the distinction sought to be drawn between the Vatican and the Holy See. The dualistic theory of separate legal personality of the Holy See is supported in Article 23 of the Lateran Treaty where it states that sentences issued by the Vatican tribunals are carried out in accordance of norms of international law, presupposing the Vatican’s status and legal capacity to act in international law, while those sentences handed down by ecclesiastical tribunals will achieve full civil effects when they are communicated to the proper civil authority, the State thereby accepting the Holy See’s legal capacity to act in Canon law. Article 24 of the Treaty further provides proof for the dual personality of the Holy See. It states the desire of the Holy See not to participate in the temporal rivalries between other states, except in the event of

⁹ Pope John Paul II, Address to the General Assembly, *United Nations Yearbook* (1979), vol. 442, UN Sales No. E. 80.1.8.

¹⁰ See n. 9

¹¹ Permanent Observer Mission of the Holy See, *The Holy See and the United Nations* (1995), p. 3 quoted in Yasmin Abdullah, Note, “The Holy See at United Nations Conferences: State or Church?”, *Columbia Law Review*, vol. 86 (1996), pp. 1835, 1870.

¹² Quoted by Archbishop Jean- Louis Tauran, Lecture on the Theme “The Presence of the Holy See in the International Organizations”, Catholic University of Sacred Heart, Milan, Monday, 22 April 2002.

such parties making a mutual appeal to the pacific mission of the Holy See. Under these circumstances, the Holy See reserves the right of exercising its moral and spiritual power. The two distinct personalities of the Holy See as the supreme head of the Catholic Church and the temporal head of the Vatican City State is further indicated by the numerous legislative enactments of the Holy See over the Vatican.¹³

A similar inference may be drawn from the Agreement between the Holy See and the International Atomic Energy Agency for the Application of Safeguards in the connection of the Treaty on the Non-Proliferation of Nuclear Weapons, at Vienna on 26 June 1972. This landmark document shows the Holy See acting in a dual capacity, as both the supreme organ of the government of the Catholic Church and the supreme head of the Vatican City State. Under Article 1 of the said Agreement, the Holy See is acting as the entity responsible for the obligations undertaken by the treaty, the Holy See appearing here as the supreme organ of the government of the Catholic Church.¹⁴ When the Agreement speaks of territory, it uses the term "Vatican City State."¹⁵ In both these capacities, the Holy See is acting with full international personality and acknowledged as such by the United Nations and hence the international community.

¹³ For example, the Holy See in enacting legislation for regulating vehicular traffic inside the Vatican City State is in no way acting as the Holy See, the supreme organ of the government of the Catholic Church, but as the supreme organ of the government of the Vatican City State.

¹⁴ Article 1: "The Holy See undertakes, pursuant to paragraph 1 of article III of the Treaty, to accept safeguards, in accordance with the terms of this agreement, on all source or special fissionable material in all peaceful nuclear activities within the territory of the Vatican City State..."

¹⁵ Article 2: "The Agency shall have the right and obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful activities within the territory of the Vatican City State, under the jurisdiction of that State or carried out under its control anywhere..." Ibid.

2.2. *The Vatican and the Definition of “State”*

2.2.1. *Population*

There is no lower limit to the size of a state’s population in international law.¹⁶ The Vatican City has around 1000 permanent residents and has about 109 acres of land subject to its complete territorial sovereignty.¹⁷ Vatican law does not speak of nationality¹⁸ but only citizenship. According to Article IX of the Lateran Treaty, the Vatican City population is made up of those persons who have at least permanent legal residence in the City. Of these approximately 1000 people reside in the Vatican City, of whom about 400 have citizenship in the Vatican.¹⁹

Citizenship in the Vatican is granted by the Pope and is established by residence within the city.²⁰ The Constitutional Laws of the City of the Vatican provide that citizens are “[t] hose who reside in the City of the Vatican... because of their rank, office, service or employment.”²¹ Vatican citizenship is based upon *jus officii*, where the status arises from the person’s office. The population of the Vatican is thus composed “almost exclusively of persons residing therein by virtue of their office”²² such as dignitaries, officials, support staff, other

¹⁶ See Jori S. Duursma, *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood* (1996), p. 118. “No reservations have been made by the international community with respect to the limited number of nationals of Micro-States even if the nationals were outnumbered by foreign residents.” See also James Crawford, *The Creation of States in International Law* (1979), p. 40.

¹⁷ There are other states, of course, with small populations: Liechtenstein (28, 777); Tuvalu (10, 090). See Brian Hunter edn, *The Statesman’s Yearbook* (1995), pp. 882, 1293.

¹⁸ Traditional notions of nationality for a population are based upon either *jus soli* (bond of the soil) or *jus sanguinis* (bond of blood). See Ian Brownlie, *Principles of Public International Law* (Clarendon Press: Oxford, 1973), edn 2, pp. 373, 374.

¹⁹ See *Worldmark Encyclopedia of the Nations (Europe)*, (1995), edn 8, vol. 5, p. 469. See also Cardinale, n. 7, p. 107. “The population of a State comprises all individuals who, in principle, inhabit the territory in a permanent way.”

²⁰ See Constitutional Laws of the City of the Vatican, Law No. 3, Article 1, reprinted in Amos J. Peaslee, *Constitutions of Nations*, (1956), edn 2, vol. 3, p. 687. If Vatican City residents, however, are on Italian territory, they are subject to Italian law or to the law of the state to which he or she belongs. See Lateran Treaty, Article 9, n. 3.

²¹ Constitutional Laws of the City of The Vatican, Law No. 3, Article 1, reprinted in Peaslee, *ibid.*, p. 687.

²² Jennings and Watts eds., *Oppenheim’s International Law* (1992), edn. 9, pp. 327-8.

employees and staff of papal missions. Vatican citizenship is extended to “the wife, children, parents, brothers, and sisters of a Vatican citizen, on the condition that they live with him and are authorized to reside in the City of the Vatican.”²³ It has however been observed that the provision regarding family residence for all practical purposes does not apply to the majority of the citizens of the Vatican or the inhabitants, for most persons by virtue of their office, are celibate clergy and nuns. In addition, every resident, whether they are resident, whether they are a citizen of the Vatican City or not, may be expelled from the Vatican territory at any time. Certain scholars have viewed the claims of a “population” in the Vatican as unsustainable as the population in the City is considered, temporary and incapable of self-perpetuation.²⁴

It has however been pointed out that the existing laws regarding citizenship in the Vatican City demonstrates that the Holy See does not see the population of the Vatican City as a fixed entity upon which the authority of the Holy See is based.²⁵ In fact it has been observed that perhaps the only true member of the Vatican’s “permanent” population is the Pope himself. Even if the Vatican City had no other inhabitant than the Pope, sitting as simultaneous head of the Church and government of the Vatican City, the State of the Vatican City would still be considered a state for special purposes under the Lateran Treaty.²⁶ The Lateran Treaty implicitly recognized that there would be no fixed population in the Vatican City. The City was created for the special purpose of assuring the Holy See as an independent sovereign in the international community. Concerns regarding a fixed population were secondary to this over-arching goal. Thus in

²³ Constitutional Laws of the City of the Vatican, Law No. 3, art. 2, reprinted in Peaslee, n. 20, p. 687.

²⁴ See M.H. Mendelson, “Diminutive States in the United Nations”, *International and Comparative Law Quarterly*, vol. 21(1972), pp. 609,612; Mario Falco, *The Legal Position of the Holy See Before and After the Lateran Agreements* A.H. Campbell trans. (1935), p. 38. Only 14 people were born within the Vatican City between 1929 and 1980. See Abdullah, n. 11, pp. 1862-3.

²⁵ See Matthew N. Bathon, “The Atypical International Status of the Holy See”, *Vanderbilt Journal of Transnational Law*, vol. 34 (2001), pp. 597, 610.

²⁶ See Duursma, n. 16, p. 412.

conclusion it may be said that the population of the Vatican may cause it to fail the “permanent” requirement of the Montevideo Convention, because it lacks a human society stably united in its territory. Such a permanent population is considered important for a state to maintain, develop and expand itself. Evidentially a “permanent population” is considered important, since in the absence of the physical basis for an organized community, it will be difficult to establish the existence of a state.²⁷

2.2.2. Defined territory

Holy See and Italy, while signing the Lateran Treaty realized “the world...recognizes no form of sovereignty other than the territorial form.”²⁸ The Vatican City has a total area of around 109 acres and claims itself to be the smallest independent state.²⁹ Through the Lateran Treaty, Italy recognized the full sovereignty of the Holy See of the Vatican City, as well as granting the Holy See full proprietorship in several church structures near the Vatican City³⁰ so that there was sufficient physical space to fulfill the duties of governing the Catholic Church.³¹ Though there is no territorial minimum required of a state,³² some

²⁷ See Brownlie, n. 18, p. 75.

²⁸ Ibid., p. 411. Unlike most states, the territory of the Vatican City is more important than the population in meeting the elements required for statehood. See Cardinale, n. 7, p. 106.

²⁹ Gordon Ireland, “The State of the City of the Vatican”, *American Journal of International Law*, vol. 27 (1933), pp. 271, 273. See also M.S. Rajan, “Small States and the Sovereign-Nation-State System”, *International Studies*, vol. 25 (1988), pp.1, 5 where the author shows the small independent states that form part of the international community. The smallest include Monaco with a size of 460 acres (approximately 1.95 square kilometres) followed by Nauru with a size of 21.3 square kilometres and Tuvalu measuring 24 square kilometres. The Vatican City in contrast to these states measures only about 0.44 square kilometers.

³⁰ Full proprietorship in the additional structures is not as extensive an authority as the “absolute power and sovereign jurisdiction” the Holy See possesses over the Vatican City proper. Herbert Wright, “The Status of the Vatican City”, *American Journal of International Law*, vol. 38 (1944), pp. 452-3.

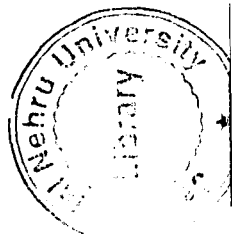
³¹ These church structures include the Basilicas of Saint John Lutheran, Santa Maria Maggiore and Saint Paul, Papal Palace of Castel Gandolfo and other annexed buildings. See Articles 13 and 14, Lateran Treaty.

³² Thomas D. Grant, “Defining Statehood: The Montevideo Convention and its Discontents”, *Columbia Journal of Transnational Law*, vol. 37(1999), pp. 403, 436.

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scholars have argued that the Holy See owing to its tiny size is incapable of obtaining statehood.³³ The annexation of papal territories in Rome to the Kingdom of Italy on 20 September 1870,³⁴ has also been used to question statehood claims. It is reasoned that between 1870 and 1929 owing to the Italian conquest and subjugation of the Papal State, the Papal State came to an end. This fact is used to prove that the international personality afforded to the Holy See prior came to 1870 also came to an end. However jurists such as Kunz find such reasoning to be unsatisfactory. Kunz states that prior to 1870, there were two subjects of international law: the Papal State and the Holy See. The Pope constituted in his person a personal union of two different organs, the highest organs of two different subjects of international law. Even prior to 1870, the more important of these two subjects according to Kunz (going by the spiritual significance attached) was the Holy See. He shows that during this time, Catholic states granted the privilege of the deanship to the Papal nuncios even in the absence of the political importance of the Papal State thus recognizing the spiritual supremacy of the Holy See.³⁵

In support of the continuance of the Holy See despite the loss of Papal States, attention has been drawn to the fact that the Holy See remained a subject of international law in the period between 1870 and 1929 as evidenced in state practice. The Holy See continued to conclude concordats³⁶ as also exercised with the consent of states, the active and passive right of legation. At this point in the



³³ The Holy See's admission into the United Nations for this reason has remained unsupported by some scholars. Some claim that the Holy See could not be admitted because of its "exiguity." See Josef L. Kunz, "The Status of the Holy See in International Law", *American Journal of International Law*, vol. 46 (1952), pp. 308, 313. Here the author points out that the Holy See is ineligible to membership in the United Nations under Article 4, which is applicable to "states" alone. He prefers to see the Holy See more in the role of an arbiter, mediator or participant in international conferences.

³⁴ See C.G. Fenwick, Editorial Comment, "The New City of the Vatican", *American Journal of International Law*, vol. 23 (1929), p. 371.

³⁵ See Kunz, n. 33, p. 311.

³⁶ Concordats are negotiated and signed like any international treaty. They require ratification and can be modified by common consent. Obligations under a concordant become operative when transformed into municipal law. See Josef Kunz, n. 33, p. 310. See also Hersch Lauterpacht, *International Law*, vol. 2, part 1, p. 495.



history of the Church, the legal position of its diplomatic agents was based on general international law (the Vienna Protocol) and not on the then existing municipal law of Italy namely, the Law of Guarantees.³⁷ In 1895 Pope Leo XIII acted as an arbiter in a border conflict between Haiti and San Domingo. In addition between 1870 and 1929, the Holy See acted as a mediator in several cases such as those between Germany and Spain (dispute over the Caroline Islands in 1885); Ecuador and Peru (1893); Argentina and Chile (territorial boundary dispute in 1900-1903); Columbia and Ecuador (1906); and Haiti and San Domingo (treaty conflict in 1926).³⁸

2.2.3. Government

The third traditional legal criteria of statehood has given rise to considerable and varied controversy. This issue naturally touches upon the recognition offered to such a government by other states.

The Government of the Vatican comprises of the Pope at the helm of affairs³⁹ together with his administrative and spiritual counselors as represented in the Roman Curia and the College of Cardinals respectively. Each of these persons is elected through a specific and democratic process.⁴⁰

Despite the lack of a permanent population in the Vatican City, the Holy See exercises effective temporal power over its inhabitants and employees. Article

³⁷ Ireland, n. 29, p. 271.

³⁸ See A.M. Styut, *Survey of International Arbitration from 1794-1970* (Dobbs Ferry: New York, 1976). For further details on Holy See's role as mediator see Issue 4.1. Vatican Initiatives for Peace.

³⁹ "[T]he Sovereign Pontiff, ruler of the Vatican City State, has full legislative, executive and judicial powers." Duursma, n. 16. See also Avro Manhattan, *The Vatican in World Politics*, Chapter 3 (Gacr Association Inc., 1949), available at http://www.cephas-library.com/catholic/catholic_vatican_in_world_politics_chpt_3.html

⁴⁰ See *Indian Catholic Reference Book*, (Published by the Catholic Association of Bombay, 1964), pp. 33-6. See also for example, The Election of the Roman Pontiff, Part Two, Apostolic Constitution *Universi Dominici Gregis* on the Vacancy of the Apostolic See and the Election of the Roman Pontiff, available at http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_22021996_universi-gregis_en.htm

III of the Lateran Treaty recognizes the full possession, and sovereign jurisdiction of the Holy See over the territory of the Vatican City.⁴¹

The Curia is the universal Church's central administrative arm, its bureaucracy, consisting of the Secretariat of State, Sacred Congregations and the Pontifical Councils. The Roman Curia is the complex of dicasteries and institutes which help the Roman Pontiff in the exercise of his supreme pastoral office for the good and service of the whole Church and particular Churches.⁴² The internal domestic affairs of Vatican City are the responsibility of the Pontifical Commission for the State of Vatican City, which is appointed by the Pope. A governor, whose duties resemble those of a mayor, directs the Vatican's administration. The Cardinal Secretary of State, who also coordinates ecclesiastical and political affairs, handles foreign affairs. The City has civil law courts in addition to the Roman Rota, which handles religious cases. However, the Italian Government prosecutes most criminal cases.⁴³

The Holy See is the simultaneous leader of the worldwide Church⁴⁴ and also the monarch of the Vatican City. Owing to such duality, acceptance of the Vatican in the nature of a government has been found to be problematic.

The Vatican has been found wanting also in its capacity for separate independent existence. Independence in this regard is said to actually refer to an independent government,⁴⁵ although the exact means of determining the same has

⁴¹ Article I of the Fundamental Law of the Vatican City grants the Holy See "full legislative, executive, and judicial powers." See Cardinale, n. 7, p. 613.

⁴² See Pope John Paul II, Apostolic Constitution, *Pastor Bonus*, available at http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/

⁴³ See *The World Book Encyclopedia* (World Book Inc: Chicago, 2000), p. 228.

⁴⁴ The New Code of Canon Law promulgated in 1983 defines the nature and function of the supreme authority in the Church as vested in the Roman Pontiff. See Amand Reuter, "The Papacy in the New Code", in Jordan Hite and Daniel J. Ward, n. 5, p. 188. See also Canon 331, *The Code of Canon Law* (Collins Theological Publications: Bangalore, 1983), p. 57.

⁴⁵ *Ibid.*, pp. 120-121. See also the definition offered by Judge Anzillotti to independence in *Customs Regime between Germany and Austria*, (1931), P.C.I.J. ser. A/B, pp. 41, 57. "[Independence] ...may also be described as sovereignty (*Suprema potestas*), or external sovereignty, by which is meant that the State has over it no other authority than that of international law. The conception of independence, regarded, as a normal characteristic of States as subjects of international law, cannot be better defined than by comparing it with the [class of] ... 'dependent states'.

been difficult. One formulation used for this purpose indicates that an independent government is that which possesses within its territory “the right to exercise therein, to the exclusion of any other State, the functions of a State.”⁴⁶ Any substantial limitation of a government’s sovereignty to a second state is believed to lead to a loss of independence and, therefore, statehood. Here the international lawyer is faced with a problem in deciding whether an entity is indeed independent by looking not only at the ‘legal independence’ but also at the ‘actual independence’ in confirming the claim. Such a view is preferred on the assumption that appraisal of criteria which is to be of legal significance must go beyond mere form to substance.⁴⁷

In the Lateran Treaty, Italy recognized the full sovereignty of the Holy See in international realm. The Holy See has extensive diplomatic relations with other countries. Both the Vatican and the Holy See are parties to numerous multilateral and bilateral treaties.⁴⁸ The attempts to undermine the claim to independence by the Vatican include the reference to the fact that the Vatican is very dependent on Italy, which surrounds it completely. The Vatican also has its own elementary schools, restaurants, fire department, supermarket, souvenir shops, soup kitchen, shelter for homeless women, pharmacy, medical staff, infirmary and an astronomical observatory. The Italian Royal Mint is at disposal of the Vatican for the production of Vatican coinage.⁴⁹ Thus the Vatican has its own coinage, although Italian money may be used in the Vatican.

The Vatican is dependent on Italy for all its essential services such as water, railroad services, telephone, radio, postal, and telegraphic connections (at Italy’s

⁴⁶ Ibid. Quoting Arbitrator Huber in the *Island of Palmas Arbitration (Netherlands v. United States)*, UN Reports of International Arbitral Awards, (1928), vol. 2, pp. 829, 839.

⁴⁷ See George Schwarzenberger, *International Law* (1949), edn 2, p. i. 58, where it is asserted that at a certain point it becomes sheer formalism to argue that a restriction on the exercise of sovereign rights accepted by a treaty cannot be considered as an infringement of sovereignty.

⁴⁸ For a list of treaties, see *Multilateral Treaties Deposited with the Secretary General* (Status as at 31 December 2002), vol. I, part I, chapters I to XI; Samuel W. Bettwy and Michael K. Sheehan, “United States Recognition Policy: The State of Vatican City”, *California Western International Law Journal*, vol. 11 (1981), pp. 1, 21-31.

⁴⁹ See *Cardinale*, n. 7, p. 121; *Ireland*, n. 29, p. 277.

own expense).⁵⁰ The Vatican lacks an economy and has no domestic or foreign trade.⁵¹ It is completely dependent on Italy for food and all other commodities.⁵² Through the Lateran Treaty, Italy guarantees that envoys of foreign governments may cross Italian territory to reach the Vatican.⁵³

Although the above-mentioned facts indicate to a certain extent that the Vatican is incapable of policing itself and providing for its inhabitants, there are other factors that are in favour of its claim to independence. The Vatican's self-sufficiency can be shown by the existence of its military force (the Swiss Guard), its post office, bank, railway, publishing house, radio station, newspaper, its own coinage and stamps and Vatican passports.

Considering all the factors mentioned above it seems a little difficult to identify the Vatican as a state as conceived in the traditional notions of international law. However, while there has been a divergence in view in the matter concerning claim to statehood by the Vatican, owing to its strong presence and the moral force, the Vatican is seen as a subject of international law with a unique position and character. Certain scholars have seen the Roman Catholic Church as represented by the Pope as a community of individuals, which, although not having the character of a state, is a subject of international law.⁵⁴

⁵⁰ See Article 6, Lateran Treaty.

⁵¹ The Vatican receives its financial support from charitable contributions, fees charged for various services, interest on investments, the sale of stamps, religious literature, other mementos, and museum admissions. The Vatican Bank, The Institute for Religious Works, is believed to hold \$3 to \$4 billion in assets. See *Worldmark Encyclopedia (Europe)*, n. 19, p. 471-72.

⁵² *Ibid.* There exists no industry within the City except for the presence of a printing plant and a mosaic studio. The printing press prints a vast array of literature produced by the Papacy. See *Yearbook of the Annuario Pontificio per L'Anno*, (2000), p. 1458.

⁵³ Article 12 of the Lateran Treaty provides that "[e]nvoys of foreign governments to the Holy See will continue to enjoy in the Kingdom all the prerogatives and immunities belonging to diplomatic agents according to international law."

⁵⁴ See Hans Kelsen, *Principles of International Law* (Holt, Rinehart and Winston: London, 1966), edn 2, p. 251. Fenwick likens the creation of the Vatican City State to a new international person who is unique and of exceptional category such that it fits into no precise type of statehood in the international family of nations. See also C.G. Fenwick, *International Law* (Bombay, 1962), p. 125. Starke prefers to place the Vatican in an intermediate zone between states and non-states, labeling it a "state-like entity." J. G. Starke, *Introduction to International Law* (London, 1984), p. 109.

The Church is described as an order constituting a community, which comprises the Catholics of the whole world. Here, however a distinction is sought to be drawn between the Catholic Church and a state as subjects of international law. Some of these distinctions include the following:

- (a) The concordats signed by the Holy See must be distinguished from the treaties signed by a state as also the Vatican itself. These concordats concluded by the Church with states have their own reason of validity, which is not based upon any national law. It must be understood here that national law, as the law of one state, cannot impose obligations or confer rights upon the Pope as Head of the Church, or what amounts to the same, upon the Catholic Church as such, since the Church is a community which comprises the Catholics of the world. Kelsen observes that only a norm of general international law concerning treaties can confer upon these agreements a law-creating effect.⁵⁵
- (b) The Church cannot wage a war, nor can war be waged against the Church. Only reprisals by which one encroaches upon the legal rights of the other are possible.
- (c) Unlike other states, the territorial sphere of the validity of the Holy See or the Catholic Church is not limited. The Church may however not be understood as being outside space. The social order of the Catholic Church may be considered as having the territorial sphere of validity as any other normative order regulating human behaviour.

2.2.4. Capacity to Enter into International Relations

Under the Montevideo Convention, the capacity to engage into international relations with other states is a prerequisite to statehood.⁵⁶ The power

⁵⁵ Kelsen, *ibid.*

⁵⁶ "An entity is not a state unless it has competence, within its own constitutional system, to conduct international relations with other states, as well as the political, technical and financial capabilities to do so." Louis Henkin et al, n. 3, quoting *Restatement (Third) Of The Foreign Relations Law Of The United States* § 201 cmt. c). However scholars like James Crawford consider capacity as a consequence rather than a condition for statehood. See Grant, n. 32. See also D. J. Harris, *Cases and Materials on International Law* (Sweet and Maxwell: London, 1998), edn 5, pp. 101-105.

and right of legation as recognized by the international community is believed to be a good indicator of the capacity of the putative state to enter into international relations. Modern day diplomacy in fact may be traced to the Catholic Church, which used diplomacy as a means to spread the Gospel and the need for contact with the outside world. The Holy See's first apostolic nunciature was established in Venice in 1500 A.D. Today, the Holy See enjoys full diplomatic relations with over 172 states.⁵⁷

The Holy See's presence in numerous international organizations also signifies its desire and capacity to enter into international relations. It is represented at the United Nations, Specialized Offices headquartered at Geneva (Switzerland) and Vienna (Austria); International Atomic Energy Agency (IAEA), Vienna; Organization for Security and Co-operation in Europe (OSCE), Vienna; Council of Europe, Strasbourg (France); Organization of American States, Washington, D.C.; Food and Agricultural Organization (FAO), Rome; United Nations Education, Scientific and Cultural Organization (UNESCO), Paris; and the World Trade Organization (WTO), Geneva.

The Holy See, in addition, is active in the international community and participates in numerous international conferences held under the auspices of the United Nations. Conferences attended by the Holy See delegation include those held in Belgrade, Helsinki, Madrid (on European security), Vancouver, Mar del Plata (on water rights), Vienna (on science and technology), Bucharest and Mexico (where the Holy See was instrumental in defeating a proposal to use abortion as a family planning measure). The Holy See also holds multilateral diplomatic relations with the EU, the European Communities, OAS,⁵⁸

⁵⁷ The Council of Public Affairs, a sister office to the Vatican Secretariat of State handles the relations of the Holy See with foreign governments. Together with the Secretariat, the Council assigns the personnel attached to the Holy See's diplomatic missions-either nunciatures committed to political and diplomatic representation in countries or apostolic delegations who concern themselves solely with ecclesiastical affairs in the country of deputation. Nuncios are equivalent to ambassadors and in most countries are automatically by way of a long-standing custom are treated as the Dean of the diplomatic corps of country of accreditation, irrespective of seniority.

⁵⁸ Within the OAS, the Vatican has especially shown her solidarity in issues relating to arms spending, commitment to democracy and sanctity of the right to life and integrity of the family. See Letter of Cardinal Angelo Sodano to the President of the 33rd General Assembly of the Organization of American States (OAS), 6 October 2003, available at http://www.vatican.va/roman_curia/secretariat_state/

Organization for Security and Cooperation in Europe (OSCE) and the African Union and shares relations of a special nature with the Palestine Liberation Organization (PLO).

The Holy See is also a signatory to numerous international agreements, thus pointing towards its capacity to enter into international relations. The Holy See has entered into many agreements regulating various aspects of warfare. It is a party to the International Atomic Energy Agency. The Holy See has also signed numerous international agreements concerning intellectual property, diplomatic relations, and methods of international communication. The Holy See normally signs UN treaties in the name of the Vatican City State and reserves the right to effect amendments, and vote on articles, as is the case with any member state of the UN.⁵⁹ The Holy See has expressed reservations to many conventions in order to preserve against incompatibility with the special nature of its mission.⁶⁰ The Holy See's status as a Contracting Party, with full rights to enter into conventions and attaching reservations, is believed to indicate that the other Parties accord equal status to the Holy See alongwith other states.⁶¹

⁵⁹ See for example, Article 45 of the 1951 Geneva Convention Relating to the Status of Refugees states: "1. Any Contracting State may request for a revision of this Convention at any time by a notification addressed to the Secretary – General of the United Nations." Here the Holy See, who ratified the Convention on 15 March 1956, is treated in an equal manner with member-states of the United Nations. However the presence of the Vatican or the Holy See in organized international activity is not automatic, although it is considerable. See Address given by Cardinal Casaroli to The Italian Society for International Organizations, quoted in the " Unique Role of the Holy See in the International Community", in *Paths to Peace: A Contribution – Collection of Documents of the Holy See to the International Community*, (Liturgical Publications: Brookfield, Wisconsin, 1987), p. xxxv.

