

REVISED AND UPDATED

SEE CHANGE

The
Catholic
Church at
the United
Nations

Church

or

State?

Ever since it was informally accepted into the United Nations in 1964, questions have been raised about the Holy See's status and role at the UN. As the UN became more influential in international policymaking, and the Holy See stepped up its opposition to the global expansion of reproductive health services, the questions have become more pertinent and pointed. Many, especially those working for internationally focused nongovernmental organizations who have seen first-hand the impact of the Holy See's role at the UN, now feel that the Holy See should not continue in its exalted place at the UN's table. This paper reflects on the the Holy See's questionable denomination as a state, the process that led it to be accepted into the UN, and how it has used its status to impose its minority views on entire populations, Catholic and non-Catholic alike.

But it's not just NGOs that have questioned the nature of the Holy See's statehood. Pope John Paul II, speaking with Vladimir Putin in 2003, said, "Look out the window. What kind of state do I have here? You can see my whole state right from this window."¹ The pope acknowledged that it requires some effort to square the current reality of the Holy See, the government of a territorial holding known as Vatican City, with the common understanding of what a state is. In fact, over the centuries many have tried to answer the question: What kind of a state is the Holy See, if it is a state at all?

The Catholic church's long history is undeniable. But how did the Holy See, the government of the Roman Catholic church, come to enjoy unique access to UN proceedings—a position held by no other religion—that gives it a voice at international conferences and in the General Assembly on some of the most sensitive issues of our time?

The Holy See, Vatican City, the Roman Catholic Church: *Is any of these a state?*

The Holy See, the government of the Roman Catholic church, claims that its possession of a territorial entity—Vatican City—qualifies it as a state and thus grants it a place among the states at the UN. The international community, however, has adopted specific norms that determine when a territory may be considered to be state.

According to the criteria codified at the 1933 Montevideo Convention on the Rights and Duties of States, Article 1 requires that a state must have a defined territory, a government, the ability to enter into relations with other states and a permanent population.² None of the entities involved, the Holy See, Vatican City or the Roman Catholic church, possess all four of these attributes.

Though they are sometimes used interchangeably, there are important differences between the Holy See, Vatican City and the Roman Catholic church. According to Archbishop Hyginus Eugene Cardinale, a former Vatican diplomat who wrote an authoritative work on the Holy See and international relations, the Holy See “exists and operates within the international community as the juridical personification of the Church.”³ By definition a “non-territorial entity,”⁴ the Holy See is the spiritual and temporal government of the Roman Catholic church. It consists of the pope and the Roman Curia—the various departments and institutes that assist the pope in running the church. The Holy See also governs Vatican City, the temporal location of both the Holy See and the headquarters of the Roman Catholic church.⁵ Today the Roman Catholic church is a religious society with some 1 billion adherents worldwide, with the pope at its head.

Vatican City is the world’s smallest “city-state” at 108.7 acres. As American Cardinal Timothy M. Dolan described it, “[Vatican City] is about the size of an 18-hole golf course, so it’s not that big.”⁶ In fact, Vatican City is a bit smaller than an 18-hole golf course, which typically extends 125–150 acres in the US.⁷ This territory houses the pope’s palace, St. Peter’s Basilica, offices, administrative services, libraries and archives.⁸

As of December 31, 2011, Vatican City boasted 594 citizens,⁹ all of whom are also citizens of other countries but are authorized to live within the territory for the term of their employment. Upon termination of their service, Vatican City citizenship is revoked from those who held it during their residency, though some inhabitants are never granted citizenship.¹⁰ The fact that citizenship is temporary throws further doubt upon the Montevideo Convention’s requirement for a permanent population. According to a rather convoluted definition, Vatican citizenship “is based solely on the criterion of permanent residence,” but if one no longer meets the qualifications of citizenship, which is “based solely on the criterion of permanent residence in the Vatican City,” one reverts to one’s original citizenship.¹¹ Also, in contrast to most other countries, Vatican City citizenship cannot be acquired by inheritance or by being born within the territory.¹²

There are few families in Vatican City; the majority of citizens are cardinals, prelates and clerics. About 100 women are citizens of the Vatican, mostly nuns, and it has been estimated that there are only about ten children in residence at any given time.¹³ Vatican City does not issue passports to its residents. Only the Holy See issues passports and then solely to the Vatican diplomatic corps, which includes ambassadors to 178 countries.¹⁴ Vatican City has no popularly elected officials—it is governed by the Holy See with the pope as sovereign—

“The Holy See is not a state, but is accepted as being on the same footing as a state.”

