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# The Nature and Role of the Catholic Church and the Holy See in the International Order

<https://www.e-ir.info/2013/09/24/the-nature-and-role-of-the-catholic-church-and-the-holy-see-in-the-international-order/>

ROBERT JOHN ARAUJO, SEP 24 2013

The Catholic Church has a unique status in international law and relations. Through the international person of the Holy See, the Church exercises sovereignty—authority—with nation-states, international organizations, and other participants. The concept of the “Holy See” is used to describe the Catholic Church—with the Pope and the Roman Curia—as an international personality that has the competence to engage other international persons including sovereign states. The Holy See is not the Vatican City State, which is the territorial body that makes the Church, through the Holy See, a sovereign that also claims power over a specific territory. But the Holy See, the pope, and the Vatican City State do not conveniently fall within traditional explanations of statehood, international personality, or sovereignty. The Holy See is nonetheless accepted as a sovereign that exchanges diplomatic relations with almost one hundred and eighty states and that participates in the realm of international organizations, such as the United Nations (UN), as either a permanent observer or as a full member.

## The Origin of Holy See Sovereignty and Diplomacy

To those unfamiliar with the term “Holy See,” there may be confusion about the nature of the Church’s role in international law and relations. But the concept is a simple one to comprehend. The term “Holy See” is derived from the Latin word *sedes* and refers to the seat or chair of St. Peter. As the successors to Peter, all subsequent popes have been the occupants of this seat or chair (although a bit of confusion existed when more than one person claimed to be pope; nevertheless, the institution of the Holy See has remained intact throughout history). The composite meaning of the Holy See accordingly refers to the residence of the pope along with the Roman Curia and the central administration of the Catholic Church. However, the synthetic meaning of this term is not synonymous with Rome or the Vatican or the Vatican City State. Its significance transcends the restraint of geographic location. This fact about the nature of the Holy See reinforces its uniqueness as an international sovereign and person and why it is interested and participates in international relations with nation-states.

Since the sixth or seventh century, the Church has been engaged with the temporal authorities of the world. Throughout this early history, most of the Church’s dealings were with Christian sovereigns, but this was not always the case, as the Church and the Holy See sometimes had international dealings outside of Christian Europe. Thus with the passage of time, the Holy See found itself engaged with many other sovereigns. By the end of the twentieth century, much of its diplomatic and other relations with states were with temporal sovereigns of other faiths or no faith at all.

While efforts have been made by some to simplify the Holy See’s character as a world religion rather than an international personality that exercises sovereignty, these efforts and the characterization promoted would be erroneous. Until 1870, the Holy See possessed a large territory, the Papal States, which made it appear more like any other temporal sovereign. However, after Italian unification and the absorption of the Papal States into Italy, its sovereignty did not cease to exist even though most of its territorial holdings disappeared. While military and territorial power did wane, its moral and spiritual voice in international relations continued. By way of example, a number of Catholic and non-Catholic states in the latter nineteenth century requested the services of the Holy See to moderate and conciliate disputes between nation-states.

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## **The Lateran Treaty of 1929**

In addition, the Holy See continued forging international treaties, particularly those designed to promote peace and humanitarian relief due to its longstanding expertise in such matters. One of the most famous bilateral agreements entered into by the Holy See is the Lateran Treaty of 1929 with Italy. The basic focus of this agreement was to resolve the so-called “Roman Question” that resulted from Italy’s confiscation of Church properties during the nineteenth century unification, and their continuing status.

It has been argued, however, that with the signing of the Lateran Treaty in 1929, Italy conferred international personality upon the Holy See. Although Article II of the Lateran Treaty states that, “Italy recognizes the sovereignty of the Holy See in the international field as an inherent attribute of its nature, in conformity with its tradition and the exigencies of its mission in the world,” it is vital to note that the Holy See has been a subject of international law since the fifth century and, as a consequence, has enjoyed uninterrupted personality under the law of nations since that time. Other states did not rely upon this provision of the Lateran Treaty to determine how they viewed the Church and the Holy See because no individual state confers personality on another member of the international order. Rather, it is the recognition of a sovereign by a substantial portion of the international community which confers this status. Again, as history demonstrates, the Holy See has enjoyed this status for many centuries.

That said, some authorities contend that, through the practice of states, international law has continuously acknowledged the non-territorial sovereignty of the papacy. For example, in 1898 Tsar Nicholas II, who was not a Catholic, asked Pope Leo XIII for papal support and involvement in the 1898 Hague peace initiative. After the First World War, Germany expressed its view that the Holy See should become a member of the nascent League of Nations; however, Italian opposition due to the “Roman Question” prevented this from happening. Furthermore, even though the United States allowed its diplomatic relations with the Holy See to expire in the 1870’s, its government organs continued to acknowledge the Holy See’s international personality. For instance, in *Municipality of Ponce v. Roman Catholic Church* (1908), the U.S. Supreme Court ruled that the Holy See “still occupies a recognized position in international law, of which this court must take judicial notice.” And though Holy See-U.S. relations were not restored until 1984, the U.S. Secretary of State Hamilton Fish observed in an 1875 dispatch that “While the probabilities seem to be almost entirely against the possibility of restoration of any temporal power to the pope, he is still recognized as a sovereign by many powers of the world.”