⁶⁰ For example, the Holy See is a Contracting Party to the Convention Relating to the Status of Refugees in 1951 and the Convention on the Rights of the Child of 1989. It has made reservations to these Conventions. No State has objected to the reservations put forth by the Holy See. See Duursma, n. 16, p. 383.

⁶¹ See Bathon, n. 25, p. 615.

2.2.5. Observer Status with (the UN) International Organizations

The Holy See owes its participation in the UN to the membership of the Vatican in the Universal Postal Union (UPU) and the International Telecommunication Union (ITU), which the city-state joined because of the operation of postal and radio services. Early in its formation the UN invited UPU and ITU and their members to attend its sessions on an ad hoc basis.⁶² Consequently, the Holy See began attending the WHO and the UNESCO in 1951 as an observer. In 1956 the Holy See was elected a member of the UN Economic and Social Council (ECOSOC) and became a full member of the IAEA.⁶³ In 1964 the Holy See under the Pontificate of Pope Paul IV applied as a Permanent Observer, following the precedent set by Switzerland. UN Secretary-General U Thant accepted the designation and announced it in three weeks. In granting the Holy See a non-member state permanent observer status, the Secretary General was required to consult established criteria for non-member permanent observer delegation. These criteria required membership in at least one specialized agency of the UN and general recognition by UN members. At that point the membership of the Holy See at the IAEA and the Council for Cultural Cooperation of the Council of Europe as also extensive diplomatic ties with states helped comply with these requirements.⁶⁴

The Holy See's presence at the United Nations in the nature of a Permanent Observer is a fact that strongly points towards its desire and capacity to partake in the concerns of the international community. The Holy See established itself as a Permanent Observer to the United Nations on 21 March 1964.

⁶² Cardinale, n. 7, p. 256.

⁶³ Ibid., p. 233.

⁶⁴ Ibid., pp. 260-5.

The Holy See's status as a non-member state Permanent Observer means that while the Holy See is not one of the Member States of the UN General Assembly, it is still considered a state.⁶⁵ It is in this capacity of a Permanent Observer that provides the Holy See with certain privileges with the UN and its subsidiary organs to voice and shape perceptions more in line with its doctrine. The General Assembly resolution of 1 July 2004 further extended the privileges of the Vatican as a Permanent Observer to the United Nations.⁶⁶ The annex to the resolution provides for an opportunity to the Vatican to make interventions on international issues in the debates of every new session in the General Assembly without the previous consent of regional organizations. The Holy See also has the right of reply in cases wherein a member state of the UN may express dissent over her position on a certain issue. The confirmation of the participation of the Vatican provides her with an opportunity to present her views as working documents in the General Assembly thus facilitating a stronger presence.⁶⁷

Although the Vatican has become a party to a number of international conventions, it is not considered a sovereign state. Some writers have gone further to state that "its activities are totally different from those inherent in national state."⁶⁸ Jurists such as Verdross believed that the constitution of the Vatican is derived from the Holy See and hence the Vatican is at best a vassal state of the Holy See.⁶⁹

2.3. Critical Comments

The legal debate over the status of the Vatican in international law has over the last century been primarily divided on issues regarding the attributes of

⁶⁵ "To quite a large degree, a Non-Member State may participate in the work of the UN on the same level as if it were a member." See Abdullah, n. 11, p. 1839

⁶⁶ General Assembly Resolution 58/314, 58th sess., agenda item no. 59, UN Doc. A/RES/58/314, 16 July 2004.

⁶⁷ See also Tracy Early, "UN Resolution Spells Out Vatican Rights as Permanent Observer", Catholic News Service, available at <http://www.catholicnews.com/data/stories/cns/0403694.htm>

⁶⁸ See Oppenheim- Lauterpacht, *International Law, A Treatise*, vol. 1 (1948), edn 7, pp. 226-30.

⁶⁹ Kunz, n. 33, p. 313.

statehood and the recognition of the Vatican as a “state” by other countries. This could well be described as the debate between the proponents of the constitutive and declaratory theories of state recognition. The question is said to be of identifying whether a previously unrecognized entity becomes a state because it has attained the factual indicia of statehood. For the adherents of the constitutive theory of recognition, the recognition by other states leads to the constitution of the state as a new member of the international community. This theory is not constrained by the inability of new “state” to conform to formal requirements of statehood. The declaratory theory on the other hand allows a state to be recognized as a subject of international law only after it has satisfied the formal criteria of statehood. According to this theory, recognition is merely a political acknowledgement of the existence of a state as a matter of fact, and does not constitute the legal personality of the state. The declaratory theory has been more widely used owing to the shortcomings in the constitutive theory. Brownlie identifies some of these shortcomings to include the inability of the theory to specify the number of states that must recognize as also the relativism that is involved in the recognition of a state in so far as concerns its relations with different states. Thus the constitutive theory fails to explain the recognition of a state where a few states refuse to afford such recognition.⁷⁰ Jurists like Fenwick preferred to view the Vatican as a creature of the Lateran Treaty and a legitimate state. Conservatism led scholars like Oppenheim, Kunz and Verdoss to consider the Vatican with limited international personality not however at par with other national states owing to the largely different activities to which the Vatican City is committed. A consideration of the vast expanse of the legal debate that has emerged on this subject leads one to the conclusion that the Vatican does not comply with the attributes of statehood as recognized in general international law and state practice. However one cannot ignore the entry of the Vatican into the UN and other international and regional organizations as an Observer and the

⁷⁰ See Brownlie, n. 18, pp. 90-93. See also *Tinoco Concessions Arbitration*, Reports of the International Arbitral Awards (1923), p. 369 (in this case Great Britain was allowed to bring a claim on the basis of concessions granted by the former revolutionary government of Costa Rica which had been recognized by some states but not by the US); *Standard Vacuum Oil Company Claim*, International Law Reporter, vol. 30, p. 168.

strong diplomatic relations shared by the Vatican with over 180 countries. It is submitted therefore that today the Holy See has carved a definite niche in international law regardless of the legal status of the Vatican City. The understanding on the distinction between the two entities is vital.

Of course the enquiry into the religious nature of the leadership as envisaged in the Holy See by lawyers is legitimate considered in the light of the Biblical mandate for the Seat of the Pope. It however needs to be stressed that such a situation is not very different from the recognition of the Queen of England as the titular head of the Anglican Church. What however separates the Vatican from other states is the fact that the centralized government of the Vatican is not so much concerned with the day-to-day administration of the concerns of its inhabitants but is run fervently in promoting the spiritual mission of the Catholic Church. A study of the constitutional structure and hierarchy of the government at the Vatican would lead to the same conclusion.

Chapter III

Hierarchy and Working of the Vatican

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The existing structure of the institutional machinery of the Vatican further provides direct evidence of its purely spiritual and religious mission. The mere fact that the Pope exists as the Head of the Catholic Church and the temporal Head of the Vatican is not enough to dilute his duties in his religious capacity. The Church that he rules is a spiritual society. Her purpose is essentially supernatural, namely to be the divinely established normal means of salvation for all mankind.¹ To understand the working of the Papal government at the Vatican a recollection of the basic premise upon which the Holy See has been set up is important. The Holy See is believed to be the means by which Jesus, the Son of God, “conferred on the bishops, the successors of the Apostles, and in a singular way on the bishop of Rome, the successor of Peter, the mission of making disciples in all nations and of preaching the Gospel to every creature.”² In thus identifying the purpose of the Pope in his primacy and in communion with the collegiality of bishops, we gain some insight into the nature of the Vatican as a Government. At this point it becomes pertinent to note in greater detail the procedures and responsibilities involved at various levels of this Church Government.

The inner form and role of the Catholic Church is guided by Jesus as the High Priest, a Teacher and a Shepherd. The Church is also to continue helping people through all times and ages. In accordance with this formative principle, the Church is a mystical communion as well as a society and an institution. In order to carry out the offices of administering the Sacraments, preservation and preaching of doctrinal truth and in governing and offering guidance to the world in her

¹ Edward L. Heston, “Papal Diplomacy: Its Organization and Way of Acting”, in Gurian and Fitzsimons eds., *The Catholic Church in World Affairs*, (University of Notre Dame Press: Notre Dame, Indiana, 1954), p. 33. See Bishop Angelo Scola, “The Mission of the Church at the Dawn of the Third Millennium: Disciples and Witnesses of the Lord”, in *Pontificium Consilium Pro Laicis, Laity Today*, The Congress of Catholic Laity, Rome 2000 (*Libreria Editrice Vaticana*, Vatican City, 2000), p. 82, where the author observes that the Church and world form an *historically inseparable polarity* with the *one design* of the Father.”

² See John Paul II, Apostolic Constitution, *Pastor Bonus*, 28 June 1988, available at p. 3.

spiritual mission, the adoption of a constitution and the creation of an organization comparable to that of a state administration with officials and regulating principles was therefore necessitated.

While undertaking a study of the hierarchical structure within the Holy See it is however important to distinguish between hierarchy that emerges from divine law and that which is hierarchical according to the law of the Church. There is an ordained power (*hierarchia ordinis*) which has passed from Christ to His Apostles, and from them to their successors. The priesthood is the bearer of this power and is organized into three grades of ordination.³ On the other hand there is a hierarchy of governing power (*hierarchia jurisdictionis*), the task of which is to direct the Church as a social institution. Of the grades involved in this hierarchy, the highest two are the primacy as represented in the Pope and the episcopacy as seen in the office of the bishop. The governing hierarchy beyond the Papacy and the episcopacy, as existing today in the Holy See is a product of historical development and the requirements of the institutional life of the Church.

The canonical framework under the revised 1983 Code of Canon Law speaks of “The People of God” in Book Two. The first of these, “Christ’s Faithful” describes the obligations and rights of the faithful; then refers to the laity after which a mention is made of the “Sacred Ministers or Clerics.” The final, third part of Book Two refers to “Institutes of Consecrated Life and Societies of Apostolic Life”; and the second part is about “The Hierarchical Constitution of the Church.” The hierarchical constitution of the Church starts with “The Roman Pontiff and the College of Bishops”; “The Synod of Bishops”; “The Cardinals of the Holy Roman Church”; “The Roman Curia” and “The Papal Prelates.”

3.1. The Roman Pontiff

The supreme authority of the Church lies in the office of the Roman Pontiff. The Pope acquires full and supreme power in the Church when, together

³ These include the episcopacy, the presbytery (the bearers of which are ordained priests) and the diaconate (on which preparatory orders have been conferred). See Joseph Bernhart, *The Vatican as a World Power* (London: Longmans. Green Co., 1931), p. 387.

with episcopal consecration, he has been lawfully elected and has accepted the election.⁴ By virtue of his office, the Pope not only has power over the universal Church but also has pre-eminent ordinary power over all particular Churches and their groupings.⁵ Pursuant to Article III of the Lateran Treaty, the Holy See is recognized as having the full possession, exclusive and absolute power, and sovereign jurisdiction over the Vatican City. The Pope in order to fulfill his duties in both the temporal and spiritual realm of affairs has delegated his authority to various organs of the government of the Vatican City. The Cardinals⁶ collectively form the College of Cardinals and serve as the Pope's principal advisors and assistants. Cardinals are priests of outstanding learning, piety, judgment and ability and are chosen by the Pope. The Cardinals elect the Pope when the Holy See is vacant. They administer Church affairs, serve on one or more of the sacred congregations, tribunals or offices of the Roman Curia and enjoy a number of special rights and privileges. The Governor of the Vatican, who is directly and exclusively responsible to the Pope, exercises the executive powers within the territory. The central administration of the Roman Catholic Church is conducted by the Roman Curia, which is divided into nine Congregations, three Tribunals, twelve Pontifical Councils, and Commissions.

3.2. The Roman Curia

It has been observed that the Holy See does not refer to a place, but to the ministry and authority of a person, the Pope. Those who staff the Roman Curia and the diplomatic corps share his ministry. The Curia has also been described as an umbrella name for a conglomerate of offices dealing with varied administrative

⁴ See Code of Canon Law No. 332, in, *The Code of Canon Law*, prepared by the Canon Law Society of Great Britain and Ireland (Published by Collins for Theological Publications, Bangalore, 1983), p. 57.

⁵ See Code of Canon Law No. 333, *ibid*.

⁶ The Cardinals figure in very early Church history as counselors of the Popes. Their duty consisted in alternately spending a week with the Pope in the Lateran as aids to his task as the highest sovereign of the Church. See Bernhart, n. 3, p. 390.

issues, which crop up in the life of the worldwide Church. The Pope usually conducts the business of the universal Church through the Roman Curia, which acts in his name and with his authority for the good and service of the Churches. The Curia is composed of the Secretariat of State or Papal Secretariat, the Council for Public Affairs of the Church, the Congregations, the Tribunals and other Institutes. The constitution and competence of all these is defined by the Apostolic Constitution.

The Roman Curia is a complex of dicasteries⁷ and institutes that help the Pope in his pastoral ministry of the universal Church. The officials are taken from among the Christian faithful, clergy or laity, noted for their virtue, prudence, and experience, and for the necessary knowledge attested by suitable degrees.⁸ Depending on their own field of competence, the dicasteries deal with those matters which, because of their special importance, either by their nature or by law, are reserved to the Apostolic See and those which exceed the competence of individual bishops and their grouping, as well as those matters committed to them by the Supreme Pontiff. The dicasteries study the major problems of the present age and review matters, which are brought to notice by the Christian faithful.⁹ Decisions of major importance are submitted for the approval of the Pope, except for those for which special faculties have been granted to the moderators of the dicasteries as well as the sentences of the Tribunal of the Roman Rota and the Supreme Tribunal of the Apostolic Signatura within the limits of their proper competence.¹⁰

The procedure envisaged in the Curia for the various dicasteries is directed towards co-ordination between themselves and the fostering of closer relations

⁷ By the word "dicasteries" are understood the Secretariat of State, Congregations, Tribunals, Councils and Offices, namely the Apostolic Camera, the Administration of the Patrimony of the Apostolic See, and the Prefecture for the Economic Affairs of the Holy See. See Article 2, §1, Apostolic Constitution.

⁸ See Article 9, Apostolic Constitution.

⁹ Ibid., Article 13.

¹⁰ Ibid., Article 18.

with particular Churches. With regard to the latter, the dicasteries seek out the advice of the concerned church and groupings of the bishops while preparing documents of major importance that have a general character. Documents thus prepared cannot be made public until communicated to the particular church or churches upon which it may have a general or special bearing. Dicasteries also are to maintain close contact with papal legates in matters concerning the particular Churches where these legates serve. Any deliberation and result thereof is not to be withheld from the legates.¹¹

3.3. Secretariat of State

The Secretariat of State, which is responsible for, among other things, relations with international organizations, heads the Roman Curia. The Secretariat of State consists of two sections: the First Section of General Affairs and the Second Section- the Section for Relations with States. The First Section is entrusted with the task of providing assistance in the daily service of the Pope; to deal with such matters as that arise in the ordinary competence of the dicasteries of the Roman Curia and of other institutes of the Holy See: to foster relations and co-ordinate work among the same without prejudice to their autonomy. The First Section also oversees the work of the legates to the Holy See, especially as concerns the particular Churches.¹² In consultation with other competent dicasteries, this section takes care of matters concerning the presence of the Holy See in international organizations. It does the same concerning Catholic international organizations.

The Section for Relations with States has the special task of dealing with heads of government. Its competence extends to the fostering of relations especially those of a diplomatic nature, with States and other subjects of international law. With the Secretariat, the Council assigns the personnel attached to the Holy See's diplomatic missions, which are either in the nature of nunciatures in countries maintaining full diplomatic relations with the Holy See,

¹¹ See Articles 26 and 27, Apostolic Constitution.

¹² See Article 41, §1, Apostolic Constitution.

or apostolic delegations in countries like the United States, which does not recognize the Holy See as an independent international “person.”¹³ The concerns expressed by this Section are yet again affiliated to the spiritual mission of the Holy See in so far as it concerns matters of common interest, promoting the good of the Church and of civil society by means of concordats and other such agreements.¹⁴ The Section, also in consultation with the competent dicasteries of the Roman Curia, represents the Holy See at international organizations and meetings concerning questions of a public nature. The Secretariat is presided over by the Cardinal Secretary of State. Since the reforms introduced by the Second Vatican Council, the role of the Secretariat of State has been widely enlarged. The Cardinal Secretary of State is to be the Pope’s right-hand man regarding “both his concern for the Universal Church and his dealings with departments of the Roman Curia.”¹⁵

3.4. Congregations

There are a total of nine Congregations, namely, the Congregation for the Doctrine of the Faith, Congregation for the Oriental Churches, Congregation for Divine Worship and Discipline of the Sacraments, Congregation for the Causes of Saints, Congregation for Bishops, Congregation for the Evangelization of Peoples, Congregation for the Clergy, Congregation for Institutes of Constituted Life and for Societies of Apostolic Life and the Congregation of Seminaries and Educational Institutions.

¹³ The Pope is said to have an inherent and independent right to appoint Legates and to send them either to particular Churches in various countries or regions, or at the same time to States and to public authorities. The principal task of a Papal Legate is continually to make more firm and effective the bonds of unity, which exist between the Holy See and the particular Churches. See Code of Canon Law, Codes 362 & 364, n. 4, pp. 63-64.

¹⁴ See Article 46, Apostolic Constitution.

¹⁵ See John Muthig, “The Roman Curia: How the Church is Run,” in Jordan Nite and Daniel J. Ward, *Readings, Cases, Materials in Canon Law: A Textbook for Ministerial Students* (St. John’s Abbey, Collogeville, MN: The Liturgical Press, 1990), revd edn, pp. 221, 223.

The *Congregation for the Doctrine of Faith* promotes and safeguards the doctrine on faith and morals in the whole Catholic world and is therefore considered to have competence in all things that touch this matter in any way.¹⁶ It is primarily involved in promoting and guarding the integrity of faith. In this regard the Congregation takes upon itself the task of censoring books and writings that touch faith and morals.¹⁷ Previously in fact, the Congregation was called the Sacred Congregation of the Universal Inquisition, once notorious for its treatment of heretics, and the Holy Office, that used to issue an index of books which Catholics were forbidden from reading together with the censoring of theologians, famous and otherwise.¹⁸

The *Congregation for Oriental Churches* considers those matters, whether concerning persons or things, which affect the Catholic Oriental Churches. The competence of this Congregation extends to all matters which are proper to the Oriental Churches and which are to be referred to the Apostolic See, whether concerning the structure and organization of the Churches, the exercise of the office of teaching, sanctifying and governing, or the status, rights, and obligations of persons.¹⁹

The *Congregation for Sacraments and Divine Worship* is closely associated with the promotion and regulation of the sacred liturgy and the symbolic religious ceremonies that pertain to the Apostolic See. It is also responsible for liturgical changes and reviews and grants approval to thousands of liturgical translations for the celebration of the Mass and the sacraments in many modern languages.²⁰

The *Congregation for the Causes of Saints* deals with everything, which according to the established way, leads to the canonization of holy men and women for the miracles attributed to them.²¹ This department has no parallel in

¹⁶ See Article 48, Apostolic Constitution.

¹⁷ Ibid., Article 51(1) and Article 51(2).

¹⁸ See Muthig, n. 15, p. 225.

¹⁹ See Article 58, §1, Apostolic Constitution.

²⁰ Ibid., Articles 62 and 64.

²¹ Ibid., Article 71.

any secular government. The pros and cons of recognizing the sacredness of a deceased Christian is debated and researched by lawyers and priests employed by this Congregation.²²

The *Congregation for Bishops* deals with everything concerning the appointment of bishops. It prepares the way for the naming of new bishops by the Pope. This Congregation also provides assistance to bishops in their pastoral function, initiates their visits to the See in agreement with the concerned dicasteries, evaluates results and proposes appropriate measures to the Pope in the same regard.²³ It also supervises the establishment of regional and national conferences of bishops and approves their statutes.

The *Congregation for the Evangelization of Peoples* directs and coordinates the worldwide spread of the Gospel as well as missionary cooperation.²⁴ It also encourages research in mission theology, spirituality and pastoral work.²⁵ This Congregation also proposes principles, norms and procedures according to the needs of time and place, by which evangelization is carried out. This Congregation which was originally called the *Propaganda Fidei* is described as a mammoth department that deals with all issues relating to mission countries, including keeping a close check on events in troubled nations of Latin America and on religious developments in China.²⁶

The *Congregation for the Clergy* deals with questions regarding the distribution of priests throughout the world, financial questions regarding clergy, parish and diocesan (pertaining to secular clergy), pastoral councils, and religious catholic instruction.

The *Congregation for Religious and Secular Institutes* handles the Pope's relations with religious orders of men and women. This Congregation employs the

²² Ibid., Article 72.

²³ Ibid., Article 79.

²⁴ See Article 85, Apostolic Constitution.

²⁵ Ibid., Article 86.

²⁶ See Muthig, n. 15, p. 226.

largest number of women staffers, although the upper rank of officials are predominantly male. Only Cardinals, Bishops and male superiors are among the Congregation's members who serve as a decision-making and policy-setting executive board.

The *Congregation of Seminaries and Educational Institutions* promotes and works towards the organization of Catholic education²⁷ It oversees all levels of Church's educational efforts, including seminaries and universities, adult education programs, grammar and high schools.

3.5. Tribunals

3.5.1. The Apostolic Signatura

This Tribunal functions as the supreme court of the Apostolic See and also ensures that justice is meted out in the Church. Besides serving as a watchdog over lower courts (Roman Rota and the local tribunals), the Tribunal examines their records and adjudicates upon matters of jurisdictional conflicts.²⁸ The Signatura also determines administrative controversies regarding various dicasteries as referred to it by the Pope.²⁹ The Signatura also has the responsibility to extend the competence of lower tribunals, grant approval to tribunals for appeals otherwise reserved to the Holy See and also has the competence to approve the erection of inter-diocesan tribunals.

3.5.2. The Roman Rota

The Roman Rota is described as a court of higher instance, especially at the appellate stage.³⁰ As a tribunal, the Roman Rota, by virtue of its own decisions helps to develop unity in jurisprudence, administers justice within the Church and assist lower tribunals. The Roman Rota is principally engaged in hearing appeals on marital cases.

²⁷ See Article 112, Apostolic Constitution.

²⁸ Ibid., Article 122 (4).

²⁹ Ibid., Article 123, §3.

³⁰ Article 126, Apostolic Constitution

3.5.3. *The Apostolic Penitentiary*

The competence of the Apostolic Penitentiary extends to internal forum and indulgences³¹ and other matters of conscience.³²

3.6. *Pontifical Councils*

The Curia's role as an instrument of the Church's ministry is further evidenced in the Pontifical Councils. Some of them have self-explanatory titles: The Council for the Laity, the Pontifical Commission for Latin America, the Commission for the Revision of the Code of Canon Law, the Pontifical Commission for Latin America, Pontifical Council for Inter-religious Dialogue and Pontifical Council for Dialogue with Non-believers.

The other Pontifical Councils may be viewed a little more closely in order to gain a better understanding of their significance in the Holy See's spiritual mission for the world at large. In this regard, the *Pontifical Council for Justice and Peace* is important from the point of view of the position adopted by the Catholic Church in matters pertaining to peace and justice. A reading of the Apostolic Constitution reveals that the Council works towards international peace and justice in consonance with the Gospel and the social teachings of the Church.³³ The Council is especially active in research and collection of information on justice and peace, human development, human rights violations.³⁴ In all these cases, the Council in close consultation with bishops discusses and draws its conclusions, which are then communicated by way of announcements and documents through the Secretariat of State,³⁵ where felt necessary.

³¹ Indulgence was the sacramental declaration made previously by the Roman Catholic Church for the remission of sins for which punishment was due.

³² *Ibid.*, Article 117.

³³ See Article 142, Apostolic Constitution.

³⁴ Article 143; §2, Apostolic Constitution. For example, in the 1980s the Pontifical Council for Justice and Peace was instrumental in behind-the-scenes advocacy for the release of political prisoners in Argentina and tracing missing persons. See Muthig, n. 15, p. 227.

³⁵ *Ibid.*, Article 144.

The *Pontifical Council for the Family* is dedicated towards the protection and preservation of the rights and dignity of the family and the institution of marriage within the Church and civil society.³⁶ In this regard, it encourages studies on the spirituality of family and marriage in a Catholic perspective. Much of the activity of this Council is especially in the political and social realm as is evidenced by the unequivocal stand adopted by the Church in matters of contraception and the abortion debate.³⁷ The Council is headed by the President and assisted by bishops and lay people, most of whom are married men and women.³⁸

The *Pontifical Council Cor unum*, stands as a witness of the Church's solicitude for humanity and the inclination of the Church to reflect Christ's charity.³⁹ Among its other functions the Pontifical Council *Cor Unum* ("One Heart") coordinates the activities of Christian organizations that work towards helping those in need. The area of the Council's involvement especially includes assistance in urgent crises and disasters and the tying up the activities of the abovesaid organizations with other public international organizations working in the same field.⁴⁰ The *Cor Unum* Council is an umbrella coordinating group for Catholic international aid agencies like *Caritas* and the *Catholic Relief Services*.⁴¹ The president of this Council is the same as that for the Pontifical Council of

³⁶ Ibid., Article 139. For the role of the Pontifical Council for the Family in determining the Church's response on issues relating to the family and the right to life, see Issues 4.3.5. and 4.3.6.

³⁷ See Article 143 (3), Apostolic Constitution. See also Rishona Fleishman, "The Battle against Reproductive Rights: the Impact of the Catholic Church on Abortion Law in both International and Domestic Arenas", *Emory International Law Review*, vol. 14 (2000), p. 277; Jack Mahoney, "Christian Doctrines, Ethical Issues, and Human Genetics", *Theological Studies*, vol. 64 (2003), p. 719.

³⁸ See Article 140, Apostolic Constitution.

³⁹ See Article 145, Apostolic Constitution.

⁴⁰ Ibid., Article 146 (2).

⁴¹ The coordination between the *Cor Unum* Council and the agencies like *Caritas* and *Catholic Relief Services* is integral in the Holy See's mission to protect the rights of refugees and migrant workers. See Issue 4.2.3.

Justice and Peace so that the activities of both the dicasteries can be closely coordinated.

The *Pontifical Council for the Pastoral Care of Migrants and Itinerant People* expresses the deep concern of the Church towards those persons who have been deprived of their native land and those who had none.⁴² It seeks to address the spiritual needs of migrant, refugees, exiles, nomads, sailors and those working at sea ports and airports. Together with the *Cor Unum* Council and international aid agencies like the *Catholic Relief Services*⁴³ the Pontifical Council for Pastoral Care of Migrants and Itinerant People helps in providing care and assistance to refugees and migrant workers in host countries themselves unavailable to provide effective relief.

The *Pontifical Council for Pastoral Assistance to Health Care Workers* helps in strengthening the efforts of those involved in taking care of the sick and the suffering. The Council, in showing its empathy towards the afflicted, lays emphasis on the use of the teachings of the Church in explaining the moral and spiritual aspects of illness as well as the meaning of human suffering.⁴⁴ The Council fosters studies and actions with international Catholic organizations or other institutes involved in this field. The Council also keenly follows health care developments in the field of law and science so as to incorporate the same into the pastoral work of the Church.