— Hyginus Eugene Cardinale, then-Titular Archbishop of Nepté and Apostolic Nuncio to Belgium, Luxembourg and the European Community, in *The Holy See and the International Order*, 1976.

and no true municipal infrastructure. Italy carries out many of the municipal functions of Vatican City, providing the police force, punishing crimes committed in the city and maintaining the water and railway systems.

It can be difficult to know where to draw the fine distinctions between the Holy See, Vatican City and the Catholic church and their unique roles. When faced with questions, the Holy See’s representatives frequently invoke history. A meeting held at the United Nations in 1947 featured an exchange between Mr. Ivan Rand of Canada and Brother Simon Bonaventure, a representative from the Holy See’s Custos of the Holy Land. (The Custos is the Holy See’s designated custodian that maintains the Holy Land’s Catholic shrines and monuments.)

Mr. Rand was inquiring about the Holy See’s legal claim to these shrines, to which Brother Bonaventure replied, “Throughout six hundred years it has been legally recognized, since we are here.”¹⁵

This circular response helps illustrate the difficulties that arise when the Roman Catholic church, an entity with a religious and temporal presence stretching back centuries, interacts with the norms of modern statecraft.

The Holy See doesn’t have a government—it *is* a government. Granting the Holy See state status is comparable to calling the US Congress a state. The Holy See does maintain permanent diplomatic missions around the world and enters into

Box 1: Treaties Related to Human Rights

Treaty	Status
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Has not ratified. ¹⁶
Convention on the Rights of the Child	Signed, with reservations. ¹⁷ Did not comply with reporting requirements. Its 2nd periodic report was due in 1997. ¹⁸ The report was finally made available online as of late 2012, listing numerous reservations, including language related to family planning. ¹⁹
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Acceded to treaty: “The Holy See, in becoming a party to the Convention on behalf of the Vatican City State, undertakes to apply it insofar as it is compatible, in practice, with the peculiar nature of that State.” Did not comply with reporting requirements. ²⁰
International Covenant on Economic, Social and Cultural Rights	Has not ratified. ²¹
International Covenant on Civil and Political Rights	Has not ratified. ²²
Rome Statute of the International Criminal Court	Has not ratified. ²³
Convention relating to the Status of Refugees	Ratified, with reservations. ²⁴
International Convention on the Elimination of All Forms of Racial Discrimination	Ratified. But see the diplomatic cable “Vatican Opposed to Brazilian Sexual Orientation Resolution,” which says, “One does not then see how one can include ‘sexual orientation’ among the causes of discrimination.” ²⁵

international treaties, but these relationships frequently require defining how the Holy See, Vatican City and the Roman Catholic church interact with each other and how the Holy See's responsibilities differ from those expected of other state actors. When it does sign a treaty, the Holy See's signature tends to come with reservations or without meeting all of the criteria expected of other signatories. [See Box 1.] For instance, when it acceded to the Convention against Torture the Holy See specified that it "undertakes to apply it insofar as it is compatible, in practice, with the peculiar nature of that State."²⁶ At times, it signs on to treaties as "the Holy See, acting also in the name and on behalf of Vatican City State."²⁷

The current unwieldy constellation of Vatican City, the Holy See and the Roman Catholic church has not always been this way—in fact, it is the fruit of a compromise not even a century old. Vatican City was created in 1929 under the Lateran Treaty signed between Benito Mussolini and the Holy See. The Lateran Treaty was designed to compensate the pope for the 1870 annexation of the Papal States, which at that time were comprised of Rome and Latium.²⁸

Before the Lateran Treaty, the question of how to reconcile the pope's temporal role with the emerging Italian state was known as "The Roman Question." It incited strong opinions on both sides throughout Europe from 1861 to 1929. And before there was a Roman Question, the pope controlled subjects and land through the Papal States. Now that the Papal States are no more, the crux of the Holy See's special status at the UN is the claim that its possession of a territorial entity—Vatican City—qualifies it as a state. However, it is not Vatican City that is a member of the UN, but the Holy See. The Holy See also points to the fact that it conducts the Vatican's diplomatic activity and has historically maintained diplomatic relations with a number of nations—sending and receiving diplomats and entering into treaties. Because

of these activities, the Holy See is recognized as an international personality, but this is not synonymous with statehood.