## **The Contribution of the Holy See to International Order**

The uninterrupted status of the sovereignty of the Holy See is also evidenced by its continuous role in diplomacy and the growth of its diplomatic relations as already mentioned. With the advancement of the mechanisms of international law and relations, such as the development of international organizations, the Holy See finds itself fully engaged in the work of universal organs such as the UN and regional organizations such as the Organization of American States, the Arab League, and the African Union. For example, it is either a member or a permanent observer state in a number of international and regional organizations. Another important fact about the status of the Holy See is that it is regularly invited to participate as an equal with other states in diplomatic conferences and treaty negotiations where the voices of all sovereigns are sought. For example, it was a full partner in the meetings leading to the adoption of the Rome Statute for the International Criminal Court in the late 1990’s. In the context of multilateral treaties, the Holy See is a party to many multinational treaties including the Geneva Conventions of 1948.

The voice and the interest of the Holy See in the formulation of international juridical instruments evolved from several factors. First of all, the Church is committed to the rule of law in the world. From the perspective of the Church and the Holy See, the rule of law must be based on a law of human origin that must, in turn, be founded on the natural law. The natural law is a method of legal reasoning that has been long recognized and practiced since the time of the ancient Romans which entails the role of objective human intelligence comprehending the intelligible reality of the world that leads to the formulation and adoption of norms beneficial to the common good—the flourishing of each person and all persons. Second, the Holy See is further obligated to developing norms that consider and apply moral deliberations in order to avoid the development of human law that is simply positivistic, i.e., law that merely represents the will of the law maker without considering the moral implications of the law that is made. These two

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principles inevitably lead to an international legal structure which serves the entire human family and the dignity of each member of the human family.

The Church's role and interest in the making of international law that is conducive to friendly, peaceful, and just relations amongst the member states of the international community is designed, therefore, to advance and protect the legitimate interests of everyone and not just some interests—especially those of the powerful. This role and interest are at the heart of the Holy See's normative mission of protecting both the religious and moral order around the globe. Unlike other sovereigns which understandably have the legitimate interests of their own people at the core of their mission, the Holy See has a distinctive role in the international order concerned with issues of peace, the common good, and the general welfare of all people, and it is its unique sovereignty and personality in international law that enables its agency in international relations.

This point was made in Pope Paul VI's October 4, 1965 address before the United Nations (UN) General Assembly, when he suggested that the Holy See was vested with temporal sovereignty to "leave him [the pope] free to exercise his spiritual mission and to assure all those that treat with him that he is independent of every worldly sovereignty."<sup>[1]</sup> With the exception of Pope John Paul I, all of his successors have also addressed the UN General Assembly: Pope John Paul II (twice: 1979; 1995); and Pope Benedict XVI (2008). At this time, it is understood that UN Secretary General Ban Ki-moon has invited Pope Francis to address the UN; however, no date has yet been set for the pope's address to the General Assembly.

One final consideration needs to be kept in mind about the nature and role of the Catholic Church in the international order. This point stems from the work of the Second Vatican Council and the challenge for the Church to read the signs of the times. This does not mean that the Church or its members must reflect the attitudes and values of the surrounding secular world. To the contrary, this important phrase that emerged from the Council necessitates a better understanding of the world so that the Church and its members may be more effective agents of the message of Christ and his mission of salvation. As the Second Vatican Council noted in the *Pastoral Constitution on the Church in the Modern World* (issued in December of 1965), the Holy See "does not lodge its hope in privileges conferred by civil authority. Indeed, it stands ready to renounce the exercise of certain legitimately acquired rights if it becomes clear that their use raises doubt about the sincerity of its witness..." But the Council also added that due to its teaching authority and moral vision for all people throughout the world, the Holy See is obliged to teach social doctrine and pass moral judgments even on issues involving the political order. In principle, the Holy See views itself as a moral voice contributing to substantive discussions of other sovereigns aiding them in furthering the common good of all peoples. This moral voice has assuredly had a positive impact on the drafting of international documents, including draft treaties, their adoption, their interpretation, and their enforcement.

But the role of the Church and the Holy See in the global community does not stop there. The Church has also founded itself or inspired others to establish institutions that serve many diverse members of the human family around the world. These institutions include schools, clinics, hospitals, shelters, and refugee services which serve hundreds of millions of people around the world. They also include diplomatic missions designed to engage the world and its political and social leaders. Even though the format of engagement is different, the objective is the same: to serve those who might not otherwise be served in the most moral of fashions possible. In the context of diplomacy exercised by the Church, the moral voice makes the Holy See all the more unique in its approach to international relations. First and last, its mission is to continue the work of Christ, and in the realm of international relations and related disciplines, this intensifies the role and nature of the Holy See.

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[1] The full text of the “Address by Pope Paul VI to the General Assembly” is available in United Nations Department of Public Information, *Yearbook of the United Nations, 1965* (New York, New York: United Nations, 1966), 237-242; online at [http://unyearbook.un.org/1965YUN/1965\\_P1\\_SEC1\\_CH16.pdf](http://unyearbook.un.org/1965YUN/1965_P1_SEC1_CH16.pdf).

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