The *Pontifical Council for the Interpretation of Legislative Texts* is basically concerned with the interpretation of the universal laws of the Church and

⁴² Article 149, Apostolic Constitution.

⁴³ The Catholic Relief Services is the official international humanitarian agency of the Catholic community in the US. The agency provides assistance to people in 94 countries and territories on the basis of need, irrespective of race, creed or nationality. Next to the UN, the CRS is the largest provider of Title II food aid around the world. The Title II food aid, a product of surplus commodities like corn, rice, soy and wheat in the US, is used by the CRS to build self-reliance in marginalized communities that do not have enough to eat, are prone to disasters and suffer from chronic diseases like HIV/AIDs, malaria and tuberculosis. Thus the CRS has committed itself to relief in flood-hit Ethiopia and Bangladesh, 2 million refugees fleeing from the Darfur region of Sudan and war-torn Afghanistan. The CRS has also made an initial commitment of US\$ 500,000 to provide shelter and immediate health care to victims of the tsunami that hit countries like India, Srilanka, Thailand and Indonesia on 26 December 2004. For details visit <http://www.catholicrelief.org>

⁴⁴ Article 153, §1, Apostolic Constitution.

is competent to publish authentic interpretations confirmed by pontifical authority and in consultation with dicasteries concerned on questions of major importance.⁴⁵

The *Pontifical Council for Culture* helps foster relations between the Holy See and the realm of human culture. In the fulfillment of this purpose the Council tries to encourage communication with various contemporary institutions of learning and teaching. The goal of this Council is to make secular culture open up to the message of the Gospel.⁴⁶ This Council, together with the Secretariat of State, takes interest in the measures adopted by countries and international agencies and where appropriate participates in the principal organizations in the field of culture.

The *Pontifical Council for Social Communications* stands in recognition of the Church's understanding of the media's role in spreading religious views of the Church. Here, the chief task of the Council is to encourage and support the Church and her members in all forms of social communication, be it in the form of newspapers or periodicals, radio or television broadcasts. The Council keeps a close watch over Catholic media in this regard so as to ensure full compliance with the magisterial teachings of the Church. It also fosters relations with Catholic associations active in social communication. The Vatican owns its press called the Vatican Polyglot Press and also has its own Vatican Publishing House, bookstore, daily, weekly and monthly newspapers including the *L'Osservatore Romano*. Media related institutes such as the Vatican Radio and the Vatican Television Center work according to their own regulations and come within the competence of the Secretariat of State or of other agencies of the Roman Curia.

⁴⁵ See Articles 154 and 155, Apostolic Constitution.

⁴⁶ *Ibid.*, Article 166.

3.7. Administrative Services

The Administration of the Patrimony of the Holy See primarily administers the properties of the Holy See so as to generate the necessary funds for the works of the Roman Curia.⁴⁷

The Apostolic Camera administers the Holy See upon the vacancy of the See. It is presided over by the cardinal camerlengo of the Roman Church, assisted by the vice-camerlengo and other prelates of the Camera.

The Prefecture for the Economic Affairs of the Holy See supervises and governs the temporal goods of the Holy See.⁴⁸ Among other things it also prepares the budget of the Holy See and approves the financial feasibility of projects undertaken by various administrative units of the Curia.

3.8. Synod of Bishops

The Synod of Bishops is a group of Bishops selected from different parts of the world, who meet together at specified times to promote the relationship between the Pope and the Bishops. These Bishops, by their counsel, assist the Pope in the defence and development of faith and morals and in the preservation and strengthening of ecclesiastical discipline. They also consider questions concerning the mission of the Church in the world.⁴⁹ The Synod's membership is currently composed of bishops elected by national bodies of bishops on a proportional basis. These representatives of national bishops' conferences, augmented by Curia Cardinals, heads of male religious orders and other clerics appointed by the Pope, meet for a month once every three years to discuss a topic of the Pope's choosing. They only have advisory powers. Women and religious laity are invited as observers.

⁴⁷ See Article 172, Apostolic Constitution.

⁴⁸ Ibid., Article 176.

⁴⁹ See Canon 342, n. 4.

3.9. Papal Legates

The Pope in his mission to transmit divine grace embodied in himself and the preaching of the Word of God looks towards the whole of mankind. The practical impossibility of maintaining such worldwide contact by one person therefore requires resort to the tool of diplomatic representation. Some of these representatives are officially accredited to the governments of the countries where they reside. Others are vested with purely ecclesiastical authority, to deal with the Catholic hierarchy of different countries.

In order to further strengthen the bonds of unity between the Holy See and the particular Churches, there are present Papal Legates in respective countries. The appointment of these Legates is again subject to the inherent and independent right of the Pope.⁵⁰ To these Legates is entrusted the office of representing in a stable manner the person of the Roman Pontiff in the particular Churches, or also in the States and public authorities, to whom they are sent.⁵¹ It is the responsibility of the Legate, within the territory assigned to him, to inform the Apostolic See about the conditions in which the particular Churches find themselves, as well as about all matters which affect the life of the Church and the good of souls; to assist the Bishops by action and advice, while leaving intact the exercise of their lawful power.⁵² Apostolic nuncios, the real ambassadors of the Holy See are officially accredited by the Pope and are governed by the norms of international law regulating diplomatic representatives in general. Apostolic nuncios have a twofold task: one is strictly spiritual, and the other diplomatic or political. Permanent legates are to also foster good relationships with the governments to which they are accredited. Papal diplomacy also consists of the Apostolic delegates. These representatives of the Pope have no official standing in the diplomatic corps of the country to which they are assigned, nor do they directly deal with the governments of these countries. While the Apostolic nuncios

⁵⁰ Canon 362.

⁵¹ Canon 363, n. 4.

⁵² Canon 364, n. 4.

represent the Vatican before the civil government of a given country, Apostolic delegates represent the Holy Father before the hierarchy and the faithful of that country. Their duties are strictly ecclesiastical and are primarily concerned with watching over the progress of the government and the Church in the country and report on the same. Such reports are examined by the officials and consultants of respective Sacred Congregations in Rome, and afford them invaluable assistance in formulating norms for the government of the Church in various countries.⁵³

It must however be clarified here that there is a distinction between the strictly spiritual mission of the Church and the diplomatic activities which aim to facilitate the fulfillment of this mission. When the Pope speaks *ex cathedra*, or officially, on a point of faith or morals affecting the entire Church, the Pope enjoys the prerogative of personal infallibility. This fact does not lead to a similar special divine safeguard to diplomatic activities. Therefore, the faithful are not bound to accept or to approve such activities unquestioningly, as they would be obliged for instance to accept a dogmatic definition.⁵⁴

Vatican diplomacy does not function in isolation. All apostolic nuncios and internuncios depend directly on the Vatican Secretariat of State, particularly on the Sacred Congregation for Extraordinary Affairs. The apostolic delegations, owing to their purely ecclesiastical mission are responsible to their immediate superior, who is the Cardinal in charge of the Congregation dealing with the affairs of the various countries to which the apostolic delegates are sent. Thus apostolic delegations that are under the supervision of the Congregation for the Propagation of the Faith, which is responsible for the worldwide missionary activity of the Church, are found in countries like Australia, Japan, Korea, New Zealand, Oceania and South Africa. A small number of apostolic delegations report to the Congregation for the Oriental Church, which handles the special problems arising from the liturgical and disciplinary differences existing between the Roman Church and the churches of the Orient. Thus, the sacred Congregation for the Oriental Church supervises the apostolic delegations in Bulgaria, Ethiopia,

⁵³ Hcston, n. 1, p. 44.

⁵⁴ Ibid., p. 34.

Greece, Iran, Iraq, Jerusalem, Palestine, Syria and Turkey. The presence of these apostolic delegates is important in keeping vigilance over Church affairs and preventing differences amongst churches to grow and endanger unity in the body of Christ, or what is otherwise called the Church.

3.10. Principles Governing the Working of the Church Government

The New Code while defining the nature and function of the supreme authority in the Church as vested in the Roman Pontiff⁵⁵ reflects traditional dogmatic and canonical principles, though with a broader conciliar formulation. Much of the criticism against the almost monarchical powers of the Pope as put forth in the First Vatican Council (1870) deliberations were sought to be rectified through the Second Vatican Council. The First Vatican Council put the accent very decidedly on the primacy of the Roman Pontiff; that is, his supreme and ordinary universal power (jurisdiction) in the Church as a whole. The Council proclaimed the infallibility of the Pope's teaching authority in the constitution *Pastor Aeternus, The Eternal Shepherd*. The constitution stated that the Pope could not commit error when he speaks as the head of the Church to define matters of faith and morals, which is to be accepted by all Roman Catholics as the revelation coming from Jesus Christ and His Apostles. The Second Vatican Council began where the First Council had stopped, namely to create an equivalent doctrine on the episcopacy as a counterpart to its doctrine on papacy. In fact the doctrine of collegiality of bishops is described as the "heart and climax" of the Second Vatican Council. Of the four constitutions issued in the Second Vatican Council, *The Dogmatic Constitution of the Church, Lumen Gentium* is helpful in understanding the relationship between the Pope and the episcopacy within the Church. The constitution is said to complement the teachings of the First Vatican Council on papal primacy and infallibility. It supported the view of the Church as a communion of local churches with the Pope as its head.

⁵⁵ The canonical legal term for the Pope is "the Roman Pontiff" (*Romanus Pontifex*) or "the Supreme Pontiff" (*Supremus Pontifex*).

In the New Code the Roman Pontiff and the College of Bishops is presented together as existing in a particular relationship, which is rooted in and modeled on the College of Apostles. Just as, by decree of the Lord Jesus, Saint Peter and the rest of the Apostles form one College, so for a like reason the Roman Pontiff, the successor of Peter, and the Bishops, the successors of the Apostles, are united together in one.⁵⁶ While this suggests a relationship of equality and communion, in which there is sharing of authority and responsibility, the pre-eminence in the position of the Pope by virtue of being the successor to Peter is unmistakable. The fact of the divine commission of the Roman Pontiff in the service of the Lord is obvious. Thus in the free exercise of his power, the Pope is not accountable to any human authority, inclusive of even the College of Bishops. In this regard, a reading of the relevant canonical law is helpful. According to Canon 333, the Roman Pontiff in the fulfillment of his office as supreme Pastor of the Church is always joined in full communion with other Bishops, and indeed with the whole Church. He has the right, however, to determine, according to the needs of the Church, whether this office is to be exercised in a personal or in a collegial manner. There is neither appeal nor recourse against a judgment or a decree of the Roman Pontiff. The primacy of the Pope in the judicial sphere is further evidenced in Canon 1404 wherein “the First See is judged by no one.” On the contrary, only the Roman Pontiff has the right to judge heads of state, cardinals, legates of the Apostolic See and, in penal cases, bishops, or other cases, which he has reserved to himself.⁵⁷ The individual members of the Church are bound to obey the Supreme Pontiff as their highest Superior, by reason also of their sacred bond of obedience.⁵⁸ This holds true not only for the faithful laity but also for the bishops of particular churches and other members of the Church government.

A glance at the procedure of internal functioning of the Roman Curia also gives the idea of the Church government being open to dealings and

⁵⁶ Canon 330, n. 4. See also Second Vatican Council. The Dogmatic Constitution on the Church. *Lumen Gentium*, no. 22.

⁵⁷ Canon 1405, n. 4.

⁵⁸ Canon 590, n. 4.

communications between the bishops and the Pope. The Curia in its vicarious character, acting on behalf of the Pope keeps in touch with the bishops of particular Churches, who are the first and principal beneficiaries of the workings of the various dicasteries. The Roman Curia also facilitates communion and sharing of concerns between bishops and the Pope by carefully preparing the *ad limina* visits.⁵⁹ These visits act as occasions for the bishops of particular Churches to have a personal meeting with the Pope to discuss matters concerning the good of the Churches and the role of the bishops. These visits aid in confirming unity and strength in the bonds of the hierarchical communion that exists in the Church. The *ad limina* visit also helps bishops gain access to the dicasteries in the Curia. This is made possible at two levels: first, it gives them access to each individual agency of the Roman Curia, especially to questions that the agencies are dealing with directly according to their competence, questions that have been referred by law to them owing to their expertise and experience. Second, bishops who come from all over the world where particular Churches are found are introduced to questions of common pastoral solicitude for the universal Church.

At this point, it becomes essential to identify the extent to which the claims of the Roman Church as representative of the Christian world are true. For this purpose the extent to which democratic principles are observed and encouraged need to be dwelt upon. Hence, here the role of Bishops, local churches and episcopacy in general needs to be considered. It was in the understanding of the Church as not only in a relationship with God but also in communion with one another that thematized the expression “People of God” for the Church.⁶⁰ Regarding Bishops in general, the Code states that they are by divine institution, successors of the Apostles. They are constituted Pastors in the Church, to be teachers of doctrine, the priests of sacred worship and the ministers of governance. By their episcopal consecration, Bishops receive, together with the office of

⁵⁹ The *ad limina* visits are traditional to the Roman Catholic Church. They comprise of the visit of the bishops to the tombs of the martyred Apostles, Paul and Peter. On this occasion the bishops also receive an opportunity to present to the Roman Pontiff a report on the state of their diocese. See Article 28, Apostolic Constitution.

⁶⁰ See Hermann J. Pottmeyer, “The Actualization of Vatican II”, *Theological Digest*, vol. 49 (2002), p. 149.

sanctifying, the offices also of teaching and of ruling. These offices may however by their nature, be exercised only in the hierarchical communion with the head of the College and its members.⁶¹ The Pope enjoys the prerogative concerning the appointment and naming of Bishops. Regarding the College of Bishops and its properly collegial actions, the Code first states that the head of the College of Bishops is the Supreme Pontiff, and its members are the Bishops by virtue of their sacramental consecration and hierarchical communion with the head of the College and its members. This College of Bishops, in which the apostolic body abides in an unbroken manner, is, in union with its head and never without this head, also subject of supreme and full power over the universal Church.⁶² However here the exercise of this collegial power is always accompanied by simultaneous exercise of papal primacy.

Canon 337 states that the College of Bishops exercises its power over the universal Church in solemn form in an Ecumenical Council.⁶³ It exercises this same power by the united action of the Bishops dispersed throughout the world and when this action is as such proclaimed or freely accepted by the Roman Pontiff, it becomes a truly collegial act. It is left to the Pope to select and promote, according to the needs of the Church, ways in which the College of Bishops can exercise its office in respect of the universal Church in a collegial manner. Similar conditions are required for the exercise of the infallible⁶⁴ magisterium by the two supreme authorities of the Church in matters of faith and morals. Canon 746 in the New Code refers to the Pope as the Chief Shepherd and Teacher of all Christ's faithful. His office affords the Pope infallibility in his teaching

⁶¹ Canon 375, n. 4.

⁶² Canon 336, n. 4.

⁶³ It is the prerogative of the Pope alone to summon an Ecumenical Council, to preside over it personally or through others, to transfer, suspend or dissolve the Council, and to approve its decrees. It is also the prerogative of the Pope to determine the matters to be dealt with in the Council, and to establish the order to be observed. The fathers of the Council may add other matters to those proposed by the Pope, but the Pope must approve these. See Canon 338, n. 4.

⁶⁴ Infallibility concerns the transmission of the Church's fundamental certainty that it cannot fall away from the truth and faith of God at the level of teaching proclamation with respect to faith and morals. See Hans Waldenfels, "Infallibility", *Theological Digest*, vol. 43 (1996), p. 121.

accompanied with the duty of strengthening his brethren in faith. The Pope by definitive act has the authority to proclaim doctrine that must be held concerning faith or morals. However the Pope alone is not solely responsible to teach the faithful in the Church.

The Code clarifies that the College of Bishops also possesses infallibility in its teaching when the Bishops, gathered together in an Ecumenical Council and exercising their magisterium as teachers and judges of faith and morals, definitely declare for the universal Church a doctrine to be held concerning faith or morals. In the matter of the teaching authority of the Pope, or what is called sometimes the Roman magisterium, there is a certain priority expressed over the magisterium of the bishops. The teaching coming from Rome has direct import for the whole Catholic Church. "Universal" in relation to the Roman magisterium indicates a magisterium with a universal audience, while the "ordinary and universal magisterium" is rooted in the universality of the church's life and is expressed through the episcopacy.⁶⁵

In addition to these strictly collegial forms, the Bishops are available to the Roman Pontiff in the exercise of his office, to cooperate with him in various ways, among which is the Synod of Bishops. This Synod does not imply any real exercise of collegiality in the sense of co-responsibility or participation at the legislative and executive levels. But Canon Law does allow that "in certain cases" the Synod may receive a "deliberative power" from the Pope, in which case it is the Pope's role to ratify decisions of the Synod.⁶⁶

Again concerning the proper power of the diocesan bishops, the Code affirms its nature and also its limits. According to Canon 381, in the diocese entrusted to his care, the diocesan Bishop has all ordinary, power and immediate power required for the exercise of his pastoral office, except in those matters

⁶⁵ See Bernard Sesbouc, "The Relationship of the Roman to the Ordinary and Universal Magisterium", *Theological Digest*, vol. 50 (2003), p. 55.

⁶⁶ See Canon 343. See also J.L. Leuba, "Change in the Papacy", *Theological Digest*, vol. 50 (2003), p. 224.

which the law or a decree of the Supreme Pontiff reserves to the supreme or to some ecclesiastical authority.

As a consequence of this basic and general rule of law, there is now, under the new Code, far less “papacy” in the life and work of diocesan bishops and of the heads of equivalent communities.⁶⁷ While this change in the relationship between the Pope and the episcopacy brought about by the Second Vatican Council and introduced in the new Canon law may be termed as “decentralization”, much of the relationship between the Pope and the Catholic bishops is one of fraternal communion and communication. To this effect, every five years the diocesan Bishop is bound to submit to the Supreme Pontiff a report on the state of the diocese entrusted to him, in the form and at the time determined by the Apostolic See.⁶⁸

3.11. Critical Evaluation of the Church Hierarchy

A consideration of the institutional life of the Church and the principles guiding the same as reflected in the Canon Law and Vatican documents shows the pyramid structure in which the Pope is above the Church in doctrinal magisterium as well as in the exercise of power. The Roman Curia presents itself as a structure with harmonious proportions. Though it is tempting to view the Curia as an ideal system of co-ordination amongst various dicasteries, the fact of the absolutism inherent in the Papacy is hard to miss out. The structure of the hierarchy of the Church rests on the believing laity and owing to its spiritual mission for the whole world extends beyond the jurisdiction of any secular form of the state. The parliamentarism of the Church is not easy to reconcile with the notions of democracy. The Church government in the Holy See connotes to one will, one power, which then flows downward through organs chosen and guided by the Pope.

Though the Church is moving towards a broader sharing of decision-making, it is still burdened by attitudes that inhibit the appointment of women in

⁶⁷ See Canon 368, n. 4.

⁶⁸ Canon 399, n. 4.

high positions within the Church hierarchy. The numerous consultations pertaining to collegiality are believed to be more apparent than real. It has also been observed that the extent to which local churches and Bishops are included in the process of building consensus is dismal. Instead of trying to work out a consensus of the bishops as a whole, the Roman magisterium “forces” consensus by quickly speaking out on its own at the outset and leaving for the bishops no role other than to accept decisions and transmit them to their people.⁶⁹

Dissenting voices against the concept of the absolute primacy of the Pope in all matters have been fast and furious. The need for a change in the attributes of papacy and the exercise of papal power within the Church structure has been widely debated upon.⁷⁰ Theological scholars have especially taken up much of the debate. Those with Protestant leanings are against the structure of papacy as of “divine law,” while others have argued that the very brotherhood that the papacy seeks to achieve in Christianity is endangered by the absolutist structure of papacy at Rome.⁷¹ Some scholars like Hebblethwaite have lamented the fact that the changes identified in the primacy of the Pope since the second Vatican Council in 1965 have not translated into reality. He expresses his uneasiness over the fact that today “local churches are seen as passive recipients of centralized wisdom.”⁷² Some of the suggestions that have evolved from such debates show the need of the Church at Rome to work in closer relation with the local Churches, keeping in view the principle of subsidiarity. This would entail the renouncement of the papal prerogative to name bishops as also allowing the expression of the magisterium of the bishops before the Pope.⁷³

⁶⁹ See Sesbouc, n. 65, p. 57.

⁷⁰ See Michel Meslin, “Reflections on Primacy and Power”, *Theological Digest*, vol. 48 (2001), p. 143.

⁷¹ See Paolo Ricca, “New Possibilities for the Papacy”, *Theological Digest*, vol. 46 (1999), pp. 48, 50.

⁷² See Peter Hebblethwaite, “Changing Vatican Policies 1965-1985: Peter’s Primacy and the Reality of Local Churches”, in Thomas M. Gannon, ed., *World Catholicism in Transition* (Macmillan Publishing Co.: New York, 1988), p. 49.

⁷³ See Sesbouc, n. 65, p. 56.

The other end of the debate on the primacy structure of the papacy is concentrated on the inescapable rivalry that arises between human institutions and those set on divine right. The concept of primacy structure in the working of the Church Government with its power center at the Vatican should ideally be a closed system. It is argued that its primacy should have a meaning only within the Catholic Church, and not be related to any other practice, custom or human institution. The fact that the Vatican has chosen to enter upon international life and specifically partake in the international law making process rises to challenge such an ideal.

3.12. Comment: Functionalism and the Church Organization

What however is important from the point of view of an international lawyer is the question as to how far the presence of the Vatican in international law helps to introduce the functionalist benefits of an organization that claims independence from temporal and political motives⁷⁴ and instead shows its commitment and solidarity to issues of peace, justice and basic human rights. The importance of the movement away from the index of power that was critical in the nationalism that emerged after the Second World War (1939-1945) to an index of need was expressed in the theory of functionalism by scholars such as David Mitrany. The writings of Mitrany produced mainly in the inter-war period and during the Second World War are especially significant in gaining an understanding and insight into the role of international organizations. The functional approach proposed by Mitrany seeks to link authority to a specific activity and thus breaks away from the traditional link between authority and a definite territory perpetuated either by an association or a federation of nations.⁷⁵ Mitrany believed that the functional approach to international organizations would help evolve a line of action that might “overcome the deep-seated division

⁷⁴ According to Article 24 of the Lateran Treaty, the Holy See in regard to sovereignty appertaining to it in international matters, declares to take “no part in any temporal rivalries between other states, nor in any international congresses called to settle such matters, save and except in the event of such parties making a mutual appeal to the pacific mission of the Holy See, the latter reserving in any event the right of exercising its moral or spiritual power.”

⁷⁵ See David Mitrany, *A Working Peace System* (Chinese Quadrangle Books Publishers, 1966), p. 27

between the needs of material unity and stubborn national loyalties.”⁷⁶ Mitrany also hoped that the functional approach would give rise to a supra-national institution bearing the trust of nations and helping the growth of an international community. Such an approach was held to be desirable in affirming the satisfaction of common needs shared by different nations. The functional approach also envisaged the presence of international agencies that would “serve peoples all over the world regardless of national boundaries” and thus create by their existence and performance a community of interests, valuations and actions.⁷⁷

The brief description of the hierarchy and working of the Vatican shows the continuous engagement of the Church with issues relating to peaceful conduct of relations between states and the application of Catholic theology to situations of deprivation and neglect. As earlier pointed out the mission entrusted to the Holy See is not restricted to a territory but the personhood of the Pope. The Pope in turn through his spiritual influence and the delineation of his ministry within the Roman Curia and tie-ups with international organizations and aid agencies seeks to serve all of mankind. It is submitted that though the Holy See or the Vatican fail to fall into the classical definition of the state in international law the Holy See must be considered a Church organization and a supra-institutional structure. The clear movement away from national interests is obvious therefore in the case of the Holy See. Its commitment to issues of need in countries beyond territorial boundaries, in matters such as education, assistance to vulnerable groups like refugees, migrant workers and victims of disasters natural and otherwise make it a worthy contender for the functional approach to international law. The Pope together with his representation in the papal legates contributes towards maintenance of good relations between states. The role of the Secretariat of State, the Pontifical Council for Justice and Peace, the Pontifical Council for the Family, the Pontifical Council *Cor Unum* and the Pontifical Council dedicated to the care of refugees and migrants are especially valuable. A closer look at the interventions made by the Vatican in international relations and the law making process is quintessential to arrive at a better understanding of the role of the

⁷⁶ *Ibid.*, pp. 28-29.

⁷⁷ Hans Morgenthau, Introduction to David Mitrany, *A Working Peace System* (Chinese Quadrangle Books Publishers, 1966), p. 11.

Vatican in international law. The question which needs to be addressed is whether the presence of the Holy See in international law stops at moral pronouncements or instead goes further to bring the international community together on issues concerning basic needs.

Chapter IV

Vatican Interests and Interventions

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The Holy See holds sovereign authority over the Vatican City State and carries out international relations on behalf of the city-state and the Roman Catholic Church. The fact that the Vatican did not want itself embroiled in international politicking as a state in its temporal sphere but rather in its spiritual capacity¹ was clarified by a 1957 exchange of letters specifying the presence of the Holy See and not the Vatican in the United Nations. This classification of the interests and spheres of influence of the Holy See was aimed at amplifying the perimeter of the papacy's interest in the activities of the United Nations.

As a Permanent Observer at the United Nations,² both the interests of the Holy See and the Vatican are represented, depending upon the subject matter. The sending authority of representations to international organizations and meetings however lie with the Holy See and not the Vatican.³

The Holy See has considered the United Nations "as a meeting place for States and civil society and a convergence of varied interests and needs."⁴ This understanding has led to the Holy See using the UN as a platform to effectively

¹ See Hyginus Eugene Cardinale, *The Holy See and the International Order* (Gerrard Cross, England: Colin Smythe, 1976), p. 256.

² Regarding Permanent Observers, there is no specific provision in the UN Charter. The custom started with the naming of Switzerland to the UN in 1946 and acceptance of its designation by the then Secretary General. See UN Public Inquiries Unit, "Information on the Status of Permanent Observer Missions to the United Nations", October 1994. The Vatican primarily became a Permanent Observer owing to its presence in UN specialized agencies such as the International Telecommunications Union and the Universal Postal Union. See "Legal Opinions of the Secretariat of the United Nations", *United Nations Juridical Yearbook*, 1962, pp. 236-37.

³ *Ibid.*, p. 257. See also Catholics For Free Choice, CFFC Publication, "The Church at the United Nations", available at <http://www.catholicsforchoice.org/article/ChurchattheUN.asp>

⁴ Pope John Paul II, Address to the United Nations Secretary General and Administrative Committee on Coordination of the United Nations, available at http://www.vatican.va/john_paul_ii/speeches

pursue and further its doctrine. To a great extent, its presence in the UN has also helped the Holy See to continue in its influence of civil rulers and civil policies.

4.1. Vatican Initiatives for Peace

The Holy See in its quest for peace and under the legitimacy of the spiritual authority offered to her through the Church has made far-reaching impact. The authority of the Pope that goes beyond the boundaries of nations and embraces all people has been used to mediate over conflicts. A historical study of papal initiatives for peace is particularly interesting in the twentieth century that witnessed to the two devastating world wars: the First World War (1914-1918) and the Second World War (1939-1945). The twentieth century opened under the ominous threat of British imperialism in South Africa coupled with a general sense of gloom in the European scene. In 1899 under the auspices of Queen Wilhelmina of the Netherlands, the International Peace Conference was assembled at the Hague to deliberate on disarmament, the peaceful settlement of international differences and the establishment of a permanent court of arbitration. The then Pope, Leo XIII not only lent his moral support to the Conference but also in a letter to Queen Wilhelmina expressed the desire of the Holy See to cooperate actively in enterprises dedicated to peace.⁵ The Holy See was however prevented from actively participating in the Hague Conference owing to the obstacles put up by Italy.