Ambiguities surrounding the Holy See's statehood are what fuel the current dispute about its role in the international arena, especially at the UN, and this new "Roman Question" has been debated without definitive conclusion in diplomatic circles for almost a century. [See Box 2.] And as we shall see in the next section, its acceptance into the United Nations was not the product of international agreement, but rather, the result of a process that was neither open nor aboveboard.

How the Holy See Came to the United Nations

The Holy See acquired its status at the United Nations through a process of custom, rather than consensus, initiated by the Holy See. As a Nonmember State Permanent Observer it enjoys a rarely used designation it once shared only with Switzerland, which became a full member in 2002,²⁹ and now shares with Palestine, which was granted the same status—through a very different process—in November 2012. [See Box 3.] Since 2004, this title grants the Holy See some of the privileges of a state at the UN, such as being able to speak, reply and circulate documents in the General Assembly. No other religion is situated at this elevated status. Other religions participate in the UN like most other nonstate entities—as nongovernmental organizations. The Holy See says that it has remained a Permanent Observer rather than seek full membership "by its own choice" because the security functions required by the UN charter would compromise the Holy See's neutrality.³⁰

It was the Holy See that took the first step towards participation in international

**"We often hear
the Church is
not a democracy.'
That's true, because
it's not a country
or a society."**

— *Cardinal Francis George,
Archbishop of Chicago,
Inside the Vatican,
June/July 1999.*

Box 2: The “Roman Question”

“The Roman Question”—the problem of how to deal with the pope’s mixture of temporal, territorial and spiritual interests—was a pressing problem in Europe for almost a century as Italy was trying to coalesce into a modern state. The United Nations still deals with some of this ambiguity today.

Pre-1870: The pope was head of a defined territory known as the Papal States which consisted of 17,218 square miles in central Italy, an area roughly equivalent to the combined area of New Hampshire and Vermont,³¹ or a little less than the area of Estonia.³²

1870: Italy annexed Rome and Latium, the last of the Papal States, which resulted in the pope’s loss of all territory except for the Vatican and Lateran Palaces and the Villa of Castel Gandolfo.

1920s: The Holy See sought to become a member of the League of Nations, but was turned down because of questions about its state status.

Feb. 11, 1929: The Lateran Treaty was signed between Benito Mussolini and Cardinal Pietro Gasparri, creating Vatican City as compensation for the Papal States.

June 1, 1929: Vatican City was admitted to the World Telegraph Union. Vatican City had joined the Universal Postal Union by becoming a State Party of the Stockholm Postal Convention of 1924.

1931: Vatican City joined the Radiotelegraph Service.

1932: The World Telegraph Union and the Radiotelegraph Service merged to create the International Telecommunication Union; Vatican City remained a member. It is by membership in this union and the postal union that Vatican City originally gained admission into the UN as an observer.

1944: The Holy See made tentative inquiries to the US Secretary of State about the eligibility of Vatican City to become a member of the UN and was told that membership was not appropriate.

1948: The Food and Agriculture Organization (FAO) became the first specialized UN agency to grant the Holy See/Vatican City the status of permanent observer to its conferences. FAO explicitly noted that this status had been granted because of the special religious nature of the Holy See/Vatican City. [The Holy See had yet to be established as the preferred term.]³³

1951: A representative of the Vatican Migration Bureau was accredited to the International Relief Organization. The Holy See/Vatican City began attending meetings of the UN General Assembly and the World Health Organization (WHO) as

an ad hoc observer. The Holy See appointed its first permanent observer to the UN Educational, Scientific and Cultural Organization (UNESCO).

1956: The Holy See participated in the founding conference of the International Atomic Energy Agency (IAEA) as a full member. This status was not subject to a vote by the general conference. The Holy See was elected a member of the UN Economic and Social Council (ECOSOC).

Oct. 16–19, 1957: Confusion regarding the interchangeable use of the terms Holy See and Vatican City prompted an exchange of notes between the Holy See and the secretary-general of the UN. This resulted in an agreement that relations should henceforth be understood as being between the United Nations and the Holy See. (At this time the Holy See was not a permanent observer.)