In 1885 the Holy See under the Pontificate of Leo XIII, was called to mediate between Germany and Spain over the conflict relating to the Caroline Islands. These islands which were discovered by Spain but never colonized, were claimed by Germany owing to their strategic importance in the Pacific. The prospect of war breaking out between the two countries led the German emperor to call upon the good offices of the Pope to arbitrate upon the issue relating to the Caroline Islands. This reference by the German emperor was significant considering the fact that Germany

⁵ See Leo XIII, Letter, *Nous Ne Pouvons* quoted by Monsignor Harry Koenig, "The Popes in the Twentieth Century", in Waldemar Gurian and M.A. Fitzsimons eds., *The Catholic Church in World Affairs* (University of Notre Dame Press, Notre Dame, Indiana, 1954), p. 49.

did not otherwise enjoy smooth relations with the Vatican. Pope Leo XIII however preferred to mediate on the issue rather than act as an arbitrator and through his proposals amicably settled the issue. The Pope was also similarly called upon to arbitrate over a treaty quarrel between Haiti and San Domingo. Though the efforts of the Pope were not so successful, the case stands in point to show the recognition by these states of the peace-making functions of the Holy See.

Pope Pius X followed in the footsteps of his predecessor in his commitment to peace efforts. He employed the mediation of his nuncios, Monsignor Giulio Tonti and Alessandro Bavona to help settle the boundary dispute between Bolivia, Brazil and Peru. The Pope also urged the Catholics in Mexico, in the background of a revolution hitting the countryside, to support the Niagara Falls Conference in which Argentina, Brazil and Chile were trying to mediate the controversy between the US and Mexico.⁶ Pope Pius X also made sincere efforts to stave off the armaments race and continued to use his spiritual influence and good offices communicated through his nuncios, in different European capitals to prevent conflicts. The efforts of the Pope proved to be in futility with Germany, Austria-Hungary declaring war against Russia, France, Great Britain, Serbia and Montenegro.

Much of the recounting of the efforts of the Popes that have resided in the Holy See enters upon the realm of international relations. The consideration of the same is integral to understanding the centuries-old position of the Vatican with regard to the usefulness of negotiations instead of resort to war, its concerns for victims of conflicts and impartiality towards belligerents. This statement especially holds true in the context of the Pontificate of Benedict XV. In 1917 the Pope described the First World War as a “useless massacre.” The Pope not only staunchly supported absolute impartiality towards belligerents but also showed his “abundant charity and tireless solicitude for the wounded, suffering and persecuted war victims.”⁷ The efforts of

⁶ See Koenig, n.5, p. 51.

⁷ See Koenig, n.5, p. 54.

Pope Benedict XV included the sending of instructions to the priests of all countries enjoining them to seek the spiritual and material welfare of all war prisoners and providing assistance in the correspondence between victims and their families. Pope Benedict XV also used his spiritual influence to plead to the belligerents to exchange war prisoners and certain classes of interned civilians. The Swiss government agreed to hospitalize sick prisoners from both camps upon the insistence of the Pope. Vatican funds, though meager at that point were also disbursed to provide relief in Belgium, France, Lebanon, Lithuania, Luxembourg, Poland, Syria and for German prisoners in Russia. Here again no attempt was made to single-out Catholic beneficiaries. The Pope continued to illustrate the Church's charity unhindered by boundaries of faith, race and nationality.

Papal efforts at peace have not always ended successfully. This especially holds true for the Pontificate of Pope Pius XII. At the prospect of another world war, Pope Pius XII on 24 August 1939 in a solemn address to the nations reminded: "Nothing is lost with peace. Everything can be lost with war." The refined courtesies of the Pope's diplomacy failed to prevent belligerents from invading Belgium, Holland and Luxembourg on 10 May 1940. With the German attack upon Russia and Japanese bombing of the Pearl Harbour, the war quickly spread to the rest of the world. The Pope however continued to plead and pray for peace. In 1944 when the end of the war was at sight, the intervention of the Holy See was sought to protect the Jewish community from Nazi victimization. Papal influence especially through the nuncio in Bucharest, Monsignor Andreas Cassulo coupled with fervent intervention by Jewish organizations helped the exodus of a large number of orphan refugees to Palestine. The Holy See was also called to seek Berlin's permission to distribute packages of medicine and clothing to the Jews of Transylvania, many of whom had gone missing.⁸

⁸ See Catholic Information Network, "The Action of the Holy See for the Jews of Europe: Romania," available at <http://www.cin.org/p12.6.html>

The constant recourse to force by states to settle disputes and the politics of power persuaded the Pope to encourage proposals for the setting up of an international organization vested with the power to counter acts of aggression and threats to peace. The Dumbarton Oaks Conference (1944) proposals for such an international organization was hailed by the Pope as a joyful development.⁹ The San Francisco Conference in June 1945, leading to the establishment of the UN did not receive any particular criticism or commendation from the papacy at Rome. The Holy See in this instance was neither invited to the San Francisco Conference nor did it show an inclination to participate in the Conference, in strict adherence to the letter of the Lateran Treaty. The Holy See preferred to wait and observe the functioning of the UN before expressing the desire to be part of the UN system.

Initiatives to broker peace between nations continued even with the birth of the UN. The present Pontificate of Pope John Paul II began in the backdrop of the Cold War. The Pope in his first encyclical clearly denounced war and identified the respect for human rights as the only sure path to peace.¹⁰ The magisterial interventions by the Pope to effectuate peace in conflict situations are essentially done at two levels: the doctrinal and the practical. The doctrinal magisterium of the Pope appears in many forms. These include the Messages for the Day of Peace,¹¹ which is celebrated every year on 1 January and the discourses by the Pope to the Diplomatic Corps accredited to the Holy See. The latter speeches are addressed to not only the

⁹ See Monsignor Harry Koenig, "Dumbarton Oaks," *Catholic Digest*, vol. 9 (1945), pp. 4-5.

¹⁰ See Pope John Paul II, Encyclical, *Redemptor Hominis*, 4 March 1979.

¹¹ As of 2004, twenty-six Papal messages for the Day of Peace have been delivered. These messages have dwelt upon various themes in order to instill a deeper understanding of the principles for universal peace. Some of the themes include "To reach peace, teach peace" (1979), "To serve peace, respect freedom" (1981), "If you want peace respect the conscience of every person" (1991). The 2002 message in the aftermath of terrorist attacks pleaded that there could be "No peace without justice, no justice without peace." In 2004 the message on "An ever timely commitment: teaching peace" reminded nations of the relentless wars that had led to a hope in the UN to maintain international peace. This message highlights therefore the need to respect law and pleads for a settlement of the crisis in the Middle East owing to the anti-terror campaign. The Pope urges nations to fight against terrorism not only through repressive and punitive operations but also at political and educational levels. These messages are available at http://www.vatican.va/holy_father/john_paul_ii/messages

ambassadors of states but also to nations and peoples as a whole, outlining for them major lines of action for contributing to peaceful international co-existence.

The practical initiatives of the Holy See to foster peace in the world is through a combination of efforts on the part of the Secretariat of State, the Pontifical delegations to different countries and the personal office of Pope. Of all these, it is the role of the Pope in his personal contacts with heads of states and numerous international visits that have truly steered the course of peace-making and peace-building measures. Among these visits of the Pope and papal delegations, those held at the UN and affiliated international institutions such as the UNESCO, FAO and the various specialized agencies in Geneva assume importance. The practical initiatives spearheaded by the Pope to ensure peace are especially relevant in the case of the Balkans, Central Africa, the Holy Land, Iraq and certain conflicts that arose in Latin America.

4.1.1. The Beagle Channel Dispute

The mediation by Pope John Paul II over the Beagle Channel dispute in 1978 helped avert war between Argentina and Chile and the four-year long negotiations at the appeal of the Pope led to the signing of a treaty on friendship and peace between Argentina and Chile.¹²

4.1.2. The Holy Land

The creation of the state of Israel in 1948 gave rise to tensions between Israel and Palestine and the situation worsened with the 1967 war that upset the delicate balance of inter-state relations in the Middle East. These tensions continue to subsist and are grimly looked upon by the present Pontiff at Rome.

¹² The Beagle Channel dispute concerned the conflicting boundary claims over a cluster of small islands at the southern tip of South America. The Vatican mediation was respected on both sides especially owing to the large Catholic populations in each country. Immediate military crisis in 1978, between the two countries was averted through the Pope's personal envoy Cardinal Antonio Samore. See Mark Laudy, "The Vatican Mediation of the Beagle Channel Dispute: Crisis Intervention and Forum Building", available at <http://wwics.si.edu/subsites/ccpdc/pubs/words/11.pdf>

Pope John Paul II from the very first few days of his Pontificate has dedicated himself to finding peace in the Holy Land. The spiritual influence of the Pope and the ability to dialogue with Hebrew, Muslim and Christian listeners in the Holy Land without appearing partisan has helped in the peace efforts in the troubled region. In his meetings with religious and civil authorities, the Pope has condemned anti-semitism and every form of racism as opposed to the teachings of Christianity.¹³ The Pope has also stressed upon the need for the guarantee of a special status to the city of Jerusalem, calling upon the parties in the conflict and international institutions.¹⁴ The Pope has through a series of highly valued symbolic actions, expressed in words, deeds and personal witness the message of reconciliation to the Palestinian and Israeli people. His visits have particularly been significant with regard to places with historical and religious importance to both parties such as the Palestinian refugee camp *Deheisheh*, the Jewish Mausoleum *Yad Vashem* (the Holocaust Memorial), the Mount of the Mosque and the Wailing Wall.¹⁵

4.1.3. The Balkans

The Pope's actions for peace are further illustrated in the trouble-torn Balkans where former Yugoslavia was faced with open warfare in Croatia (1991) and devastating war in Bosnia and Herzegovina (1992). In the space of less than a year alone, from 30 January 1991 to 13 January 1992 Pope John Paul II intervened thirty seven times in the first phase of the Yugoslavian crisis. At the outset of the crisis, while addressing a group of Croatian pilgrims, the Pope emphasized that the way leading to the future was in dialogue and discussion on points of disagreement,

¹³ See Pope John Paul II, Address to the Chief Rabbis, Holy Land, 23 March 2000, *L'Osservatore Romano English edn*, 29 March 2000, p. 6.

¹⁴ See Pope John Paul II, Annual Address to the Diplomatic Corps, 11 January 1999, *L'Osservatore Romano English edn*, 13 January 1999, p. 2.

¹⁵ See intervention by Cardinal Angelo Sodano on the occasion of the 25th Anniversary of the Pontificate of John Paul II: Symposium organized by the College of Cardinals, 18 October 2003, available at http://www.vatican.va/roman_curia/secretariat_state

mutual respect, cooperation and solidarity.¹⁶ The Pope also sent three messages respectively, to Ante Markovic, President of the Social Council of the Socialist Federal Republic of Yugoslavia; Franjo Tudjman, President of the Republic of Croatia and to the President of the Republic of Slovenia exhorting them to immediately stop the use of force and resume dialogue.¹⁷ Additional initiatives on the part of the Pope included a letter to the Patriarch of the Serbian Orthodox Church calling upon a time of fasting and prayer for peace in the Balkans and a highly symbolic and courageous pilgrimage to the “matyr” city of Sarajevo amidst continuing conflicts (12-13 April 1997).¹⁸ The Pope was distraught by the egregious violations of human rights in the Kosovo crisis and used every opportunity to express his anguish.¹⁹

4.1.4. *Central Africa*

The outbreak of fratricidal war between the *Hutus* and the *Tutsis* on 7 April 1994 following the murder of the Presidents of Rwanda and Burundi escalated into one of the greatest catastrophes of human history. The millions killed in this horrific war was only a reflection of the ethnic conflicts that have ensnared the Great Lakes Region (Rwanda, Burundi and Democratic Republic of Congo [Zaire]) for the last one decade. At a time when the turmoil and terror in Rwanda was received with impassivity in the international community the Pope expressed his shock and begged the warring groups to reconcile. The fact that the war was fought even by groups that were in large part Christian was found to be unfortunate and contrary to the Christian

¹⁶ See Citta del Vaticano Libreria ed., *Crisis in Yugoslavia Position and Action of the Holy See [1991-1992]* (Vatican, 1992), p. 29.

¹⁷ *Ibid.*, pp. 32-34.

¹⁸ Pope John Paul II made similar “pilgrimages of peace” to Slovenia (1996 and 1999) and Croatia (2-9 June 2003).

¹⁹ See Pope John Paul II, Address to a Group of Nobel Peace Prize Laureates, 22 April 1999, *L'Osservatore Romano English edn.*, 28 April 1999, p. 1. (“How can we fail to renew a vigorous appeal for an end to ethnic conflicts in the Balkans and the clash of arms, for a return to dialogue and the respect for the dignity of all persons and all communities, in the name of fundamental rights!”).

imperative for peace and brotherhood.²⁰ In a post-Synodal exhortation *Ecclesia in Africa*, published on 14 September 1995, Pope John Paul II again expressed his grief over the war in Africa and indicated that the trade interest of external groups trafficking in arms were fomenting the war in Africa.

Among the numerous interventions of the present Pope in the conflict ravaging Central Africa, the intervention in the plight of the thousands of refugees lost in the uninhabitable forest of the Great Lakes Region is significant. The Pope while receiving eleven new ambassadors accredited to the Holy See, including the new ambassador of Rwanda, reaffirmed the “urgent necessity” of working zealously to reconstruct Africa.

4.1.5. Iraq

The Pope relied upon the use of negotiation to ensure the possibility of averting a second war in Iraq. The sending of personal representatives, Cardinal Roger Etchegaray to Baghdad and Cardinal Pio Laghi to Washington was an attempt at direct mediation between Iraq and the US. The Pope also categorically denied a support for the war in Iraq in his Speech before the Diplomatic Corps accredited to the Holy See on 13 January 2003.²¹ The bombing of Baghdad on 20 March 2003 was received with great sorrow by the Pontiff who in a declaration before the Vatican Press on the same night deplored the abandonment of the path of negotiations as initiated under international law. The Pope in the same declaration welcomed the fact that the war in Iraq had not interrupted the assistance offered by Catholic institutions in Iraq. The Pope also announced that, as a symbol of solidarity with the victims of

²⁰ See the message of Pope John Paul at the inauguration of the Special African Assembly of the Synod of Bishops, 10 April 1994, *L'Osservatore Romano English edn*, 13 April 1994, p. 1.

²¹ The Pope said: “War is not inevitable. It is always a defeat of humanity. International law, honest dialogue, solidarity between states, the noble exercise of diplomacy: these are the methods worthy of individuals and nations in resolving their differences. Speech available at http://www.vatican.va/holy_father/john_paul_ii/speeches/2003/

the war the Apostolic Nunciature headed by Archbishop Fernando Feloni would remain open in Baghdad.²²

4.2. Special Interest in Human Rights

The Holy See has perceived international law as the primary means for pursuing peace and in this context has seen the role of the Catholic Church in inculcating morality to inspire and develop law.²³ It is the exercise of such authority under the UN framework that is of significance. While the scope of the purposes and principles of the United Nations as envisaged in the Charter is wide and far-reaching, the Holy See's participation in the realm of international law under the UN framework has been always subject to her "spiritual mission" in the world.

The interest of the Catholic Church in the sphere of human rights actually grew in the backdrop of the Renaissance when claims of civil liberties of individual involved a vehement rejection of religion.²⁴ Since then the main focus of the Holy See has been on civil rights. An indication to the same effect can be gathered from the remark by Pope Paul VI, in his reply to the New Year greetings of the diplomatic corps of the Holy See, on 14 January 1978. He enunciated that three rights alone can give governments the moral right to govern their country: (a) religious liberty; (b) equality of all men (c) physical and psychic integrity and consequent banning of all forms of torture.²⁵

The Holy See is a party to a number of multilateral treaties within the framework of the United Nations. The aim here is to show the specific inclination of the Holy See towards human rights considered in the light of the "objective moral

²² See intervention by Cardinal Angelo Sodano, n. 15.

²³ See Pope John Paul II, Address to the Diplomatic Corps accredited to the Holy See, 13 January 1997, available at http://www.vatican.va/holy_father/john_paul_ii/speeches

²⁴ See Walter Fernandes, "The Church and Human Rights" in *Vidyajyoti, Journal of Theological Reflections*, vol. 17, (1978), pp. 500, 501.

²⁵ See Paul VI, "Hope of a More Just Society in Regard to Human Rights", *Osservatore Romano English edn*, 26 January 1978, p. 6.

order.” Furthermore it also explores the commitment of the Church to serve “within competence”²⁶ in considering world affairs in their social, cultural, economic and political spheres while claiming legitimate independence for herself.²⁷

4.2.2. Right to Religious Liberty

The Holy See has shown its agreement with international instruments supporting the right to religious liberty and expression. The Holy See has understood the critical importance involved in the recognition and protection of the right to religion as a precursor to other human rights.²⁸ The Holy See has expressed its “serious concern” over reports of discriminatory and intolerant policies with regard to minorities in States having an official religion and the increase in extremism in all religions and inter- religious conflicts.²⁹ The Holy See has identified such situations as a “direct and serious contradiction” to Article 18 of the Universal Declaration of Human Rights (UDHR).

The Church’s position on the right to religion and expression has itself shown a marked change since the days of the Second Vatican Council. As far as civil restriction goes, the Church now interprets and applies the divine law less severely than before in matters of religion. The common good now permits and requires coercive measures only if its most fundamental features are assailed; these being the

²⁶ See Pope Paul VI’s Address to the UN General Assembly quoted by H.O. Waterhouse, *The Social Message of the Catholic Church*, (Catholic Truth Society: London, 1980), p. 27.

²⁷ Second Vatican Ecumenical Council, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, no. 42; see also John Desrochers, *Social Teachings of the Church* (Bangalore, 1982), p. 146.

²⁸ In an annual address to the Diplomatic Corps, Pope John Paul II affirmed, “Among the fundamental freedoms which the Church must defend, first place naturally goes to religious freedom. The right to freedom of religion is so closely linked to other fundamental rights that it can be argued that respect for religious freedom is, as it were a touchstone for the observance of other fundamental rights.”, Pope John Paul II, Address to the Diplomatic Corps, February 1989.

²⁹ See intervention of Monsignor Renato R. Martino at the United Nations “on Item 119c- Human Rights Question-Religious Tolerance”, 13 November 2001, available at http://www.vatican.va/roman_curia/secretariat_state

ones grouped under the term “public order” in the Declaration on Religious Liberty.³⁰ Thus in other words, even in a strongly Catholic country, the public diffusion of non-Catholic ideas or practices should not now be considered a punishable threat to the common good simply in so far as they are non-Catholic. To merit that kind of classification they would have to be anti-Catholic propaganda, which by virtue of its content or usage assaults or threatens norms of truth, honesty, civic responsibility, sexual morality and respect for other persons. Such a determination is to be arrived at based on human arguments and rationality without appeal to the supernatural authority of divine revelation.

The Holy See also strongly condemns recourse to violence and war in the name of God and religion³¹ and in this regard encourages communication through inter-religious dialogue at both national and international levels. Furthermore in the context of a pluralist society, the Holy See tries to show the importance of thorough education with regard to the respect due to the conscience of others and emphasizes the revelation of truth found in Jesus, by which Christians are called to promote unity rather than division; reconciliation rather than hatred and violence.³²

The Holy See has viewed with satisfaction the role of religion in the constitutional treaty of the European Union thus providing for “healthy cooperation”³³ among the churches, ecclesial communities and other religious

³⁰ Second Vatican Ecumenical Council, Declaration on Religious Liberty, *Dignitatis Humanae* (1965), no. 14.

³¹ See Pope John Paul II, *L'Osservatore Romano*, 6 March 2002, p. 12. See also Intervention by Monsignor Renato R. Martino at the Third Committee of the 57th General Assembly of the United Nations on Religious Freedom, 8 November 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20021108_martino-religious-freedom_en.html

³² See Pope John Paul II, Message of His Holiness for the XXIV World Day of Peace, 8 December 1990, available at www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121990_xxiv-world-day-for-peace_en.html

³³ See Pope John Paul, Apostolic Exhortation, *Ecclesia in Europa*, no. 113, 28 June 2003, available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_20030628_ecclesia-in-europa_en.html

organizations and European institutions. Such public recognition of the role of religion is welcomed by the Holy See so as to accept the religious dimension in guaranteeing the secure and peaceful development of society.³⁴

It must also however be pointed out that the Holy See had made serious attempts to ensure the mention of Christian roots in the constitutional treaty of the EU.³⁵ According to the Pope, it was these roots that helped Europe to integrate and uphold principles of fundamental equality, justice and peace. The rationale behind such a singular reference to Christianity has been justified in the light of historical fact and the possibility of Christianity as represented in the Vatican providing a common set of values that would unify Europe in the future. However, the desire of the Holy See regarding such an inclusion has not been allowed in the EU Constitution, wherein the drafters have not only refused to include any specific religious reference but have also deliberately avoided the distinction between the Church and other religious communities and associations within the Member States. In fact a study of the events leading to the framing of the EU Constitution provides a reflection of the increasing efforts of EU countries to tread the path of secularism. A direct reference to Christian roots in Europe was considered problematic in so far as it would delineate the boundaries of economic cooperation on religious grounds. Thus some have pointed out that the debate over Turkey's entry in the EU was a question relating to its origins in Europe rather than its Islamic linkages. Furthermore a reflection on EU countries presents a picture wherein member countries have shown a widespread reluctance to oblige the Pope.

³⁴ See Intervention by the Holy See at the 113th Session of the Committee of the Ministers of the Council of Europe, Moldova, 5-6 November 2003 available at http://www.vatican.va/roman_curia/secretariat_state/2003/documents/rc_seg-st_20031106_council-europe_en.html

³⁵ See John Paul II Pleads with Europe on Eve of Crucial Meeting, Vatican City, 11 December 2003, available at www.goacom.com/overseas-digest/Religion/Pope%20JP11/vat&eu03.htm

It is only a few EU countries that have chosen religious references in their constitutions. For instance even predominantly orthodox states like Italy and Spain are not described officially as Catholic countries. Italy chose to remove the religious designation from her post-war constitution in 1945. France's commitment to secularism goes back to the days of the French Revolution. Greece, otherwise an orthodox country, was pressurized by the EU to delete religious references on a person's passport. This desire of nations to embody secular values has been shown to be quintessential especially in the process of inclusion of an ever-increasing migrant population within these nations.³⁶

The Holy See's special interest in religious rights and maintenance of peaceful relations has also led it to the establishment of diplomatic relations with both Israel³⁷ and Palestine.³⁸ With regard to the ongoing conflict between the said parties, the Holy See has shown a special concern for the access to worship in the holy sites at Jerusalem and the Holy Land. The agreement with the PLO in this regard calls for a respect for the right to religion of all three monotheistic religions and the rights of followers in the City of Jerusalem, maintenance of status quo of the holy sites related to Christian worship and a commitment to inter-religious dialogue to facilitate a peaceful and lasting resolution of the conflict in conformity with basic principles of international law, relevant UN resolutions, justice and equity. In this case, the Holy See has drawn attention to the provisions of international treaties that protect cultural property in times of conflict.³⁹

³⁶ See United Press International, "Pope Wants EU to Call Itself Christian", 23 January 2003, available at www.upi.com/view.cfm?StoryID=20030123-035724-9153r

³⁷ See Fundamental Agreement Between the Holy See and the State of Israel, 30 December 1993, available at <http://www.israel-mfa.gov.il/>

³⁸ See the PLO-Vatican Agreement, 15 February 2000, available at <http://www.jqf-jerusalem.org>

³⁹ For example, the protection afforded under Article 53, First Additional Protocol to the Geneva Convention, Protection of Cultural Property in the Times of Conflict, 1977; Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954.

4.2.3. *Right to Equality*

The Holy See strongly condemns racist policies as they are seen running contrary to her understanding of the equality of all before God.⁴⁰ It considers racism a sin and a lie deliberately constructed to cause divisions in society and contrary to the solidarity of the human family.⁴¹ The Holy See encourages the stance adopted at the Durban Conference urging all States to ensure that their legislation expressly and specifically prohibits racial discrimination and provides effective judicial remedies and redress. With regard to such legislation, the Holy See draws special reference to the situation of refugees and migrants who are often victims of discrimination. Such legislation must address the situation of indigenous peoples as also the needs of minority groups. In this regard, the Holy See emphasizes the importance of inter-religious dialogue as a vital element to foster peace and understanding amongst various groups. According to the Holy See, the fight against racism requires a personal change of heart and the “healing of memories” and forgiveness.⁴²

The Church has shown definite concern for the protection of the rights of refugees and displaced persons. It has remained engaged in the process of not only identifying the causes to the displacement of persons within and outside countries but has also evolved definite responses at various levels to assuage the anxieties that arise naturally in times of displacement and migration. The Church through her pastoral charity in the local churches provides for educational and counseling needs of refugees and migrants. The Church also networks through her various agencies to provide reliable pre-departure data and upon the arrival of persons in the country of

⁴⁰ For all are made in the image of God. See *The Bible*, Genesis 2: 27.

⁴¹ See intervention by the Head of the Holy See Delegation at the Durban World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 3 September 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20010903_durban-racism_en.html

⁴² See Pope John Paul II, Message for the World Day of Peace, 11 December 2001, available at http://www.vatican.va/holy_father/john_paul_ii/messages

refuge or migration, as the case may be, provides legal and social assistance.⁴³ As a party to the conventions protecting their rights⁴⁴ the Vatican has together with the UNHCR strongly upheld the rights of refugees and of those internally displaced, pertaining to family, marriage, migration, asylum and religious freedom. On the fiftieth anniversary of the Convention on Refugees, 1951, the Holy See noted the increased flight of refugees and internal displacement and the tendency of economic powers to restrict the interpretation and scope of the Convention. The Holy See has therefore called for an interpretation of the Convention more in the light of the spirit behind it together with an understanding of protection under its framework as more dynamic and action-oriented rather than in abstract terms.⁴⁵ The Holy See encourages the availability of opportunities that would allow the local integration of these groups into the economy of host state where return to home country is made impossible.

The Holy See renewed its call to the solidarity of nations in the human family and requested for the allocation of resources and a reduction in the burden placed on poorer countries for the care of refugees.⁴⁶ With an eye to the impact caused by war and persecution across and within borders, the Holy See has noted with dismay the erosion of international refugee protection and introduction of barriers to asylum. In this regard the Holy See has emphasized upon the role of the UNHCR providing

⁴³ Pontifical Council for the Pastoral Care of Migrants and Itinerant People, "Problems and Challenges of Migrants and the Response of the Church," 3 March 2003, available at http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents/rc_pc_migrants_doc_20030333_srilanka_hamao_en.html

⁴⁴ The Holy See is a party to the Convention Relating to the Status of Refugees, 1951; the Convention Relating to the Status of Stateless Persons, 1954 and the Protocol Relating to the Status of Refugees, 1967.

⁴⁵ Sec intervention by the Holy See at the Ministerial Conference of 140 Signatory States of the Convention of 1951 on the "Status" of Refugees, Geneva, 9 December 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20011209_marchetto-ginevra_en.html

⁴⁶ Sec intervention by the Holy See Delegation to the United Nations on the Occasion of the 55th Session of the General Assembly on the Issue Relating to Refugees, Returnees, Displaced Persons and Humanitarian Questions, 6 November 2000

umbrella protection to international and local agencies involved in humanitarian assistance for this disadvantaged group.

The Holy See on its part, through its various agencies such as the *Pontifical Council for the Pastoral Care of Migrants and Itinerant People*, *Pontifical Council Cor Unum*, *Caritas Internationalis*,⁴⁷ and its national offices of *Catholic Relief Services*⁴⁸ and *Jesuit Refugee Service* provides service to refugees all over the world. The *Jesuit Refugee Service* that started in response to the forced displacement of the Vietnamese boat people at the end of the Vietnamese War (1975) has since its inception provided yeoman service to the cause of refugees. The JRS was initially focused on short-term mobilization of resources. Today its services extend to over fifty countries including Burundi, El Salvador, Ethiopia, Kosovo,⁴⁹ Rwanda,

⁴⁷ The Caritas Network through its various national offices has provided relief in war-torn zones especially in Central Africa and eastern Africa. The Irish Caritas agency, Trocaire was one of the only eight humanitarian agencies that were allowed to cross into Zaire to assist refugees in the Goma area. Trocaire drew together supplies of food, medical supplies and shelter materials to meet the needs of 60, 000 people. Caritas Australia welcomed the deployment of peace-keeping forces in Zaire and the financial aid offered by the Australian Government to the 1.2 million refugees caught in the conflict in eastern Zaire. Caritas agencies from Europe, North America and Australia networked with Caritas agencies in Africa to provide food and other aids. See *Caritas Welcomes Aid Initiatives for Zaire*, 18 November 1996, available at <http://www.mn.catholic.org.au/newsroom>

⁴⁸ For example, the CRS has been working in Pakistan for around fifty years. The CRS initially provided emergency relief aid to Pakistan which has in past years faced drought, floods and influx of Afghan refugees. Today the CRS has expanded its operations to include provision for small business loans to women to make them economically self-sufficient, educational programmes and assistance in conflict resolution especially amongst religious groups. The CRS has also extended humanitarian assistance to the internally displaced persons in Afghanistan. In 1997, the CRS became the lead agency of the newly formed Caritas Organizations for Aid to Afghanistan (COAA), networking with Caritas agencies in Denmark, Germany and France. These together have provided assistance in health, education and infrastructural rehabilitation in Afghanistan. See Catholic Relief Service, "Afghan Refugees," 29 October 2001, available at <http://www.catholicrelief.org/>. See also Strategy for the Caritas Network involvement in Afghanistan, July 2002, available at <http://www.reliefweb.int/>

⁴⁹ JRS work over the past decade in the Kosovo is particularly targeted to ameliorate the situation of vulnerable displaced groups that have arisen from the conflicts in the Balkans; the young, elderly, landmine survivors and war victims. Among the many JRS projects, the programme for the young survivors of landmine explosion is note-worthy. This programme involves a 10-day summer camp for 26 such survivors together with other activities directed towards empowering these individuals through medical, material, psycho-social and legal assistance.

Sudan,⁵⁰ Tanzania, US,⁵¹ Vietnam⁵² and Zaire.⁵³ During the year 2001, Church agencies in US alone aided 3,19,541 refugees and immigrants, who received help with settlement, family reunification, education, legal and employment services and language classes.⁵⁴ The Vatican has also taken notice of migrant workers as a vulnerable group and considers them in a paradoxical situation wherein though they are understood to be contributors to the economic progress of countries to which they have moved; yet they are exposed to racist policies. The Holy See believes that “increased mobility of peoples demands more than ever an openness to others.”⁵⁵

4.2.4. Freedom from Torture, Other Cruel and Degrading Treatment and Punishment

The Catholic Church has consistently pronounced favour for respect for life and unequivocally condemned “whatever violates the integrity of human person, such

⁵⁰ The large-scale displacement of persons due to the inexorable war in Sudan led to the JRS extending its services in the early 1980s. These included educational initiatives in southern Sudan. For thousands of refugees that find their way into Uganda, the JRS provides scholarships, legal advice and medical help.

⁵¹ In the 1990s, the JRS provided sponsorship for refugees to find safe haven in Canada and US. Simultaneously, the JRS office in the US also responded to the growing number of Haitian refugees that were being detained and rejected for asylum and offered them legal assistance.

⁵² In 1989 when governments that had received Vietnamese refugees began a strict screening program, the JRS provided legal and social counseling to these refugees to facilitate their resettlement and where necessary prepare them for repatriation. In 1993 the JRS followed the Vietnamese asylum seekers that had been repatriated to Cambodia in order to monitor their condition.

⁵³ For details visit <http://jrs.net>

⁵⁴ See intervention by Renato R. Martino at the Third Committee of the 57th General Assembly Session of the United Nations, 7 November 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20021107_martino-refugees_cn.html

⁵⁵ The Church and Racism, Contribution of the Holy See to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Vatican City, 2001, p. 21. See also intervention by the Permanent Observer of the Holy See to the United Nations at the 58th Session of the Commission on Human Rights Commission, 22 March 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020322_martin-human-rights_cn.html

as mutilation, torments, inflicted on body or mind, attempts to coerce the will itself.”⁵⁶

The Holy See in recognition of its commitment for the human right against torture and degrading treatment acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 June 2002. The date chosen was significant⁵⁷ and the accession to the 1984 Convention on Torture was shown to be reflective of the Catholic Church’s pronouncement in favour of “unconditional respect for right to life.” Pope John Paul II after delivering the Angelus on 27 June 2004, exhorted for shared commitment by individuals and organizations to banish completely all forms of torture, which are “intolerable violation of human rights.”⁵⁸

Pope John Paul II has affirmed, “torture must be called by its proper name.”⁵⁹ He has expressed profound compassion for the victims of torture⁶⁰ and in particular for the “women victims of torture.”⁶¹ Concerns for women who are victims of torture within families, in instances of domestic violence and those subjected to the sexually demeaning acts during times of armed conflict have been especially highlighted by the Holy See. While the Holy See has condemned heinous sexual assaults that greatly harm women and children, it has also expressed unease over the incorporation of terms such as “enforced” or “forced pregnancy” within the Statute of the International Criminal Court. The Holy See believed that the inclusion of such a “vague

⁵⁶ See Second Vatican Ecumenical Council, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, 7 December 1965, available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/

⁵⁷ The UN has chosen June 26 as the International Day of Support to Victims of Torture.

⁵⁸ See Georgia News Bulletin, “Pope says Torture is ‘intolerable’ Violation of Human Rights”, 28 June 2004, available at www.georgiabulletin.org/world/2004/06/28/WORLD-2

⁵⁹ Pope John Paul II, Message for the Celebration of the World Day of Peace, 1 January 1980.

⁶⁰ World Conference on Pastoral Ministry for Human Rights, 4 July 1998.

⁶¹ Pope John Paul, Message to the Secretary General of the United Nations, 1 March 1993.

terminology.” The Holy See observed that though such terms would be reflective of the realities of armed conflict and ethnic cleansing witnessed in Bosnia-Herzegovina, they would “raise the ironic prospect of making the enforcement of legitimate state and conventional law a ‘war crime’.”⁶² Therefore the Holy See instead suggested that such crimes must be prosecuted within the framework of existing legal norms addressing rape, enforced prostitution, illegal detention, indecent assault, torture, genocide and other related crimes.

Of all the forms of large-scale violence perpetrated by men, the Holy See has been distraught by genocide directed towards the annihilation of nations, race, tribes, ethnic and religious groups. In this regard, the Holy See has called for a three-pronged approach that would first identify the need to implement existing legal instruments such as the 1948 Geneva Convention for the Prevention and Punishment of the Crime of Genocide; secondly, an emphasis on the central role of international, regional and sub-regional organizations in tackling with the crime; and finally the commitment to education and vigilance against genocide.⁶³

4.3. Position on Certain Issues in International Law

4.3.1. Prohibition of Use of Force

The Holy See views the use of force with great apprehension and has tried to often persuade nations from not using war as a means to settle differences between themselves. It also believes that the use of force for “ensuring the common good” can

⁶² See intervention of the Holy See delegation before the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Working Group on War Crimes, 7 July 1998. The suggestion of the Holy See with regard to the deletion of “enforced pregnancy” has not been complied within the ICC Statute.

⁶³ See intervention by the Holy See at the Fourth International Forum on Preventing Genocide, Stockholm, 27 January 2004, available at http://www.vatican.va/roman_curia/secretariat_state/2004/documents/rc_seg-st_20040127_forum-genocide_en.html

only be justified in the last resort and without ignoring the consequences for the civilian population both during and after the military operations.⁶⁴

The Holy See allows for the use of coercive economic sanctions against a nation under circumstances of danger. Such use of economic tools such as embargo must however be with discernment and under consideration of the humanitarian consequences that fall thereof upon the civilian population. The Holy See favours dialogue to resolve conflicts and considers economic sanctions effective only as short-term measures.⁶⁵ It also recommends the establishment of a mechanism that would independently and effectively monitor such situations and correct the repercussions felt by a given population.

The Holy See is convinced that in the sphere of nuclear weapons, the banning of tests and the further development of these weapons, disarmament and non-proliferation are closely linked and must be achieved as quickly as possible under effective international controls.⁶⁶ The Holy See considers the rule of nuclear deterrence as a relic of the Cold War era and hopes for a progressive movement towards concrete disarmament measures so as to cut short the race for arms accumulation. The Vatican has also relied upon the Advisory Opinion of the International Court of Justice in the *Legality of Use of Nuclear Weapons*,⁶⁷ as a

⁶⁴ See intervention by Monsignor Celestino Migliore at the Meeting in the Chamber of the Security Council of the United Nations on the Iraqi Issue, 19 February 2003, available at http://www.vatican.va/roman_curia/secretariat_state/2003/documents/rc_seg-st_20030219_migliore-security-council_en.html

⁶⁵ See Pope John Paul II, Address to the Diplomatic Corps, 13 January 2003; intervention by Monsignor, Renato R. Martino at the 57th General Assembly of the United Nations on Unilateral Extraterritorial Coercive Measures, 16 October 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20021016_martino-coercive-measures_en.html

⁶⁶ Among other international instruments the Holy See identifies the NPT, the CTBT and the Biological Weapons Convention (BWC) as instruments that must be complied with.

⁶⁷ *Legality of the Threat or Use of Nuclear Weapons*, International Legal Materials (1996), vol. 31, p.806.

reassertion that the rule of law cannot countenance doctrines supporting the essentiality of nuclear weapons.⁶⁸

The Holy See has called to intensify efforts to ensure the universality, verification and full implementation of key treaties relating to weapons of mass destruction, including those outlawing chemical and biological weapons and the Nuclear Non-Proliferation Treaty.⁶⁹ The Holy See has through its accession on 4 January 2002 to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, in the backdrop of the post-9/11 attacks, hoped to strengthen the instrument and considers the BWC as an instrument that would be an effective safeguard against heinous acts targeted against civilian population. The Holy See has however called upon State Parties to the BWC to agree on a comprehensive set of measures, which may be implemented in stages so as to ensure greater transparency and increase the potential for detection and prohibition of activities under the Convention.⁷⁰

According to the Holy See there can be no moral acceptance of military doctrines that embody the permanence of nuclear weapons. The Holy See has viewed

⁶⁸ See intervention by Monsignor Francis A. Chullikkatt at the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 8 April 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020408_non-proliferation-treaty_en.html

⁶⁹ With the signing of the CTBT on 24 September 1996 and ratification on 18 July 2001, the Holy See reiterated its commitment that “nuclear weapons are incompatible with the peace that we seek for the twenty-first century.” See the statement of Monsignor Renato Raffaele Martino to the 56th Session of the General Assembly of the United Nations on Disarmament, 15 October 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20011015_un-disarmament_en.html

See also intervention by the Holy See at the Seventh Session of the Group of Governmental Experts of the Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, 8-12 March 2004, available at http://www.vatican.va/roman_curia/secretariat_state/2004/documents/rc_seg-st_20040308_tomasi-ccw_en.html

⁷⁰ See intervention by Monsignor Renato Raffaele Martino at the First Committee of the General Assembly of the United Nations on General and Complete Disarmament, 1 October 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20021001_martino-disarmament_en.html

with satisfaction the cooperation among governments, including the military, humanitarian organizations and other actors in civil society in the implementation of the 1998 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personal Mines and on their Destruction and used it as an example that spells hope for nations otherwise distanced in their ideologies.⁷¹

The Holy See has however regarded with disappointment the abandonment of the Anti-Ballistic Missile Treaty and the resistance to requisite number of ratifications to the CTBT. It also believes that the First Preparatory Conference for the 2005 NPT Review, revealed the stalled nature of nuclear disarmament and the “paralyzed” state of the Conference on Disarmament.⁷² In this regard, the Holy See has also drawn attention to the pledge made by nuclear weapon states to “an unequivocal undertaking to accomplish the total elimination of their nuclear arsenals” during the 2000 NPT Review and the programme of 13 Practical Steps adopted for systematic and progressive nuclear disarmament. The Holy See has pointed out that any claims made by States towards disarmament are empty words unless they show a clear support for instruments such as the ABM Treaty and the CTBT. In the arena of nuclear disarmament, the Holy See therefore stresses upon genuine multilateral efforts to comply with disarmament instruments so as to guarantee universal and permanent norms that would bind all States. In this respect, the Holy See recommends compliance with the NPT, which it considers the “centerpiece of the global non-proliferation regime.” The Holy See emphasizes that the NPT plays a crucial role in efforts to prevent the spread of nuclear weapons especially to terrorists and States that support them.

⁷¹ “In this era of interdependence, it is no longer tolerable to condemn through inaction, entire populations to live in fear and precariousness”. See Address of the Holy See to the Fourth Meeting of Parties to the Ottawa Convention, Geneva, 19 September 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020917_anti-personnel-mines_en.html

⁷² See intervention by Monsignor Francis A. Chullikkatt at the Preparatory Committee for the 2005 Review Conference of the Parties to the NPT, 8 April 2002, n. 175.

4.3.2. Right to Development

The Holy See sees extreme poverty as “perhaps the most pervasive and paralyzing form of violation of human rights in our world”⁷³ and has been especially “saddened to see the daily suffering of a great number of people from violence, starvation, poverty and disease.”⁷⁴ The Holy See views the discussion and recognition of the right to development within the United Nations as important and timely when seen in the background of widening disparities in the levels of development between the richest and the poorest countries. It considers the right to development as a right that connects and animates the protection of the two international covenants on human rights, the ICCPR and the ICESCR. It believes that civil and political rights, economic, social and cultural rights are mutually reinforcing and development is the fruit of their implementation.

While considering the impact of globalization the Holy See has frequently put forth the social doctrine of the Church in so far as recognizing the interdependence of the rights and responsibilities of the individual, family, State and the international community. It believes the State has the primary responsibility to promote, protect and implement the right to development. In the global system of governance, the Holy See continues to lay emphasis on the principle of subsidiarity wherein there is rightful access to the decision-making procedures of international organizations and institutions that affect the lives of nations.⁷⁵ The Holy See also understands the need to enhance the creativity of individuals, who it considers the real protagonists of any

⁷³ Pope John Paul II, Homily at the Jubilee of Workers, 1 May 2000, available at http://www.vatican.va/holy_father/john_paul_ii/homilies

⁷⁴ Pope John Paul II and Ecumenical Patriarch Bartholomew I, Joint Statement at the Fourth Symposium on Religion, Science and the Environment, Rome-Venice, 10 June 2002.

⁷⁵ See the intervention by the Permanent Observer of the Holy See at the 60th Session of the United Nations Commission on Human Rights Discussing on the Right to Development, 15 March- 23 April 2004, available at http://www.vatican.va/roman_curia/secretariat_state

development.⁷⁶ Furthermore the Holy See holds the position that adequate levels of development in every geographical area will be legitimately and respectfully guaranteed only if the access to water and food resources is considered a right of individuals and peoples. With regard to water resources, the Holy See points towards the notion of common patrimony of humankind, which by its nature encourages fair sharing by all humankind “under the guidance of justice tempered by charity.”⁷⁷

The Holy See perceives the right to adequate shelter as a necessary corollary to the understanding of sustainable human development as reached at the Rio Conference on Environment and Development, 1992.⁷⁸ The Holy See refuses to accept that the distressing phenomenon of hunger and poverty is solely attributable to environmental conditions, economic processes or consequences of past situations. It traces other causes so as to include the lack of management of resources, expansion of ideological and political systems far removed from the concept of solidarity and the increase of conflicts and wars. The Church shows its solidarity with the poor and the hungry and expresses its eagerness to be part of the alliance against hunger conceived after the World Food Summit (1996). In such an alliance it perceives the need to address the fact that the existing market economy mounts pressure on the use of intensive cultivation techniques that in turn contribute to a cycle of poverty. The Holy See emphasizes the need to return to the wisdom of traditional indigenous farming techniques, preservation of biodiversity and international cooperation in

⁷⁶ See Pope John Paul II, Encyclical Letter, *Centesimus Annus*, no. 34, available at <http://www.vatican.va/edocs/ENG0214/INDEX.HTM>

⁷⁷ See Second Vatican Ecumenical Council, *Gaudium et Spes*; Message of Pope John Paul II on the occasion of the World Food Day, 13 October 2003, available at http://www.vatican.va/holy_father/john_paul_ii/messages/food/documents

⁷⁸ See intervention by the Holy See Delegation at the XXV Special Session of the General Session of the United Nations Organization on Human Settlements, 8 June 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20010608_human-settlements_en.html

setting up well-planned and resolute programmes aimed towards securing justice and charity for all human beings.⁷⁹

The Holy See has also expressed her special solidarity with the Least Developed Countries (LDCs) and considered their increasing numbers as reflective of an iniquitous, dysfunctional international community. The Holy See also criticizes the mere lip service paid by the international community in addressing the needs of the LDCs in so far as setting targets which are not followed with concomitant financial and human resources. In order to foster growth and development in the LDCs, the Holy See therefore suggests a process of monitoring and verification of targets set, follow-up based on the actual experiences of the local communities that are beneficiaries and the creation of new opportunities for employment and trade in local communities, through reinvestment of savings that have resulted from successful local enterprises.⁸⁰

In the process of development, the Holy See thus perceives the importance of good governance going hand-in-hand with investment aimed at building human and community capacity, within the different cultural contexts of the world. In order to achieve development the Holy See therefore defines the need for a framework of solidarity and shared responsibility in all national and international efforts.

4.3.3. Protection and Preservation of the Environment

The concerns expressed by the Holy See for the care and protection of the environment is based upon her understanding of the centrality of the human person in

⁷⁹ See Message of John Paul II to Jacques Diouf on the Occasion of the World Food Day 2003, 16 October 2003, available at

http://www.vatican.va/holy_father/john_paul_ii/messages/food/documents/hf_jp-ii_mes_20031016_xxiii-world-food-day_en.html

See also intervention by Holy See at the XXXI Session of the General Conference of FAO, 7 November 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20011107_fao-marchetto_en.html

⁸⁰ See intervention by the Holy See delegation at the Third United Nations Conference on the Least Developed Countries, Bruxelles, 16 May 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20010516_ldc-martin_en.html

all ecological programmes and developmental initiatives. The Holy See believes that the ultimate purpose of all environmental and developmental programmes is to enhance the quality of human life and to place all creation at the service of the human family. This anthropological understanding that governs the Vatican initiatives in the field of environmental law however does not proceed on the basis of unhindered abuse of the earth's resources. The Holy See considers men and women to be at the center of all creation in order to enjoy its fruits and display responsibility and stewardship over all of creation. For the Holy See, the problems of the environment and development are at the root, issues with a moral and ethical dimension from which derive two obligations, one of stewardship of the earth's resources and the other of solidarity with all creation. The Holy See has proposed that this stewardship should be in the consideration of the common good, so that no one person or group of people in isolation are allowed to determine their relationship with the universe.⁸¹

Responsible stewardship and genuine solidarity according to the Vatican is not only to be directed towards the protection of the environment but also to secure the inalienable right and duty of all people to development. The Holy See has encouraged access and use of the earth's resources subject to monitoring and just sharing. The Holy See has expressed regret over "scandalous patterns of consumption and waste of all kinds of resources by a few."⁸² While the Holy See recognizes the legitimate need of developing countries to improve upon their situation, it has also expressed a note of caution against a complete emulation of the growth and consumption patterns of developed countries. The Holy See in fact points out that the highly wasteful growth strategies practiced by the latter have led to the present state of environmental affairs.

⁸¹ See statement of Archbishop Renato R. Martino, Head of the Holy See Delegation to the United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 4 June 1992, available at <http://conservation.catholic.org/archbishop.htm>

⁸² See Message of Pope John Paul II for the 1990 World Day of Peace on the theme "Peace with God the Creator, Peace with All of Creation", 8 December 1989, no. 8, wherein the Pope reminds: "Simplicity, moderation and discipline, as well as a spirit of sacrifice, must become part of everyday life, lest all suffer the negative consequences of the careless habit of a few."

The Holy See has encouraged the discovery of new substitute materials, efforts at conservation and recycling programmes aimed at the protection of known resources and the development of new technologies so as to facilitate more efficient use of resources. In this regard, the Holy See emphasizes the dire need of technology for developing countries. It believes that these countries, which are otherwise rich in natural resources, would clearly benefit by the use of new technology. To ensure a sustainable model of development the Holy See therefore shows the need for a global sharing of technological resources.

The Vatican also believes that efforts to protect the environment and secure developmental goals should be supplemented with the need to address structural forms of poverty. Furthermore, while considering the problems of environment and development, the Holy See has affirmed the importance of the issue of population. This area of environmental debate has seen a clear divergence of opinion on population control strategies espoused by UN bodies and related conferences and the teachings of the Catholic Church as referred to by the Holy See. Much of the debate related to demographic strategies would be closely studied in the following chapter, in an effort to understand the impact of the diplomatic presence of the Holy See in international law.

The Holy See has also shown concern over climate change and has highlighted some ethical issues related to it. The Holy See affirms the scientific and political recognition given to human activity as a significant factor in climate change. It believes that human actions by themselves can play a crucial role in the mitigation of and adaptation to climate change. The Holy See places responsibility not only upon the single acts of individuals but also at the level of technical, economic and social structures and at governmental level.⁸³ The Holy See reiterates that one of the primary principles that must govern responses to climate change is the consideration of an inherent order in the universe, which demands respect and careful use. According to

⁸³ See intervention by the Holy See at the Ninth Conference of Parties (COP-9) to the United Nations Framework Convention on Climate Change (UNFCCC), Milan, 10 December 2003

the Holy See true mitigation and adaptation can be realized only when human beings are placed at the centre of concerns for sustainable development.

The Holy See in its associations with the IAEA has also emphasized upon the ethical considerations involved in the protection of the environment from the harmful effects of ionizing radiation. In this regard, the Holy See has urged for the enforcement of strict rules of handling of radioactive and fissile material and waste.⁸⁴

4.3.4. International Trade

The Church has endorsed as legitimate an economic order where there is an “abolition of excessive desire for profit, nationalistic pretensions, the lust for political domination, militaristic thinking, and intrigues designed to spread and impose ideologies.”⁸⁵ The Holy See in its spiritual mission has not absented itself from the sphere of international economic and trade law. It has in fact often made representations before the World Trade Organization (WTO) spearheading the cause of the poorer, developing countries. The Holy See is against prolonged protectionism and other trade practices, which bring disproportionate benefit to wealthier sectors of the world’s economies and believes therefore that such measures cannot be the basis for an equitable rule-based system as envisaged under the WTO.⁸⁶ According to the Holy See the relationship between government and markets should be viewed as complementary rather than in competitive or antagonistic terms. The principle of subsidiarity must be applied increasingly. The Holy See also requires for the removal

⁸⁴ See intervention by the Holy See Delegation at the 46th Session of the General Conference of the International Atomic Energy Agency, Vienna, 17 September 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020917_boccardi-aica_cn.html

⁸⁵ Second Vatican Ecumenical Council, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, no. 85.

⁸⁶ See intervention by Monsignor Diarmuid Martin at the Fourth Ministerial Conference at Doha (Qatar), 12 November 2001, available at http://www.vatican.va/roman_curia/secretariat_state

of artificial restraints on the flow of goods and services to lead towards greater efficiency and economic growth.

The Holy See considers that in the context of intellectual property, access to basic medicines is a determinant factor in addressing health concerns. The Holy See challenges the demands for a strong intellectual property regime, which runs counter to human rights. It believes that there is a “social mortgage” on the protection of private property and the same must be applied to intellectual property.⁸⁷ The Holy See supports the use of innovative differential pricing system to preserve the incentive for future research and development. Furthermore it also advocates transfer of the greater share of research and development on luxury and non-essential pharmaceutical products.⁸⁸ As a reiteration of the necessity to comply with international obligations towards poorer countries the Holy See delegation at the WTO has brought to the fore the warning issued by the Pope “that failure to keep commitments in the sphere of aid to developing nations is a serious moral question.”⁸⁹

⁸⁷ See Pope John Paul II, Message to the Jubilee 2000 Debt Campaign Group, 23 September 1999.

⁸⁸ See intervention by Monsignor Diarmuid Martin to the Plenary Council of the World Trade Organization on Trade-related Aspects of Intellectual Property Rights, 20 June 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20010620_wto_en.html

⁸⁹ See intervention by the Holy See at the World Trade Organization, Address of Monsignor Diarmuid Martin, 20 December 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20021220_martin-wto_en.html
See also Pope John Paul II, Message for the World Day of Peace 2003, available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mcs_20021217_xxxvi-world-day-for-peace_en.html

4.3.5. *Right to Life*

The Vatican affirms the right to life of all as given in the UDHR and considers that human beings have this right from the very beginning of their existence, i.e. not only from birth but from the moment of conception.⁹⁰ Therefore the Holy See proclaims the illegality and immorality involved in acts of abortion and infanticide. According to the Holy See, the moral prohibition against abortion also stands in circumstances wherein the continuation of pregnancy involves a risk to the life or to the health of the mother.⁹¹ This position of the Church is in consideration of the absolute sanctity of human life and also extends to the sphere of advanced science and technology especially in the field of fetal experimentation.

Though the Holy See considers the use of prenatal diagnostic techniques useful in so far as they are employed to ensure the integrity and well-being of the human embryo and foetus and directed towards its healing,⁹² it is not in favour of the use of such techniques with eugenic intentions. The Holy See is also not in favour of the use of scientific techniques and medicine to intervene in human procreation. The

⁹⁰ See Article 4, Holy See, Charter of the Rights of the Family, 22 October 1983, available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html

⁹¹ See Declaration by the Pontifical Council for the Family regarding “Embryonic Reduction”, Vatican City, 12 July 2000 available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001207_embryonic-reductions_en.html

See also Pope John Paul II, Papal Encyclical, *Evangelium Vitae*, no. 57, (1995), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html

However a challenge to the conservative Catholic influence of the Vatican in the AU, may be read in the 2003 Protocol on the Rights of Women in Africa. The AU adopted this instrument on 11 July 2003 as a supplement protocol to the 1981 African Charter on the Human and People’s Rights. It is the first instrument in international law that explicitly sets forth the reproductive right of women to medical abortion. The circumstances underlying such termination of pregnancy include pregnancy that has resulted from rape, incest and when continuation of pregnancy endangers the health or life of the mother.

⁹² See Declaration by the Pontifical Council for the Family Regarding “Embryonic Reduction”, n. 91.

Church allows for experiments on human embryos in so far as the purpose is therapeutic and maintains a condemnation of attempts at cloning.⁹³

Among the things the Holy See considers as crimes opposed to the right to life include murder, genocide, mutilation, subjection to inhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and the selling of women and children. In this regard it welcomes the setting up of just and effective juridical mechanisms to bring to justice those responsible for perpetrating such atrocities.⁹⁴ The Holy See condemns sexual assaults on women and children and the growing trend of human trafficking. In the case of the later the Holy See recommends an examination of the causes of increased demand, lifestyles and human behaviour, particularly with regard to the image of women that have allowed sexual exploitation to grow as an industry in developed countries. It also urges for the development of effective mechanisms to prevent trafficking of persons and the reintegration of victims in developing countries.⁹⁵

Another important facet to the Vatican's position on the right to life is her view on the lesbian, gay, transgender and bisexual movement. The Vatican has vehemently opposed any language in human rights instruments that have offered protection to such a movement and has considered with great suspicion any references to rights based on "sexual orientation." This position of the Vatican has

⁹³ "Life can never be downgraded to the level of a thing." See Pope John Paul II, Message for the World Day of Peace, 1999; Holy See, Congregation for the Doctrine of Faith, *Donum Vitae*, I, no. 6, 22 February 1987, available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-life-en.html

The Holy See refuses to distinguish between "reproductive" and "therapeutic" human cloning. See the Views of the Holy See on Human Cloning, Vatican's Mission to the United Nations 2003, available at http://www.lifeissues.net/writers/doc/doc_11humancloning.html

⁹⁴ See intervention of the Holy See before the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Working Group on War Crimes, Rome, 7 July 1998, available at http://www.catholicculture.org/docs/doc_view.cfm?recnum=459

⁹⁵ See Pope John Paul II, "Continue Reflection on Allied Human Rights Issues", *L' Osservatore Romano*, 5 June 2002, available at http://www.catholicculture.org/docs/doc_view.cfm?recnum=4393

been reiterated in UN conferences in Cairo (1994), Beijing (1995), Durban Conference on Racism (2001) and debate on the Resolution on Sexual Orientation (2003). The Vatican has also refused to change its stance within regional groupings such as the AU EU and OAS. This of course has not been followed by a similar position adopted by these groups.

At this point one may refer to the Resolution on Human Rights and Sexual Orientation (RSO),⁹⁶ which was moved by the Government of Brazil in 2003 before the UN Commission on Human Rights (CHR). In 2004, when the resolution came up for debate, as in previous years, it was faced with strong opposition from religious groups such as the Organization of Islamic Conferences (OIC)⁹⁷ and Catholic conservatives such as the Vatican. While the OIC believed that a support for the resolution would be a direct affront to the Muslims of the world, the Vatican expressed her discontent over such a debate on a number of grounds. The Vatican has pointed out that a lack of a definition as to what constitutes “sexual orientation” within UN instruments can lead to confusion and possibly threaten public order, public health and moral. Thus the Vatican is opposed to legitimization of same-sex marriages and the adoption of children by such “families.”⁹⁸ Although on 29 March 2004 the said Resolution failed to be adopted due to intense pressure by the OIC, the Vatican and the Protestant Right as represented by the U.S.,⁹⁹ the debate on the

⁹⁶ UN Res. E/CN. 4/2003/L. 092 (2003)

⁹⁷ The OIC consists of 57 Member States and three Observer States: 27 from Asia, 27 from Africa, one from Europe and two from the American continent. The African block, with countries like South Africa, which often supports rights based on sexuality, was unusually silent on the deliberations on the RSO. See also Ana Elena Obando, *Sexual Rights and the Commission on Human Rights*, May 2004, n. 2, available at www.whmct.org/docs/issue-sexualrightscommission.html

⁹⁸ See Congregation for the Doctrine of Faith, *Considerations regarding Proposals to give Legal Recognition to Unions between Homosexual Persons*, 3 June 2003, available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html

⁹⁹ Ambassador Ellen Sauerbrey, expressed the Christian approach of the U.S., during the Third World Congress of the Families held in Mexico City in 2004. The ideological values supported by President Bush within the UN included, maternity status, parental responsibility, heterosexual marriage for procreation, the heterosexual family as the natural and fundamental unit of the society, abstinence as

resolution provides interesting insights into the differences that are evolving between the Vatican on one hand and the regional groups such as the EU and OAS on the other.

In the European Parliament, the EU approved the resolution on the rights, priorities and recommendations of the CHR and called on the Presidency to act on behalf of the Brazilian initiative on prohibition of discrimination based on sexual orientation. It must however be clarified that such a view within the EU was not unanimous. The Vatican had frowned upon a previous resolution by the EU Parliament on 16 March 2000 approving the human rights in the EU of “de facto unions” between members of the same sex, their registered cohabitation and the need to legalize their marriage. The Vatican stated that such a resolution had no “authentic legislative value” and nor should it be considered a “compulsory guideline.”¹⁰⁰

The Latin American and Caribbean Group (GRULAC) also backed the Resolution on Sexual Orientation before the sixtieth session of the CHR.¹⁰¹ The open support for the resolution by Argentina, Brazil and Mexico for the resolution was significant in the face of pressure that is often mounted upon these countries by the Vatican and the U.S. Countries such as Australia, Belgium, Canada, Denmark,

the “preferred, most responsible, and most healthiest choice for unmarried adolescents,” ban on human cloning and prohibition on abortion and funding for the same overseas. See Remarks to the World Congress on Families III, Ambassador, Ellen Sauerbrey, U.S. representative to the UN Commission on the Status of Women, Mexico, 29 March 2004, available at http://www.unitedfamilies.org/wcf_sauerbrey.asp
Consistent with this position the U.S. voted against the RSO and blocked efforts towards its passage.

¹⁰⁰ See Pontifical Council for the Family, Statement on the Resolution by the European Parliament making De Facto Unions, including Same Sex Unions, Equal to the Family, 17 March 2000, available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20000317_declaration-homosexual-unions_en.html
See also Pontifical Council for the Family, Family, Marriage and “De Facto” Unions, 26 July 2000, available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001109_de-facto-unions_en.html

¹⁰¹ See n. 97.

Finland, France, Germany, New Zealand, Norway and Sweden have also shown favour for the recognition of equal right benefits to same-sex couples.¹⁰²

The sanctity attached to the right to life also causes the Holy See to welcome a moratorium on the death penalty and possible abolition of the same even in cases concerning perpetrators of severe crimes. For such persons, the Holy See appeals for a “chance to live a renewed life envisioned with healing and forgiveness.”¹⁰³ The position of the Holy See is therefore to persuade authorities to consider the possibility of limiting themselves to a concept of non-lethal means of punishment even for serious crimes; means that “are more in keeping with the common good and more in conformity with the dignity of the human person.”¹⁰⁴

4.3.6. Rights of the Child

The Holy See has always looked upon children as a wonderful gift of God and has therefore undertaken numerous interventions on behalf of their rights. The Holy See has expressed concerns over poverty and malnutrition that especially affects children, abandonment of children by families and violence against children.¹⁰⁵ On various occasions, the Pontifical Council for the Family has held international

¹⁰² See Ana Elena Obando, *Sexual Rights and the Commission on Human Rights*, n. 97. See also CNN, *German Gay Marriage Law Backed*, 17 July 2002; *Canada News, Canada Rejects Vatican on Gay Marriage*, 8 September 2004, available at <http://canada.news.designerz.com/canada-rejects-vatican-on-gay-marriage.html>

¹⁰³ See intervention by Archbishop Renato Martino, Apostolic Nuncio, Permanent Observer of the Holy See to the United Nations before the Third Committee of the 54th Session of the General Assembly on Item 116 A, *Abolition of the Death Penalty*, New York, 2 November 1999, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_02111999_death-penalty_en.html

¹⁰⁴ See *Catechism of the Catholic Church*, no. 2267, available at <http://www.christusrex.org/www1/CDHN/ccc.html>

States have at their disposal today new possibilities for “effectively preventing crime, by rendering one who has committed an offense incapable of doing harm- without definitively taking away from him the possibility of redeeming himself”, see Pope John Paul II, *Papal Encyclical, Evangelium Vitae*, n. 56 (1995).

¹⁰⁵ See Pope John Paul’s *Letter to Children during the International Year of the Family*, 13 December 1994, available at http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_13121994_children_en.html

congresses on children addressing a number of concerns such as the dignity and rights of children (Rome, 18-20 June 1992); the sexual exploitation of children in prostitution and pornography (Bangkok, 9-11 September 1992); the family and child labour (Manila, 1-3 July 1993); street children (Rio de Janeiro, 27-29 July 1994) and international adoption (Seville, 25-27 February 1994). On the occasion of the 2000 Jubilee year, the Holy See held a World Congress entitled “Children, Springtime of the Family and Society.” On 5 June 2001 the Permanent Observer Mission of the Holy See at the UN together with the UN Secretary General’s Representative for Children organized a Symposium at the UN, titled “Children in Armed Conflict: Everyone’s Responsibility.”

The deep love and concern for the rights of the child have translated into the commitment of the Holy See to their cause in international law. The Holy See ratified the 1989 Convention on the Rights of the Child, in 1990 with certain reservations.¹⁰⁶ Her concerns for the well-being of children whom the Holy See considers the “precious treasure given to each generation as a challenge to its wisdom and humanity” is further reflected in her other international commitments.¹⁰⁷ In its interventions before the UN, the Holy See has expressed concern over children suffering from the effects of conflicts and their aftermath, those displaced by war within and outside their countries and the use of children as child soldiers. The Holy See has drawn attention to the grave human rights violations of children especially in conflict areas such as Angola, Kosovo and Colombia where children have been subjected to forced displacement, abduction, sexual abuse, conscription into military

¹⁰⁶ These reservations show the Holy See professing problems with interpretative terms within the CRC such as, ‘family planning, education and services’ (Article 24. 2) and emphasizing that these must allude to natural and morally acceptable methods of family planning; expressing also the need to safeguard the primary inalienable rights of parents, in particular to the rights of the child concerning education (Articles 13 & 15), association with others (Article 15) and privacy (Article 16).

¹⁰⁷ See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000, UN Doc. A/54/RES/263, ratified by Holy See on 24 October 2001; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, UN Doc. A/54/RES/263, ratified by Holy See on 24 October 2001.

service and have been used as spies and human shields. The Holy See has also joined in the condemnation of the use of children for commercial sexual exploitation and decried their imagery as marketable commodities for purposes of adoption and labour.¹⁰⁸ Furthermore the Holy See believes that legislation is required to protect children from all kinds of abuses, as in the case of incest, pedophilia, labour, victims of armed conflicts and international sanctions, use as child soldiers and sex objects. In all these cases it recommends strict punishment for perpetrators.

The Holy See has condemned the sexual exploitation of children in the nature of sex tourism and internet pornography and attributes an increase in these heinous crimes to a combination of an amoral free market and sexual decadence, poverty and weak family structures.¹⁰⁹ With regard to the role played by poverty in the issue of sex tourism the Holy See has emphasized the importance of targeting poverty and places the onus for the same on both international organizations and local communities. The importance of developmental aid in combating poverty is considered crucial. The Holy See believes that the shameful sex tourism prevalent especially in developing countries must be combated both on the demand and supply side. Poor families must be provided assistance and clients-exploiters must be detected and punished through effective international legal cooperation. In this regard, the Holy See has shown favour for promising developments involving extra-

¹⁰⁸ These inferences are drawn from the Holy See's references to the statement made by Carol Bellamy, UNICEF Executive Director, Bogota, 30 April 1999 and the statement by Ofelia Calcetas-Santos, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography to the 55th Session of the Commission on Human Rights, 15 April 1999. See intervention by Renato R. Martino, Permanent Observer of the Holy See of the United Nations before the Third Committee of the 54th Session of the General Assembly on Item 112: Promotion and Protection of the Rights of the Children, 28 October 1999, available at http://www.vatican.va/roman_curia/secretariat_state/documents/

¹⁰⁹ See intervention by the Holy See Delegation at the Second Conference on the Commercial Exploitation of Children, Yokohama (Japan), 21 December 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20011221_children_en.html

territorial legality especially in the light of the fact that both sex tourism and child pornography today are global phenomena.

The Holy See has also constantly relied on the CRC to show that a healthy society with a real human countenance is one in which everyone recognizes the family as the basic cell of the society and the most important provider and educator of children.¹¹⁰ The Holy See has identified the “best interests of the child” as the central criterion that must prevail in the reading of the CRC. This “best interest” according to the Holy See makes it necessary for the child to have an adequate relationship with the family, based on marriage. The Holy See has therefore exhorted the international community to defend “the value of the family and respect for human life right from the moment of conception.”¹¹¹ Its understanding of the integral role of the family in nurturing a child’s development disallows the Holy See from supporting single parent adoption at both national and international level.¹¹²

The Holy See welcomed the consensus decision of the General Assembly in the adoption of the document “A World Fit for Children” but also clarified the areas that could not be considered endorsed by itself owing to its nature and particular mission. The Holy See reiterated its reservations and statement of interpretations in the areas regarding fundamental human rights and dignity, the provision of basic social services, education, health, sexuality, the family and their rights, duties and responsibilities of parents and the right to life from the moment of conception.¹¹³

¹¹⁰ See intervention by Cardinal Alfonso Lopez Trujillo at the Special Session of the United Nations on Children, 9 May 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020509_trujillo-onu_cn.html

¹¹¹ Discourse of John Paul II on the occasion of the Jubilee of Families, 14 October 2000, available at http://www.vatican.va/holy_father/john_paul_ii/speeches/2000/oct-dec/documents/hf_jp-ii_spc_20001014_familics_en.html

¹¹² See n. 100.

¹¹³ See Declaration by the Holy See Delegation at the Special Session of the General Assembly of the United Nations on the Adoption of the Document “A World Fit for Children”, 10 May 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020510_santa-scde-children_cn.html

The Vatican shows a special regard for the rights of the child before and after birth and draws attention to the principle developed by the Declaration on the Rights of the Child, 1959, whereby “a child, because of its lack of physical and mental maturity, requires special protection and care, including due legal protection before and after birth.” This understanding of the Romano-canonical juridical tradition has also been identified by the Holy See as being evident in other international instruments as also forming *jus cogens*.¹¹⁴ The Vatican therefore holds a position that no legislation can be allowed to “encourage the right” to abortion or “other forms negating unborn life.”¹¹⁵ This seemingly innocuous statement however has led to serious differences of opinion between most of the UN Member States and the Vatican.

4.3.7. Rights of Women

The Holy See has shown a special regard to the unique contribution that women alone can make to the establishment of economic and political structures within a given society. In consideration of the inherent sacrificial nature of women in all spheres of life, the Holy See has stressed upon “authentic equality” for women in every area. A specific reference in this regard has been made on issues relating to equal pay for equal work, protection for working mothers, fairness in career advancement and the equality of spouses regarding family rights. The Holy See has also expressed grave concern over the violence and torture to which women are often

See also intervention by the Holy See Delegation to the United Nations on the occasion of the Special Session on the Item “World Summit for Children”, 31 January 2001, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20010131_summit-children_cn.html

¹¹⁴ See Holy See, Pontifical Council for Family, *The Family and Human Rights*, 15 November 2000, available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html

¹¹⁵ See Holy See, Congregation for the Doctrine of Faith, *Instruction, Donum Vitae on Respect for Unborn Life and Dignity of Procreation*, I (1987), no.1. See also Pope John Paul II, *Message for the World Day of Peace*, 1999, no. 4.

subjected. The Holy See has therefore condemned domestic violence against women and empathized with the sufferings of women caught in national and international conflicts. The Holy See is sensitive to the predicament of women in such situations wherein at the risk of their lives, they bear the responsibility of taking care of the children and the elderly in their families.¹¹⁶ The problems faced by women refugees and those internally displaced are shown to be more acute.

The condition of women during armed conflicts has received a special focus of the Holy See. The fact that women are considered easy targets for sexual brutalities and other acts directed to “dehumanize their dignity” has also been received with grief and strong contempt. The systematic exploitation and trafficking in women and children is also of immense concern to the Holy See which has therefore called for not only a greater commitment by authorities to punish perpetrators but also offer women opportunities to contribute to the decision-making process so as to instill a feminine insight to the problem.

The Holy See has also developed an extensive network of health care services directed to help women who are battered, suffering from serious disabilities and infectious diseases like leprosy. While the Holy See considers the high incidence of diseases such as tuberculosis, tropical diseases, AIDS and other infectious diseases with grave concern, it has not been keen to pursue health services that are directed towards offering women help and welfare in reproductive and sexual health. Therefore while the Holy See supports initiatives to secure health care for women, it critically views attempts of pro-abortion groups and reproductive rights advocates to fashion family planning methods.¹¹⁷

¹¹⁶ See intervention of the Holy See at the 48th Session of the Commission on the Status of Women, 1-12 March 2004, available at http://www.vatican.va/roman_curia/secretariat_state/2004/documents/rc_seg-st_20040304_martone_cn.html

¹¹⁷ See intervention by the Holy See delegation before the 43rd Session of the Commission on the Status of Women, 4 March 1999, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_04031999_status-women_cn.html

4.4. Critical Comments

The entry of the Holy See formally into the UN system in 1964 as a Permanent Observer enhanced the peace efforts of the Holy See. As an Observer to the UN the Holy See today not only partakes in the law-making process, by interventions, interjections and utterances but also translates these principles into action through the spiritual influence of the Pope. Down the centuries, the teachings of the Church, drawing upon the philosophical and theological reflections of Christian writers have helped direct the course of international law. References to these interventions and pronouncements by the Church government at the Vatican seem to be in the realm of “preaching” rather than “practice.” A coupling of papal efforts at securing peace and justice and assistance offered to the deprived and needy sections of the international community by networking with international aid agencies, with the position adopted by the Holy See in international law however allays any such doubts. At this point it would therefore not be inappropriate to conclude that the Church as an organization does in fact apply the functional approach in bringing together nations on the basis of needs rather than narrow political interests.

The Holy See has undertaken the defence of the right to life and family as integral to her mission in the world. This has led her to adopt positions reflective of such an understanding at multilateral levels of dialogue such as those in the Cairo Population Conference (1994) and the Beijing Women’s Conference (1995).¹¹⁸ The presence of the Vatican in these UN conferences¹¹⁹ has led to the visible exposure of the way in which perceptions of participants in these processes shape international law.

¹¹⁸ See Lecture by Archbishop Jean- Louis Tauran, on the theme “Presence of the Holy See in the International Organizations”, Catholic University of Sacred Heart, Milan, 22 April 2002, available at http://www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020422_tauran_en.html

¹¹⁹ These conferences are high profile events that help establish a framework by which nations cooperate to meet global objectives. Programmes of Action adopted at UN conferences also help introduce accountability from governments. See Rudolf Bernhardt ed., *Encyclopedia of Public International Law*, vol. 5 (1983), p. 280; Gita Sen, “The World Programme of Action: A New Paradigm for Population Policy”, *Environment*, January- February (1995), pp. 10, 15.

Chapter V

Vatican Participation in International Diplomacy

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The Church's attitude towards human rights during the last two centuries has been frequently characterized by hesitations, objections, reservations and on occasion, even vehement reaction on the Catholic side to any declaration of human rights made from the standpoint of liberalism and laicism.¹ The position of the Church particularly on the rights of women is a glaring example in this regard. The attempt to shape international law in consonance with the doctrine of the Church has been obvious and difficult to ignore.

The international influence of the Vatican is best evidenced in the recent two UN conferences held to debate on population policy with a special emphasis on the reproductive rights of women and the rights of women against all forms of discrimination. The Cairo and Beijing Conferences demonstrate the role of the Vatican in international politics and law making process. These conferences are testimonies to the pervasiveness of the Catholic doctrine in the Vatican's presence that almost held captive progressive debate on women's rights. As a Permanent Observer to the United Nations, the Holy See obtained an opportunity to participate in these conferences. The fact that UN conferences operate on consensus rather than voting, offered the Holy See a chance to be a part of the debates as any other state and thus wield much power in shaping the final documents.

5.1. Cairo Conference

The Cairo Conference witnessed to a gathering of over 180 nations coming together to debate upon a twenty-year, US \$ 17 billion a year action plan to stabilize

¹ See Holy Sec, Pontifical Commission for Justice and Peace, "The Church and Human Rights", Working Paper No. 1 (Vatican City State, 1975), no. 18.

global population.² The Conference represented a paradigm shift in recent years from focusing almost exclusively on controlling numbers in population to empowering women by providing them with health services and acknowledging their reproductive rights.³ The Cairo Conference Programme of Action was targeted towards evolving a dynamic and multifaceted approach to combat population growth, including the expansion of female education, greater maternal and childcare, and access to family planning. The Cairo document bore testimony to “the realities of women’s lives in terms of lack of power, economic insecurity, abuse, violence and coercion, unrecognized and unmet health needs, and poor-quality or no services.”⁴

5.1.1. Vatican Influence and Position

Vatican position on issues such as abortion, contraception and sexuality were previously evident to the international community in the 1984 International Conference on Population, held in Mexico City and the 1992 UN Conference on Environment and Development held in Rio de Janeiro. In the latter conference while the Vatican conceded to the close link between population concerns and developmental issues, it asserted that the aim of public policy must be to enhance the welfare of families; recognition of the right of spouses alone to determine the size of the family and spacing of births, without pressure from governments and international organizations.⁵ There was little hope for a change of doctrinal position before the

² See Meredith Marshall, Comment, “United Nations Conference on Population and Development: The Road to a New Reality for Reproductive Health”, *Emory International Law Review*, vol. 10 (1996), pp. 441, 441- 42.

³ See United Nations, *Report of the International Conference on Population and Development*, UN Doc. A/CONF.171/13 (1994), pp. 9-13.

⁴ Gita Sen, “The World Programme of Action: A New Paradigm for Population Policy”, *Environment*, January- February (1995), pp. 10, 34.

⁵ See statement of Archbishop Renato R. Martino, Head of the Holy See Delegation to the United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 4 June 1992, available at <http://conservation.catholic.org/archbishop.htm>

Cairo Conference as was evidenced by papal encyclicals such as *Humanae Vitae* and *Splendor Veritatis*.⁶ The involvement of the Holy See at the Cairo Conference was preceded by attempts by the Holy See to persuade national leaders to support its stance on abortion. The fact that consensus could be blocked single-handedly by the Vatican was met with a general trend among nations to comply with the requests of the Vatican. The Vatican also worked its way through negotiations during the three preparatory committee (Prep Com) meetings and other regional meetings that resulted in the formulation of the draft Programme of Action. Two weeks before Prep Com III, Nafis Sadiq, Secretary-General of the Conference, had an interview with Pope John Paul II in the Vatican which was followed by a Vatican statement that clarified as to the content of the interview. The Pope emphasized his unease over preparations for Cairo and said that in defence of the human person, the Church stands opposed to the imposition of limits on family size, promotion of methods limiting births which separate the unitive and procreative dimensions of marital relationship, which are “contrary to the moral law inscribed in the human heart.”⁷

Prep Com III witnessed an unusual number of interventions by the Holy See in the drafting process. The Holy See tried to square bracket⁸ over 100 references to sexual and reproductive health, or safe motherhood, fearing possible reading allowing resort to abortion. The Vatican was strong in its condemnation of the Programme of Action being envisaged under the Conference and showed it to be one that encouraged abortions on demand, approved of adolescent sexual activity and condoned homosexuality. The Pope’s tirade against the attempts of the Conference to destroy the “future of humanity” also included angry references to support from countries such as the US on the international population programme at Cairo.

⁶ See Stanley Johnson, *The Politics of Population: Cairo 1994* (Earthscan Publications Ltd., London, 1995), p. 25.

⁷ See n. 6, p. 66- 67.

⁸ To ‘square bracket’ wording indicates that it has not been agreed upon and is subject to further negotiation. The Holy See bracketed “reproductive health” 112 times, “family planning” 41 times, and “fertility regulation” throughout the document.

The Vatican and its allies such as Argentina, Ecuador, Guatemala, Honduras,⁹ Malta, Islamic states such as Iran, Libya, Saudi Arabia, Lebanon, and Sudan, were effective in forcing the lowest common denominator on these issues, despite the fact that over 170 delegations might have agreed to more progressive recommendations.¹⁰ Thus even before the Conference began, the Holy See's resistance on certain issues was successful in keeping at least ten percent of the draft document in square brackets. It must be pointed out here that unlike the Holy See, the Islamic nations were less concerned about abortion than they were about women's empowerment. Their areas of agreement were issues such as opposition to privacy rights of adolescents seeking reproductive health care, sexual health and sexual rights. The political alliance between the Holy See and Islamic governments dissolved once the draft document dropped the language of sexual rights.¹¹

The Holy See in its written statement submitted to the Cairo Programme of Action expressed its inability to join in complete consensus. The Holy See considered the Cairo Programme of Action as a document notable for its affirmations against all forms of coercion in population policies. The See welcomed the recognition of the support for the family as a basic unit of society as extended under the Programme. The Holy See was aware of the document's emphasis on the need for the advancement of women's status, through education and health-care services. At this point however the Holy See claimed the impossibility of giving full support to the Programme of Action owing to her understanding that the document was liberal

⁹ Latin America recognizes that unsafe abortions are major health issue. It has approximately 800,000 cases a year of medical complications that arise from unsafe abortions. See Debbie Taylor ed., *Women: A World Report, A New Internationalist Book* (Oxford University Press, 1985), p. 10. The study shows that in "Latin America, complications from illegal abortions is the leading cause of death for women between the ages fifteen and thirty-nine."
See also Earth Negotiations Bulletin, available at <http://www.iisc.ca/linkages/volL106/0630011e.html>

¹⁰ Scn, n. 4, p. 10.

¹¹ Scn, n. 4, p. 12.

enough to create a new international right to abortion.¹² This view was uncalled for as explanations appended to the document clearly showed that abortion was not being peddled as a means of family planning.¹³ The Holy See joined the consensus on Chapter III on population, sustained economic growth and sustainable development. Owing to its specific nature, it refused to be part of the operative chapters of the document (chapters XII to XVI). The Holy See expressed its reservations over Chapters VII and VIII especially with regard to the concept of reproductive rights. It regarded the term “sexual health”, “sexual rights”, “reproductive health” and “reproductive rights” as terms that may be considered only in their holistic concept of health.¹⁴ It reaffirmed its well-known position concerning family planning methods, which the Catholic Church considers morally unacceptable.

With reference to the terms “couples and individuals”, the Holy See reserved its position with the understanding that this term alluded to a conjugal relationship and the individual man and woman constituting the same.¹⁵ Thus the Holy See refused to allow any scope for an individualistic understanding of sexuality. Here the Holy See saw the document opening itself to a liberal interpretation approving homosexual behaviour and extra-marital relationships. The Holy See also clarified that nothing in its partial support for the document could be construed as an

¹² See Written Statement submitted by the representative of the Holy See on the Programme of Action, Population and Development, Programme of Action adopted at International Conference on Population and Development, vol. 1 (1994) (Department for Economic and Social Information and Policy Analysis), p. 97-99.

¹³ The most contentious issue in the Draft Programme of Action for the delegation of the Holy See was paragraph 8.25, which recognized unsafe abortion as a major health problem affecting women. The controversial paragraph in part read: “In no case should abortion be promoted as a method of family...[A]ll attempts should be made to eliminate the need for abortion. In circumstances in which abortion is legal, such abortion should be safe....In all cases, women should have access to quality services for the management of complications arising from abortion.”

¹⁴ Reservation 1. See Written Statement of Holy See Representative, n. 12, p. 98.

¹⁵ *Ibid.*, Reservation 4, p. 99.

endorsement of concepts that it could not support for moral reasons. This included also its censure of the use of condoms in HIV/AIDS prevention programmes.¹⁶

5.2. Beijing Conference

The Beijing Conference was anticipated as a platform for a new international commitment to the goals of equality, development and peace for all women everywhere and moved the global agenda for the advancement of women into the twenty-first century. The commitments made by 189 states at the Conference are considered a reflection of the understanding that women's equality to men must be a central component of any attempt to solve the world's social, economic and political problems.¹⁷ The 150-page long Platform of Action that emerged from the Conference called for women's empowerment, including the right of women to control their fertility, equal participation in society, the promotion of women's economic independence, and the elimination of all forms of violence against women.¹⁸

5.2.1. Vatican Influence and Position

At the Beijing Conference, the Vatican expressed its solidarity with the momentum reached through the Conference in addressing the needs of women in poverty, strategies on development, literacy, education, access to employment and the consensus on the need to end violence against women. The delegation of the Holy See however expressed dissatisfaction over the "exaggerated individualism" in the Beijing Declaration. The ire of the Catholic Church was especially invoked with regard to what it considered a "disproportionate attention to sexual and reproductive

¹⁶ See Written Statement of the Holy See Representative, n. 12, p. 98.

¹⁷ See Action for Gender Equality and the Advancement of Women, United Nations General Assembly Special Session, "Women 2000: Gender, Equality, Development and Peace for the Twenty-first Century", New York, 5-9 June 2000 (Published by United Nations Department of Public Information, 2000), p. 1.

¹⁸ See United Nations, Report of the Fourth World Conference on Women, UN Doc. A/CONF.177/20 (1995).

health.” The Holy See also believed that the ambiguous language of the document concerning “unqualified control over sexuality and fertility could be interpreted as including societal endorsement of abortion and homosexuality.” The Holy See spared no words in its wish to disassociate from the consensus on the document for the Conference and considered its participation only so far as provisions were “positive” and at “the service of the real well-being of women.” Similar to the position adopted during the Cairo Conference, the Holy See only partially joined the consensus on the documents of the Fourth World Conference on Women. It again chose to stress upon the family as a basic unit of society, based on marriage as an equal partnership between husband and wife, to which the transmission of life is entrusted.¹⁹ The Holy See saw these references also only allowing an interpretation within the terms of a marital relationship and subscribing to the use of “natural” family planning methods. The Holy See was categorical in emphasizing that its partial consensus on the documents could not be read as an endorsement of contraception or the use of condoms, either as a family planning measure or in HIV/AIDS prevention programmes. The Holy See retained its position against the “ambiguous terminology concerning sexuality and fertility” owing to a perceived danger of it being construed a societal endorsement of abortion or homosexuality.

The substantive content of the Holy See’s participation in the Beijing Conference had nothing new to offer from its hard-line position during the Cairo Conference. What however differed was a softer approach to the issues close to its heart such as abortion. This was attributed to the fact that this time around the Vatican delegation was led by Harvard Law Professor Mary Ann Glendon, the first lady to head a papal delegation.

In Beijing instead of focusing solely on abortion and contraception, the Vatican focused its efforts on language, which it claimed denigrated the two-parent family structure and diminished the right of parents to choose the education for their

¹⁹ See Reservations and Statements of Interpretation of the Representative of the Holy See, in *Report of the Fourth World Conference on Women*, Beijing, 4-15 September 1995, UN Doc. A/CONF.177/20, in *The UN and the Advancement of Women 1945-1996*, revd edn, p. 727.

children, in this instance referring to sex education. The Vatican was again able to garner the support of staunch Islamic nations like Iraq, Lebanon, Saudi Arabia, Sudan and Latin American nations in limiting the expansion of human rights to include reproductive rights. The Holy See was involved in the Beijing Conference right through the preparatory meetings. The Holy See used a combination of means to consolidate support on its perspective. On one hand it tried to show its solidarity with women and regret in its complicity in denigrating them within the Church.²⁰ On the other, its participation in the preparatory meetings was characterized by alliances with Catholic and Islamic nations to defeat portions of the draft Platform of Action inimical to its interests.²¹ The Holy See also had no qualms in intensely lobbying against its critics such as Catholics for Free Choice, an NGO that opposes the Holy See's stance on contraception and abortion.²²

Long after these conferences the Holy See continued to express its distinct unhappiness over "exacerbated individualism" and attempts of UN agencies supported by powerful lobbies imposing "new human rights" such as "reproductive rights."²³ It frowned upon introduction of "gender ideology" as under the Beijing Conference and characterized the same as anti-life, anti-family and therefore

²⁰ See Pope John Paul II, Letter to Women, *Origins*, vol. 25 (1995), pp. 137, 139. The Pope's letter was seen as a "strategic move" aimed at garnering support for the Holy See's position at Beijing. See Kenneth L. Woodward, "Who's Sorry Now?," *Newsweek*, 17 July 1995, p. 65

²¹ The Holy See sent a delegation to five regional meetings: Asia-Pacific (Jakarta, Indonesia, June 1994); Latin-America-Caribbean (Mar del Plata, Argentina, September 1994); Europe (Vienna, Austria, October 1994); Western Asia (Amman, Jordan, November 1994); and Africa (Dakar, Senegal, November 1994). At the Prep Com Session in March, the Holy See together with Catholic and Muslim nations challenged one third of the draft Platform of Action and square bracketed all references to "gender" and "gender equality." See statement of Jean Louis Tauran, Secretary of State, *The Holy See's Position on the Draft of the Platform of Action for the Fourth World Conference*, 26 May 1995.

²² Catholics For a Free Choice is an NGO based in the US and helps through discourse, education and advocacy to advance sexual and reproductive ethics. In 1995 the CFFC initiated a petition asking the UN to reconsider the Observer status of the Holy See. Hundreds of NGOs from around the world signed the petition, alongwith approximately 2,000 individuals who signed the petition at the Beijing Conference and the related NGO Forum.

²³ See Holy See, Pontifical Council for the Family, *The Family and Human Rights*, nos. 73- 75.

potentially “destructive of nations.” Both these Conferences witness to the immense organizational influence of the Holy See, its commitment to its cause irrespective of obstacles and willingness to leave no stone unturned in its pursuit for law abiding in Catholic perception.

A revisit of the matter regarding “sexual orientation” at the Durban World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)²⁴ led to a repeat of divisions among nations. On the occasion of the tenth anniversary of the Cairo Conference the Holy See reiterated its position on the right of the husband and wife alone to determine number of children and decisions regarding spacing in births without social and legal coercion.²⁵

5.3. Official Catholic Church Doctrine on Marriage and Family

The unflinching position adopted by the Holy See can be traced to the doctrine of the Catholic Church regarding the institution of marriage and family. The Church understands marriage as a divine institution, in its sacramental dignity and perpetual stability. This is considered an immutable and inviolable fundamental doctrine instituted not by man but by God alone.²⁶ According to the Church, by its very nature,

²⁴ During the Durban Conference against Racism, the EU, Australia, Brazil and Canada called for the inclusion of “sexual orientation” among the list of bases for discrimination. The Asian and African countries preferred to use the language of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the UDHR. The Santiago Declaration of the Regional Conference of the Americas did include the term “sexual orientation”. This Declaration has however been termed not “binding” by the Vatican. See Ana Elena Obando, “Sexual Rights and the Commission on Human Rights”, May 2004, available at www.whrnet.org/docs/issue-sexualrightscommission.html

²⁵ See Archbishop Celestino Migliore, Apostolic Nuncio, Permanent Observer of the Holy See to the United Nations before the 59th Plenary Session of the General Assembly on Agenda Item 45, 14 October 2004, available at www.holyseemission.org

²⁶ See Leo XIII, Encyclical, *Arcanum divinae sapientiae*, 10 February 1880, *Acta Leonis XIII*, vol. 2, p. 10; Pius XI, Encyclical, *Casti connubii*, 31 December 1930, *Apostolic acta sedis*, vol. 22, pp. 536-538. See also *The Bible*, Genesis 1: 27-28; Mathew 19: 3 and Ephesians 5: 23. The Church’s position against divorce has for years prevented Catholic states from legislating on divorce. However in recent years even strongly Catholic states have tried to step away from a denial to legal recourse to divorce. See Lindsay L. Abbate, “What God has joined “let” Man put Asunder: Ireland’s Struggle between Canon and Common Law Relating to Divorce”, *Emory International Law Review*, vol. 16 (2002), p. 583.

the institution of matrimony and conjugal love are ordained for the procreation and education of children. The parents also have a right to ensure that their children are not forced to attend classes, which are not in conformity with their moral and religious convictions. Sex education, in particular, is therefore considered the basic right of parents and is to be subject to their close supervision and control.²⁷ The Church reminds parents to regard as their proper mission the task of transmitting human life and thus see themselves as cooperators with the love of God. Since parents have conferred life on their children, parents have the original, primary and inalienable right to educate their children and must be acknowledged accordingly.²⁸

The Church also believes that from the moment of conception, life must be guarded with the greatest care and considers abortion and infanticide unspeakable crimes.²⁹ The Roman Catholic Church considers the practice of contraception a grave sin, since it believes that the conjugal act is primarily by nature for begetting children. Therefore those who in exercising it deliberately frustrate its natural power and purpose, sin against nature and commit a deed, which is shameful and intrinsically vicious.³⁰ Relying on these principles, methods of regulating procreation which are found blameworthy by the teaching authority of the Church in its unfolding of divine law may not be undertaken.³¹ This view of the Church however has faced much

²⁷ See Pius XI, *Casti connubii*. See also Terence P. Mclaughlin ed., *The Church and the Reconstruction of the Modern World: The Social Encyclicals of Pius XI* (Image Books: A Division of Doubleday and Co. Inc., Garden City, New York), p. 122.

²⁸ Article 5(c), Holy See, Charter of the Rights of Family, 22 October 1983.

²⁹ "Abortion is a direct violation of the fundamental right to life of the human being." See Article 4 (a), Charter of the Rights of the Family, *ibid*.

³⁰ The Church maintains this view on contraception owing to the interpretation of natural law as in *The Bible*, Genesis 38: 8-10. Here Onan, son of Judah was requested by his father to perform the duties of a husband to his brother's widow. Onan knowing that the offspring begotten thus would not be his own, wasted his seed to prevent conception. This was displeasing in the sight of the Lord who therefore took away his life.

³¹ Pius XI, Papal Encyclical, *Casti connubii*, 31 December 1930, pp. 559- 561. See also Paul VI. Address to a Group of Cardinals, 23 June, 1964, *Apostolic acta sedis*, vol. 43 (1964), pp. 581-9;

disapproval by certain theologians. Such a view of the Catholic Church has been considered as ignorant of the problems and difficulties of married people of modern time.³² The Holy See's opposition to the use of contraceptives such as condoms in HIV/AIDS prevention is also in its understanding of health in holistic terms wherein measures to safeguard "sexual health" or "reproductive health" help foster achievement of personal maturity in sexuality and mutual love and decision making that characterize conjugal relationship. Promotion of the use of condoms in the prevention of the deadly disease is considered irresponsible, unsafe and risky. The Holy See instead recommends abstinence before marriage and respect and mutual fidelity within marriage as the "only safe and completely reliable method of preventing the sexual transmission of HIV."³³ A similar emphasis on the importance of prevention in fighting the pandemic was adopted in the XVth International AIDs Conference organized in Bangkok on 11-16 July 2004.³⁴

The strong negation of any claims to alternate sexuality by the Holy See may again be viewed in the light of its teaching that it is the family alone that forms the fundamental unit of society, a "sanctuary of life" through which an individual can recognize his or her reality as a person and innate dignity.³⁵ The biblical condemnation by God of the homosexual acts of the people of Sodom and

Marriage Laws of the Church, in *Indian Catholic Reference Book* (Published by the Catholic Association of Bombay, 1964), pp. 51-55.

³² Theologians have expressed that the situation and the intention of married couples who have a good and sometimes absolutely obligating reasons not to desire a pregnancy are totally different from the situation of Onan, who was killed by God because of the betrayal of his wife and of his kinship. See Dorothy Dunbar Bromley, *Catholics and Birth Control: Contemporary Views on Doctrine* (The Devin-Adair Company, New York, 1965), p. 38

³³ Statement of Interpretation of the Holy See on the Adoption of the Declaration of Commitment on HIV/AIDS, 27 June 2001, available at www.vatican.va/roman_curia/secretariat_state/documents

³⁴ See Washington Post, "AIDs Meeting Focuses on Prevention: Bangkok Conference ends Amidst Debate of Progress and Funding of Methods", available at <http://www.washingtonpost.com/>

³⁵ Pontifical Council for the Family, *The Family And Human Rights*, no. 2. 2, *The Family the Basis of Society*, 15 November 2000, available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html

Gomorra³⁶ forms the basis of the Church's refusal to sanctify "civil unions" or gay marriages. The concept of marital relationship beyond the realm of one man and one woman is therefore untenable.³⁷

5.4. Critical Views Expressed

The presence of the Vatican in the abovesaid conferences was vigorously critiqued by reproductive rights advocates such as the Centre For Reproductive Rights and Catholics For a Free Choice. Questions were raised not only over the "statehood" conferred upon the Vatican but also reservations were expressed over the unique right offered to one single religion to participate in the UN to the exclusion of others.³⁸ These NGOs started a movement demanding a "See Change" that sought to restrict the authority of the Holy See as representative of the Catholic Church to its over one billion faithful scattered around the world. But no state has supported this non-governmental move against the Church.

Arguments raised to counter the scriptural authority for the condemnation of contraception by the Church are also considered stumbling blocks to the acceptance of the Church's philosophic concept of natural law. It can be pointed out that the intransigent position of the Church on such matters without actual regard for the reality of modern day existence in fact leads to a point where many who are considered her members disregard her teachings. It is therefore concluded at this point that where a Catholic himself or herself is not persuaded in the ways of the

³⁶ See *The Bible*, Jude 1: 7; Genesis 19: 24; Romans 1: 26-27.

³⁷ Take for instance the reference to "spouse" in The Charter of the Rights of the Family; it is pointed out in terms of the "natural complementarity which exists between man and woman." This would mean any other relationship is therefore inherently unnatural. See Article 2 (c), Charter of the Rights of the Family, n. 198.

³⁸ See Statement of Anika Rahman, Director, International Programme at the Centre for Reproductive Rights, "The Questionable Status of the Holy See at the United Nations: A Church Disguised as a Nation", 19 April 1999.

Church, the non-acceptance of the Church's didactic views by non-Catholics seems only natural.

The Church's disproportionate emphasis on issues relating to abortion, sexual and reproductive rights and same-sex unions and her almost obsessive passion in the pursuit of the same in international law is obvious. This can be traced to the doctrinal position of the Catholic Church in considering the family as a "natural society" existing prior to the State or any other community.³⁹ Such a stand of the Holy See is not inappropriate. However a failure on the part of the Catholic Church to dialogue and carefully contemplate the delicate process of law-making would easily make the Church's commitment to human rights suspect and open to criticism.

³⁹ Holy Sec, Preamble, Charter of the Rights of the Family, 1983.

Chapter VI

The Role of Religion in Influencing International Law- Impact and Implications

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The all-consuming predilection of the Holy See for issues relating to abortion rights, contraception, sexual and reproductive rights and the recognition of same-sex unions has been keenly watched and noted by scholars committed to a secular construct in human rights. Advocates of reproductive and women's rights have also keenly followed the presence of the Vatican at international forums and conferences. This Chapter intends to set forth some of the arguments that may and have been advanced against the presence of a religious entity such as the Vatican in international law.

6.1. Law and Morality

Law claims ultimacy in the strongest sense in a secular society where a highly cohesive moral outlook does not exist. In such a society law becomes a kind of secular religion.¹ Scholars such as Rawls have attempted to find principles and philosophical positions that are common to different religions.² However it is pointed out by others like Greenawalt that it is often the unshared positions that determine troubling circumstances involving social choice.³ This problem of incorporation of morality has especially been obvious in the natural rights theory that is understood in its fundamentally Christian roots. Though these principles of natural law⁴ provide a

¹ See Kent Greenawalt, *Conflicts of Law and Morality* (Clarendon Law Series: Clarendon Press University, Oxford, 1987), p. 18.

² For example, John Rawls, "Justice as Fairness: Political Not Metaphysical", *Philosophy and Public Affairs*, vol. 14 (1985), p. 223.

³ See Kent Greenawalt, "Lectures on Religious Convictions and Lawmaking", *Michigan Law Review*, vol. 84 (1985), p. 352.

⁴ Some have asserted that the essence of the natural law movement has been to deduce from human nature or reason, which because of their source in the universally identified human nature, claim validity for all time and for all parts of the world. In another version natural law is presented as divine

perfect setting for an ideal society, it has been argued that large portions of our world do not share such beliefs. To solve the dilemma some scholars have emphasized upon the efficacy of the inductive approach to international law in arriving at what constitutes law. The inductive approach identifies the sources of law. This authority rendered to the law-creating process as expressed in Article 38 of the ICJ Statute, however imperfectly, and the embodiment of an agreed set of values that are reflected in the principles laid down in the UN Charter are said to aid arrival at a near universal set of values for the international community.⁵

However the inductive approach to international law is also not without its critics. Jenks argues that no satisfactory basis of obligation can ever be found within the law. First principles, by their nature, cannot be ascertained or verified by inductive reasoning and international law must like any other code of conduct rest upon certain first principles.⁶ Such an argument is claimed to reveal the failed attempts by certain jurists to segregate international law from the uncertainties of a moral law so as to infuse a more “scientific” basis to international law.⁷

It however remains unclear as to from where and by whom these first principles are identified. What emerges from such an argument is that challenges to the rules of international law shall remain as long as nations continue to guard their interests and therefore whether the claim is based on moral law or positive law, the

law flowing from the “eternal law of God” and this form has survived particularly in the Catholic Church and some Christian writers. See Frede Castberg, “Natural Law and Human Rights: An Ideal Historical Survey”, in *International Protection of Human Rights* (Proceedings of the Seventh Nobel Symposium, Oslo, 25-27 September 1967). See also Kotaro Tanaka, “Some Observations on Peace, Law and Human Rights”, in W. Friedmann and others eds., *Transnational Law in a Changing Society* (Columbia University Press: New York, 1972), pp. 250-255.

⁵ See George Schwarzenberger, *The Inductive Approach to International Law* (London: Stevens and Sons, 1965), p. 152.

⁶ See Jenks, *The Prospects of International Adjudication* (Stevens, London-Oceana Publications: New York, 1964), p. 660.

⁷ See Charles G. Fenwick, *International Law* (Appleton-Century-Crofts: New York, 1971), p. 51. The author argues that distinction between law and morality fail because nations like individuals will always appeal to a “higher law” when a particular rule appears to them to work injustice.

mediator being men and nations themselves, conflicts shall remain. It must be conceded that references to law given specifically and to which nations give their consent holds much efficacy. However it must also be borne in mind that laws religious or otherwise are not immutable or unchanging. The deemed conflict between law and morality is also not wholly correct. To assume that laws existing are devoid of a moral order would be an exaggeration and not easily sustainable.

6.2. Natural Law v. Positive Law

The attempt to secularize laws and liberate them from religious underpinnings began with the Grotian concept of natural law based on right reason rather than God. A consideration of the persistent rhetoric of inalienable or inherent rights of man in a substantial segment of the activities of the UN as also reflected in its related instruments show a support for natural law principles under the UN framework. The Preamble to the Charter in its reaffirmation of “fundamental human rights” and appeal to “human dignity and worth of the human person” alludes to natural law without any direct reference. Much of the declarations and resolutions of the UN in incorporating natural law principles have tried to evolve standard setting models in law. Thus when the UDHR was being drafted it was understood as being the “common standard of achievement for all people and all nations.” Here too the inroads for an explicit mention of natural rights of men and women were avoided. This fact has been used to advantage particularly by women’s rights advocates to counter religious perceptions in law. The UN Charter provisions have been used to bolster their claims. Before considering these arguments it is necessary to outline the scope for religion within the Charter and the reservations expressed by the Vatican and other religions that have been tested on the anvil of the Charter provisions by some scholars.

6.3. The Obligations under the UN Charter

The UN Charter is more than just a treaty because “it prevails expressly over all other treaties, and implicitly over all laws, anywhere in the world.”⁸ The promotion of women’s liberty and equality appears in the Preamble to the Charter alongside the promotion of peace, security and tolerance among nations.⁹ The Preamble makes no reference to religion. The Charter affirms the broader purposes of the UN in Article 1(3), including “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion...”¹⁰ Under Article 56, all members “pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in article 55”, which promotes the “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹¹

6.4. Scope for Religion under the UN Charter

The language of the Charter makes clear that human rights under the Charter are not dependent upon any religion, nor is any particular religion their source. The Charter contains provisions in favour of religion, but these are simply one manifestation of the principle of non-distinction. The Charter by affording protection to human rights and fundamental freedoms without discrimination on the basis of

⁸ Louis B. Sohn, “The New International Law: Protection of the Rights of Individuals Rather than States”, *American University Law Review*, vol. 32 (1982), pp. 1, 13 (arguing that the Charter is customary international law and *jus cogens*). See also *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. US)*, 1986 I.C.J. Reports, pp. 4, 98.

⁹ The Preamble “reaffirm[s] faith in fundamental rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”, UN Charter 1.0.

¹⁰ This is the first mention of religion. As a parallel to this purpose as embodied in the Charter is the requirement to make studies to produce recommendations in order to promote the realization of human rights and fundamental freedoms without distinction. Article 13(1)(b), UN Charter. See also Article 76(c), UN Charter, providing for encouragement to the same effect under the international trusteeship system.

¹¹ See Article 55(c), UN Charter.

race, sex, language and religion, thus identifies characteristics, which individually or in combination may not be employed to the detriment of human rights. While identifying the grounds upon which there could be possible discrimination, the Charter does not place these grounds in a certain hierarchy. Thus an argument that there is a recognition of a customary norm of non-discrimination on the basis of religion but not on sex would fail. A conclusion to the contrary would shift the balance between human rights and competing interests that the Charter achieves.¹² By direct implication, the language of non-distinction establishes that the entitlement to human rights and fundamental freedoms under the Charter is not to be determined or evaluated by any religious law and neither is any religion to be treated more privileged than the other. The underlying premise in these provisions of the UN Charter is that human rights and fundamental freedoms are inherent in the dignity and worth of the human person. Such an understanding based on the equality of rights of all human beings therefore disallows distinction based on grounds as recognized under the Charter. Conversely the directive to uphold human rights and fundamental freedoms “without distinction”¹³ does not by itself negate the actual exercise of the right to religious thought and expression.¹⁴

¹² Courtney W. Howland, “The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter”, *Columbia Journal of Transnational Law*, vol. 35 (1997), pp. 271, 337.

¹³ The use of “distinction” in the Charter unlike the term “discrimination” used in other human rights treaties such as the ICCPR is considered not to be deliberate. See B.G. Ramcharan, “Equality and Non Discrimination”, in Louis Henkin ed., *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York, 1981), pp. 246, 259. See also the ICESCR; Article 1, The Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, UN GAOR, 34th session., Suppl 46, p. 193, UN Doc. A/34/46 (1970).

¹⁴ Article 18, UDHR: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”; Article 18 (1), ICESCR: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

6.5. *Vatican Reservations and International Obligations*

The reservations relating to international human rights treaties especially regarding the rights of women under religious law and practices have long captured the interest of critics.¹⁵ Among countries that have expressed reservations on the pretext of religious interpretations in the field of family law and personal status, one may consider the reservations expressed by Iran to the CRC (subjecting it to the Sharia), its non-accession to CEDAW and similar reservations by Saudi Arabia to CEDAW, CRC and CERD. It has been pointed out that such reservations proposed under the human rights treaties under the justification of religious compulsions not only undermine the support offered to these treaties by religious states¹⁶ but also by those that are secular. Thus it has been argued that while the Vatican's opposition to abortion and artificial contraception is part of the consistent doctrine of the Catholic Church in the form of reservation to the CRC¹⁷ and the CEDAW, reservations have also been expressed by India, a secular nation.¹⁸

On the basis of the abovesaid submissions regarding obligations and reservations it therefore becomes essential to identify the implications arising from Vatican's presence in international law. The Vatican by its own admission sees the UN as the hope for the future, calling for international cooperation on problems of

¹⁵ See Theodor Meron, *Human Rights Law-making in the United Nations: A Critique of International Instruments and Process* (Oxford, 1986), pp. 78-9.

¹⁶ In 1995, UNICEF issued an official communiqué announcing that it was suspending assistance to education programmes in Afghanistan where girls were excluded, citing Afghanistan's commitment as a Party to the United Nations Convention on Rights of the Child. See Nancy Hutch Dupree, "Afghan Women under the Taliban", in William Maley, ed., *Fundamentalism Reborn? Afghanistan and the Taliban* (C. Hurst & Company: London, 1998), p. 145.

¹⁷ See Addendum to the Initial Report by the Holy See under Article 44 of the CRC, UN Doc. CRC/C/3/Add.27 (28 March 1994), paras 8 and 16.

¹⁸ India has two declarations with respect to CEDAW: i) Under Article 5(a) that speaks of a duty to modify the social and cultural patterns in order to achieve the elimination of prejudices against women; and ii) Article 16(a) that speaks of the duty to eliminate discrimination against women in matters relating to marriage and family matters. These reservations are seen as unwillingness on the part of the world's largest democracy to displease Muslim minority especially when seen in the light of the Shah Bano controversy. See Yogesh Tyagi, "The Conflict of Law and Policy on Reservations to Human Rights Treaties", *British Yearbook of International Law*, vol. LXXI (2000), pp. 181, 198.

different dimensions and the necessity of upholding Charter principles.¹⁹ It has hailed the UDHR as “one of the highest expressions of human conscience of our time” and “a real milestone on the path of moral progress of humanity.” In 1963 Pope John XXIII, in his encyclical wrote “today the universal common good poses problems of worldwide dimension, which cannot be adequately tackled or solved except by the efforts of a public authority endowed with a wideness of power, structures and means of the same proportional public authority which is in a position to operate in an effective manner on a worldwide basis.”²⁰ Though the Church’s magisterium has not clarified as to the exact nature of such a public authority it can be assumed that the Vatican presence within the UN system is an indicator that the Church does in fact see international law and the rule of law as a structural solution to ensure universal common good.²¹

6.6. Is Recognition of the Vatican Exclusionary to other Religions?

The fact that the Vatican is recognized as a Permanent Observer at the UN and thus allowed to propound Catholic doctrine is cited as an exclusionary privilege against similar opportunities to other religions.²² This statement however is clearly untrue for there exists no legal impediment to the entry of other religious entities into the UN system. In fact the detailed arguments put forth by scholars like Abdullah in an attempt to challenge the status of the Holy See at the UN achieves quite the opposite effect. She argues that the status of the Holy See as a non Member

¹⁹ Pope John Paul II, Address to the United Nations, 1995, available at http://www.vatican.va/holy_father/john_paul_ii/speeches/

See also J. Gremillion, *The Gospel of Peace and Justice, Catholic Social Teaching since Pope John* (Orbis Book: Maryknoll, New York, 1976), pp. 87-8.

²⁰ See Pope John XXIII, Encyclical, Peace on Earth, *Pacem in Terris*, 1963, no. 137.

²¹ See Father Thomas D. Williams, “Terrorism and International Law: A Catholic Perspective”, available at <http://www.zenit.org/english/visualizza.phtml?sid=53677>

²² See CFFC, “The Church at the United Nations”, 1995, available at <http://www.catholicsforchoice.org/article/ChurchattheUN.asp>

Permanent Observer to the United Nations implies that another religion would be entitled to similar privileges merely by asserting control over a small amount of territory.²³ The factual possibility or impossibility of other religions easily acquiring the status such as that attained by the Holy See in international law²⁴ should not be a cause for criticism in its legal status at the UN.

Of course the argument against religious influence on law that is prejudicial to human rights cannot be reduced into a case of representation alone. The focus of a legal debate on religious reservations and positions in law is critical to the understanding of human rights norms are built on an unstated premise of secularism. While law provides a singular framework or reference for rights and duties, perceptions in different religious traditions tend to vary and fail in achieving a common denominator. Therefore while both Christianity and Islam protect the right to human dignity,²⁵ divergence exists within their traditions.²⁶ Thus while the Catholic Church goes to great lengths to protect the right to life inherent in human

²³ See Yasmin Abdullah, "The Holy See at the United Nations Conferences: State or Church?," *Columbia Law Review*, vol. 96 (1996), pp. 1853, 1875. The author suggests that if an Islamic state entered into an agreement with a religious leader, following the model of the Lateran Treaty between Italy and the Holy See, that religious leader could be granted sovereignty over a designated territory.

²⁴ See Matthew N. Bathon, "The Atypical International Status of the Holy See," *Vanderbilt Journal of International Law*, vol. 34 (2001), pp. 597, 627-630. The author argues that the unique status of the Holy See has been attained through centuries, through recognition by states in their diplomatic relations and is not dependent on the Lateran Treaty or the Vatican City in terms of territory. Bathon states that Islam as a world religion with the largest number of followers, possessing nationalist character would also not be an easy contender to a similar status owing to its lack of centralized, hierarchical structure present in the Catholic Church. He however concedes that the Baha' i Faith, a recent offshoot of Islam may possibly evolve into a religious state on par with the Holy See.

²⁵ For instance, respect for human dignity is protected in the Quran in verse 17: 7 "Surely we have accorded dignity to the sons of Adam" and comparable human rights in the Preamble of the UDHR as well as its Articles 1, 3, 17etc. and similar provisions in the ICCPR and the ICESCR.

²⁶ For example one may consider the position of the Islamic Republic of Iran in relation to legal obligations under international law. See Theodor Meron, "Iran's Challenge to the International Law of Human Rights", *Human Rights Internet Reporter*, vol. 13 (1989), p. 8. See also Cairo Declaration on Human Rights in Islam, 5 August 1990, UN GAOR, World Conference on Human Rights, session 4, Agenda Item 5, UN Doc. A/CONF.157/PC/62/Add.18 (1993).

dignity, Islam allows for the use of death penalty,²⁷ the use of force which may be excessive and unjustified in the light of international humanitarian law²⁸ and honour killings.²⁹ These differences among religions on issues in international law are serious. However a solution to the problem does not lie in rejecting and disregarding religious motivations. Such an approach would be wholly unrealistic.

6.7. *Religious Rights v. Women's Rights*

Scholars such as Howland in trying to show that extremist views on religious obligations as translated in law violate human rights have referred to the Vatican amongst other fundamentalist entities. Howland claims that religious traditions have often promoted a differentiated role for men and women and such determination of gender roles has often infringed upon the equality of women.³⁰ Feminist scholars

²⁷ Islamic States have often been ardent retentionists and have recently come to express their disapproval of abolition more forcefully. The resistance of Islamic countries is further bolstered by religious arguments. During the debate over the Second Optional Protocol to the ICCPR, the Sudanese delegate stated that abolition was "incompatible with the criminal code and legislation of Sudan based on the divine and sacred laws of Islam which were immutable." See UN GAOR 3d Comm., 37th Session, 67th mtg., ¶ 46, UN Doc. A/C.3/37/SR.67 (1982). An Egyptian representative described the Second Optional Protocol as a "racist, imperialist idea which certain countries were seeking to impose on the 115 countries which still had the death penalty." See Joan Fitzpatrick and Alice Miller. "International Standards on the Death Penalty: Shifting Discourse", *Brooklyn Journal of International Law*, vol. 29 (1993), pp. 273, 341 (quoting UN GAOR 3d Comm., 44th Sess., 52d mtg. ¶ 72, UN Doc. A/C.3/44/SR.52 (1989).

²⁸ See Hujjat al- Islam Dr. Sayyid Mustafa Muhaqqiq Damad, "International Humanitarian Law in Islam and Contemporary International Law" in *Islamic Views on Human Rights: Viewpoints of Iranian Scholars* (Organization for Islamic Culture and Communication: Directorate of Research and Education Centre for Cultural- International Studies, Tehran, Kanishka Publishers, 2003), p. 253.

²⁹ Stoning to death is a punishment for women's adultery under fundamentalist interpretation of the *Hudd* punishments. In 1990 Iraq decreed that according to its fundamentalist ideology, men were allowed to kill their womenfolk for adultery. See Marie-Aimee Helie- Lucas, "Bound and Gagged by the Family Code", in *Third World/Second Sex*, vol. 2 (Miranda Davies ed., 1987), p. 55.

³⁰ See Howland, n. 12, pp. 271-324. The author makes a comprehensive study of the fundamentalist and conservative views promoted by extremist groups in the five major religions of Buddhism, Christianity, Hinduism, Islam, and Judaism, emphasizing on their political promotion and legal enforcement of gender roles which are specifically targeted towards the subordination of women. The author also highlights that a common goal of religious fundamentalism of whatever origin is to translate state laws that reflect religious laws. These groups show a special concern in matters pertaining to family laws and personal status laws, which have a particularly strong impact on women.

point to the fact that major religions emerged and developed in patriarchal societies and their texts and traditions are imbued with patriarchy and unequal treatment of women.³¹ These scholars show that the legal structures of fundamentalist marriage and divorce and modesty codes serve as enforcement mechanisms to maintain women's chastity and control their sexuality. Certain religious traditions have also been shown to sometimes adversely affect the health and development of the personhood of women.³² Among the traditional cultural practices that were shown to be harmful to women by the UNHCHR included female genital mutilation (FGM), forced feeding of women, early marriage, nutritional taboos and traditional birth practices, female infanticide owing to preference for sons, early pregnancy and dowry practice. Similar arguments are made against the tendency of religious ideology to marginalize international standards on human rights and instead subject them to religious values as enunciated by particular political elites.³³

A consideration of the above argument and evidence is important in the light of the principle of non-discrimination that forms the foundation for all human rights. The command issued under the UN Charter is clearly against laws and traditions that differentiate on the basis of sex. The substantive content of the rights protected is provided for in the UDHR, which like the Charter is an instrument with aspirational goals. The UDHR also provides that all persons are entitled to the rights and

³¹ See Mary E. Becker, "The Politics of Women's Wrongs and the Bill of Rights: a Bicentennial Perspective", *University of Chicago Law Review*, vol. 59 (1992), pp. 453, 458-9. The author argues that sexism and patriarchy pervade Christianity and Judaism. In Islam, fundamentalism requires strict control over the women through modesty doctrine of *hejab* that ensures wife's obedience, reinforcing husband's total control especially in economic terms. Modesty codes require the segregation of men and women in general and primarily demand that women stay indoors, act modestly and dress with their entire bodies covered. *Hejab* sets barriers against the working of women outside the home and disallows women economic independence. Even inheritance rights are limited.

³² See United Nations High Commissioner for Human Rights (UNHCHR), *Harmful Traditional Practices Affecting the Health of Women and Children*, UN Fact Sheet no. 23 (August, 1995), p. 17, available at <http://www.unhcr.ch/html/menu6/2/fs23.htm>

³³ See Michael H. Reisman, "Some Reflections in Human Rights and Clerical Claims to Political Power", *Yale Law Journal*, vol. 19 (1994), pp. 509-523.

freedoms set forth in it, without discrimination of any kind, including that based on race, sex or religion.³⁴ Similar to the language of the Charter, the non-discrimination language employed in the UDHR connotes to the unavailability of scope for any religious law to be determinative of international human rights standards. It has also been pointed out that the preparatory work³⁵ of the UDHR makes clear that no particular religion was to be deemed the foundation of human rights. The UDHR in its protection of the right to freedom of thought, conscience and religion is categorical not only in protecting every religion equally but also the right to non-religious beliefs.³⁶

The UDHR, on the matter of discrimination on the basis of sex, states that men and women “are entitled to equal rights as to marriage and its dissolution.”³⁷ This does not mean that international law requires identical treatment in every instance for men and women.³⁸ These distinctions should however be reasonable, just, based on objective criteria and proportionate to justification. Distinction, which is found to be

³⁴ Article 2, UDHR.

³⁵ Article 32 of the Vienna Convention on the Law of Treaties, 1969 allows recourse to supplementary means of interpretation including preparatory work in cases of ambiguity or obscurity in the meaning of treaty language. Though the UDHR is not a treaty because of its norm-creating character, interpretative terms such as that given in the Vienna Convention may be employed. The UDHR has been described as an “authoritative listing of human rights” and has been shown to have become a “basic component of international customary law, binding on all states, not only members of the United Nations.” See Louis B. Sohn, n. 246, p. 17. *Opinio juris* and state practice make clear the customary law status of the UDHR. See *Case concerning the United States Diplomatic and Consular Staff in Tehran (US v. Tehran)*, 1980 I.C.J. Reports, pp. 3, 42; Proclamation of Tehran, Final Act of the International Conference on Human Rights, UN GAOR, 23rd session, Suppl 41, p. 1, UN Doc.A/CONF.32/41 (1968); *Filartiga v. Pena-Irala*, 630 F. 2d 876, 883 (2d.Cir.1980).

³⁶ See the Summary Records of the Third Committee, September- 21 December 1948, Official Records of the Third Session of the General Assembly, Part I, pp. 108-125, UN Doc. A/C.3/SR (1948).

³⁷ Article 16(1), UDHR.

³⁸ See Human Rights Committee, General Comments adopted by the Human Rights Committee Under Article 40, ¶4 of the International Covenant on Civil and Political Rights, Addendum: General Comment 18[37] (non-discrimination) (adopted 21 November 1989), UN Doc.A/45/40, CCPR/C/21/Rev.1/add.1 (1990).

unreasonable, cannot be revived by justification of motive or intention.³⁹ The UDHR recognizes the potential for conflict between rights and freedoms. Permissible limitations are drawn out in Article 29 of the Declaration and these are “solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of the democratic society.”⁴⁰

6.8. Permissible Limitations to Women’s Rights- UDHR Methodology

The limitations on women’s rights are allowed only for securing “due recognition” of the right to religious belief or “just requirements” of a democratic society. The right to religious belief and its manifestations have been identified in international law.⁴¹ Given the language against discrimination between the sexes under the Charter and the UDHR, the international standard of “due recognition” of religious rights would thus disallow religious groups from determining the equality of women for themselves. Such an understanding of human rights is clearly indisputable. This conclusion can be drawn from the fact that the international community refused to recognize the systematic racial discrimination and apartheid practiced in territories under the control of South Africa. Much of these practices were justified in the light of God’s divine plan to set the white settlers apart from the

³⁹ *South West Africa Cases (Second Phase) (Ethiopia v. South Africa; Liberia v. South Africa)*, 1966 I.C.J. Reports, pp. 6, 306, 309, 314 (dissenting opinion of Judge Tanaka) (finding that the “practice of apartheid is fundamentally unreasonable and unjust. The unreasonableness and injustice do not depend upon the intention or motive.”). See Human Rights Committee, General Comment Non-Discrimination, *ibid.*, p. 175 (stating that differentiation will be justified only if such “criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”). The Human Rights Committee has justified affirmative action on this basis.

⁴⁰ Article 29(2), UDHR.

⁴¹ See Article 6, UN Declaration on the Elimination of Religious Intolerance and Discrimination, G.A. Res. 36/55, UN GAOR, 36 sess., Suppl 51, p. 171, UN Doc.A/36/51(1981), wherein the right to religious belief includes the freedom *inter alia*: to worship, to maintain places of worship, to maintain charitable institutions; to make and use necessary articles related to the rites and customs of religion; to issue and disseminate publications concerning the religion; to teach a religion in a place suitable for the purpose; to solicit financial support; to train leaders; to observe religious holidays; to have communications at the national and international level with other members of the religion.

coloured individuals. The unequivocal position taken on the abolition of slavery and apartheid and elevating them to the status of *jus cogens*, clearly show that religious sects are no more allowed to determine standards of discrimination on their own.

Considering the second condition upon which these rights can be curtailed i.e., pertaining to the just requirements of a democratic society, arguments subjugating women to an inferior position would fail. Howland again tries to show that fundamentalist notions of women's rights are intrinsically repressive of divergent political opinions.⁴² Assuming but not accepting that such a statement holds true in all circumstances, a consideration of the Vatican in international law provides another conclusion. The fact that today there exist numerous NGOs and activists within the Catholic community itself that have expressed their fury over the Church's doctrine on issues such as abortion, sexual and reproductive rights clearly shows that the international law making process is alive and vibrant, notwithstanding the chaos of divergent views.

6.9. Critical Observations

While the international human rights movement has ushered in an era of the right to claim for equal rights and human dignity, the conflicts between religious rights and human rights norms especially with respect to women have been conspicuous.⁴³ The lack of a credible objectivist grounding in standards set by religious claims have given rise to an incompatibility in the value expressed in human rights norms with the dominant ethos in countries like China, Pakistan, Saudi Arabia, Sudan and Nigeria.⁴⁴ The fact that the Catholic Church as represented by the Holy

⁴² See Howland, n. 12, p. 366.

⁴³ See Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices*, UN Doc. E/CN.4/Sub.2/200/Rev.1, UN Sales No. 60.XIV.2 (1960); Donna J. Sullivan, "Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination", *American Journal of International Law*, vol. 82 (1988), p. 487.

⁴⁴ See John Tasioulas, "International Law and the Limits of Fairness", *European Journal of International Law*, vol. 12 (2002), pp. 993, 996.

See is able to influence not only domestic policy⁴⁵ but also the law-making process at the international level cannot by itself be considered an arbitrary exercise of power or cultural imposition of norms not accepted by society in general.

International lawyers have been quick to show the role of international law in legal translation of the reality that is in the “international society, which consists of opposing, self-differentiating national and regional or continental cultural traditions, crisscrossing with both religious and commercial systems.”⁴⁶ In the context of international law in particular, the need to devise a scheme that would correlate to the belief system of each state is necessary yet fraught with difficulties. This attempt to juxtapose various voices and to retrieve a conceivable common ground may in turn result in a void. Nonetheless the process of opportunity for the expression of myriad voices is vital to the development of international law, its improvement and reconsideration according to the needs of the international community.

Religions have for centuries shaped political and legal culture in its historical, moral and theological context. At a time when international affairs have witnessed the use of tools presented in international law for narrow national interests, certain jurists have emphasized that ethical considerations and issues of morality must be central to the assessment and development of international law.⁴⁷ The argument against the total exclusion of religion and a secular construct of human rights is strong. To favour automatically the secular over religious views at the point of breakdown in public consensus on an issue is said to project the world-view of the non-religious as that of all especially when the religious reality of these groups is ignored. The solution to the

⁴⁵ The Church has opposed law allowing abortion in States such as the US, Spain and Ireland. See Rishona Fleishman, “The Battle against Reproductive Rights: the Impact of the Catholic Church on Abortion Law in both International and Domestic Arenas”, *Emory International Law Review*, vol. 14 (2000), pp. 277, 289-304; Keith S. Koegler, Note, “Ireland’s Abortion Information Act of 1995”, *Vanderbilt Journal of International Law*, vol. 29 (1996), no. 5, pp. 1117, 1144.

⁴⁶ See Anthony Carty, “Critical International Law: Recent Trends in the Theory of International Law”, *European Journal of International Law*, vol. 3 (1998), pp. 66, 68.

⁴⁷ See Theodor Meron, “Crimes and Accountability in Shakespeare”, *American Journal of International Law*, vol. 92 (1998), pp. 39- 40.

incongruities introduced to the international law-making process by the presence of religious entities such as the Vatican is not in its total exclusion. As remarked earlier “religions will not be easy allies to engage, but the struggle for human rights cannot be won without them.”⁴⁸

⁴⁸ See John Witte Jr. “Law, Religion, Human Rights”, *Columbia Rights Law Review*, vol. 28 (1996), pp. 1, 2.

Chapter VII

Conclusion and Suggestions

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The Holy See in its dual capacity as the temporal head of the Vatican City and the spiritual supreme of the Catholic Church presents an awe-inspiring organizational structure that keeps a close watch over international events. The Holy See in her role as the engine of Catholic doctrine has over centuries impacted national laws and international relations. The birth of the Holy See, which runs independent of treaty status and instead finds its legitimacy in the Biblical mandate for the universal Church of Christ, presents some formidable issues in international law. The recognition of the Holy See in international law as a “state” continues to be widely debated, with divergence of opinions being evident. The fact that the Holy See by her own admission has not moved towards a formal recognition for statehood under the UN framework but rather prefers to work in the system as a Permanent Observer further complicates matters.

A preliminary glance at the presence of the Vatican in international organizations such as the EU, OAS and the UN presents a picture wherein the Vatican influence on policy making is variable. Within the EU and OAS, though the Vatican is provided with a platform to espouse her doctrinal stand, the same is not at the cost of international objectives basically aimed at economic and social cooperation. Thus the rather strong movement towards a secular framework within these organizations has placed the Vatican in a place of honour but without the deference that she otherwise demands. Vatican presence in the UN however sends a message of greater reverence for her “spiritual mission.” Today the Vatican through the recent UN General Assembly resolution¹ passed on 1 July 2004 confirms for herself an easier access to the UN system as a Permanent Observer. According to this resolution the Vatican is no more required to gain the assent of regional organizations to its interventions and may also circulate its documents as working documents at the General Assembly. Through this resolution the Holy See also has the right of reply to possible interventions

making reference to the Holy See. Such a move by the UN is claimed to be for the purpose of making the UN system more democratic and inclusive.

An analysis of the presence of the Vatican in international law and relations cannot be viewed in total isolation of the fact that the Holy See has on numerous occasions helped guide the course of international law for purposes that are beneficial to the social, economic and political well-being of the whole of humanity. Papal efforts to maintain international peace and security especially seen from the early twentieth century to the present age are noteworthy contributions. The initiatives for peace under the current Pontificate of Pope John Paul II seen particularly in the Beagle Channel dispute between Argentina and Chile, the Israeli-Palestinian standoff in the Holy Land of Jerusalem, ethnic conflict in Central Africa, ethnic-cleansing in the Balkans and the diplomatic efforts to avert war on Iraq are illustrative of the role of the Vatican in the process of international settlement of disputes. The role of the Vatican in the process of dispute settlement must be considered as a bulwark to the structure of international law. The insistence of the Vatican on the use of tools of negotiations and diplomacy instead of a ready resort to use of force is timely and of critical importance to the present international polity.

The Vatican contribution to the field of human rights is important at both levels of principle and practice. The Church's social doctrine on issues relating to economic and trade aspects of international law, especially considered in the light of the interventions of the Holy See in organizations like the WTO are helpful in inculcating ethical standards in models imposed by industrialized and developed countries. The Holy See's solidarity with the problems of developing countries particularly in the field of environment and developmental issues is a reassertion of the inherent inequalities that exist among nations and the need to bridge the gap.

However an entry into the realm of right to life, reproductive rights and women's rights presents a picture that is replete with knots and crosses, affirming a conservative view on these issues. The Holy See is permitted to be part of

¹ General Assembly Resolution 58/314, 58th sess., agenda item no. 59, UN Doc. A/RES/58/314, 16 July 2004.

international UN conferences. These conferences operate on the basis of consensus and therefore the fact that the Vatican as a non-Member Permanent Observer cannot vote, is not a deterrent. The presence of the Vatican in international law conferences such as the Cairo Conference on Population and Development in 1994 and the Beijing Conference on Women in 1995 indicates the absolute commitment of the Holy See to prevent a deviation of international law from Catholic doctrine relating to abortion, issues of sexuality, contraception, adolescent sex-education and the concept of reproductive rights. The Holy See in interpreting these documents did not shirk in striking alliances with Islamic nations such as Saudi Arabia, Sudan and Iran. The presence of strong religious dissent over the international law creating process almost to the point of the derailment of negotiations thus leads to the study of religion as a social force that shapes international law.

The fact that the Holy See is the only religious entity in international law, which has been elevated to the status of a Permanent Observer at the UN is seen with some apprehension. It is argued that the allowance of religious perceptions in the law making process tends to usher in opportunities to religious groups to choose compliance with international law. The Holy See in its various international commitments has often expressed reservations on substantive contents claiming exception owing not only to its “peculiar nature” in international law but also claiming independence of thought in its spiritual mission. The power of the Holy See strictly in the spiritual realm provides wide amplitude of influence. Groups advocating women’s rights and reproductive rights maintain that the recognition of the Holy See as an Observer to the UN is an unjust exclusion of other religions. One may trace this argument as guided by the factual reality of the influence of the Holy See in international relations. The definite inclination and ability of the Holy See to push Catholic perception into the international law making process to the alleged exclusion of other religions can easily be traced to its ambit of power be it in her world-wide membership in the Catholic Church or its primacy in the structural hierarchy of an international organization running solely on a Catholic agenda. The opportunity afforded to the Vatican at the UN and other international organizations and agencies is similarly

available to other religions. It is submitted that in the absence of any legal impediment to the entry of other religions in the law-making process an argument relating to exclusion is not sustainable.

In recent times, the argument against the universal cultural legitimacy of the present internationally recognized standards of human rights in general have been made upon the basic conception that these standards have emerged from western philosophical and political developments. One may accept the same as a historical fact.² However raising these concerns in general terms on a religious or cultural perspective by itself cannot justify the arbitrary condemnation of all human rights standards, or even a particular one, unless it is followed with very careful inquiry and substantiation of the alleged objections.

It has been pointed out that there exists a definite rationale that demands a high degree of proof from those who mount a challenge to internationally recognized human rights. The significant consensus that has been achieved on internationally recognized human rights, over several decades has been through a settled process of articulation, ratification and adoption in international treaties. The present formulations in human rights instruments provide a certain degree of protection, however inadequate. These formulations by themselves form the basis for dissention³ from which new law may emerge.

The problem of religious perceptions shaping international law is further compounded by the fact that religions have been shown to lack objectivist grounding. Therefore international law in proffering universal solution is said to be an effective guide to international life. The preference for resort to positive law based on the theory of consent is claimed by some scholars to be more efficacious than direct references to natural rights. In order to prove the same, mention is made of the clear absence of an explicit mention of natural rights within

² See for example, Virginia A. Leary, "The Effect of Western Perspectives on International Human Rights," in Abdullahi An- Na'im and Francis M. Deng, eds., *Human Rights in Africa: Cross-Cultural Perspectives* (Washington, DC: Brookings Institution, 1990), pp. 15-30.

³ See Abdullahi Ahmed An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws", in Rebecca J. Cook, ed., *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press: Philadelphia, 1994), p. 172.

international instruments such as the UN Charter and the UDHR. This preference for positive law is justified so as to avoid subscription to the traditional understanding that natural rights portend to a conception of law in God, a doctrine particular to Christianity. A reference to natural rights is therefore considered unjust and improper for other cultures and religions. It is however submitted that the lack of an explicit mention of the principles of natural law within international human rights law should not result in treating these principles as defunct and unusable. Scholars like Stone point out that “a theory of natural law tends not only to criticize positive law by reference to whether it realizes justice, but also to deny that its norms are valid at all unless they are in keeping with certain norms of natural law.”⁴

The debate over religious influence and human rights is taken further by scholars such as Reisman who suggest that undue influence of religious ideology on the scope of human rights tends to marginalize international standards.⁵ Therefore it is believed that secularism should be weaved into the fabric of human rights so as to ensure non-discrimination between religions. However such an argument should not mean a total removal of religious dialogue in the law making process. To do so would be to fail in understanding the inevitable presence of religion in our social and political milieu. However the cautious note is necessary so as to prevent attempts to countenance the rule of law.

The way ahead for such a debate definitely points towards the need for a greater flexibility on the part of both human rights advocates and religious entities such as the Vatican. The Holy See definitely enjoys a privilege like none other in shaping international law. This privilege however should not be subject to abuse. The need for inter-religious dialogue is important in the law making process but the fact that religions have sometimes held captive the working of civil authorities and implementation of international instruments is not a healthy sign of cooperation.

⁴ See Julius Stone, *Human Law and Justice* (Stanford University Press: Stanford, 1965), pp. 76, 291.

⁵ Michael H. Reisman, “Some Reflections in Human Rights and Clerical Claims to Political Power”, *Yale Law Journal*, vol. 19 (1994), pp. 509-523.

Ideally the presence of religious entities should be at the level of other international actors such as NGOs within the UN system so that a particular consultative relationship can be struck with them. This approach would not only allow for a representation of religious views on matters of international concern but also ensure that these views by themselves would not detract from the original relationship drawn between the UN and such entities. This suggestion is clearly possible under Category I NGOs and the relation can easily be identified in accordance with Article 71 of the UN Charter, which authorizes the Economic and Social Council to develop a consultative relationship with certain NGOs. The organizational framework of the Vatican as also its mandate to spread Catholic doctrine would allow for such a consideration. The fact that the Vatican also receives financial contributions from charitable institutions and not from any particular government or public body further allows for such a reference. It is however doubtful whether placing the Vatican in such a paradigm would actually achieve any change in its status quo. It also emphasized that an attempt at striking a consultative arrangement must be considered in the light of the neutrality of the Vatican on political affairs. The Vatican neutrality on affairs of international politics as shown in Article 24 of the Lateran Treaty is central to its ability to mediate and act as a facilitator for the needs of the international community. The commitment of the Holy See to issues of international human rights effectuated through its networking with states and international aid agencies is important for the functional approach to international law.

The Holy See as the representative of the Catholic voice in the making of international law has in most parts of its existence through its numerous interventions helped in the formation of consciences. This is but the mission of the Church and her prerogative. However such a privilege needs to be qualified by a willingness to dialogue so as not to arouse the suspicion that the whole structure of civil authority is being threatened. The Church in promoting and teaching her social doctrine as a guide for practice must also allow this doctrine to be guided by the practice of the international community. This coming together of precept and practice is not only helpful in preventing a diminution of her authority in a world where social and economic problems have an historical framework but also points to the road to progress.

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