March 21, 1964: UN Secretary-General U Thant received a letter from the secretary of state of the Roman Curia at Vatican City stating that the Holy See would have a permanent observer at UN headquarters in New York. Pope Paul VI dispatched Rev. Msgr. Alberto Giovannatti to New York as the first permanent observer of the Holy See to the UN.

April 1964: UN Secretary-General U Thant accepted the Holy See’s designation of itself as a permanent observer. There appeared to be no involvement of the General Assembly or the UN Security Council in the decision.

Feb. 1, 1967: Pope Paul VI named a permanent observer to the UN’s Geneva Office, as well as to the Office of the UN High Commissioner for Refugees.

1967: The Holy See named permanent observers to the WHO, the International Labor Organization (ILO) and the UN Conference on Trade and Development (UNCTAD). The United Nations Industrial Development Organization (UNIDO) was established and the Holy See joined as a full member.

1978: The Holy See became a permanent observer to the Organization of American States.

1997: The Holy See became a member of the World Trade Organization.

2004: The Holy See is granted a larger role at the United Nations, including the right of reply, the right to freely intervene in debates and the right to have its documents circulated.³⁴

bodies. Pope John Paul II confirmed that the Holy See invited itself into the UN when he noted, “Pope Paul VI initiated the formal participation of the Holy See in the United Nations Organization, offering the cooperation of the Church’s spiritual and humanitarian expertise.”³⁵

Prior to the formation of the UN, the Holy See wished to be admitted to the League of Nations and reportedly “regretted its exclusion” due to concerns about its statehood status and the possibility that it would have undue influence on the votes of Catholic member states.³⁶ In October of 1944, the pope inquired of US Secretary of State Cordell Hull what the conditions of membership would be for the future United Nations. Hull replied that “the Vatican would not be capable of fulfilling all the responsibilities of membership.”³⁷

In fact, given that it doesn’t meet most of the criteria of a state, the Holy See owes its status at the UN to an accident of

history—the membership of Vatican City in the Universal Postal Union and the International Telecommunication Union. Soon after its formation, the UN invited these organizations and their members to attend UN sessions on an ad hoc basis, and representatives of the Holy See began attending sessions of the UN General Assembly, the World Health Organization and the UN Educational, Scientific and Cultural Organization in 1951 as ad hoc observers.³⁸ In 1956, the Holy See was elected a member of the UN Economic and Social Council and also became a full member of the International Atomic Energy Agency.³⁹

Representatives of the Catholic church were active as ad hoc, and at times, formal observers to various UN bodies between 1948 and 1964. In 1957, as a result of confusion regarding the interchangeable use of the terms Holy See and Vatican City, the secretary-general of the UN and the Holy

Box 3: Palestine vs. the Holy See

In November 2012, Palestine’s status at the UN was changed from permanent observer to Nonmember State Permanent Observer, the same as the Holy See. The differences between the two are striking, however. Palestine’s role came about after a multi-year campaign seeking full membership at the United Nations, a move that enjoyed “broad support”⁴⁰ but ultimately did not receive the unanimous approval of the Security Council when put to a vote in 2011.⁴¹ When Palestine attained Nonmember State Permanent Observer status in 2012, it did so following a vote in the General Assembly—138 of the 193 members were in favor. By contrast, the Holy See achieved its role as Nonmember State Permanent Observer by degrees—joining UN agencies, corresponding with the secretary-general and sending representatives to conferences.

The Holy See issued a statement lauding the UN vote elevating Palestine to its new status, seeing it as a step towards affirming that the “Palestinian people have a right to a sovereign independent homeland.”⁴² It would be hard to apply the same vision to the Holy See’s participation in the UN, however, because of the lack of a true “people” to represent. The *CIA World Factbook* lists the population of the Palestinian territories as over 4 million,^{43,44} while the population of the Holy See (listed as identical to Vatican City) is recorded as 836.⁴⁵ When Palestine’s representatives speak at the UN, there is no question about for whom they speak. And unlike the fanfare with which Palestine became a Nonmember State Permanent Observer, there is no surviving documentation dating back to when the Holy See acquired this rank.

See reached an agreement that relations should henceforth be understood as being between the UN and the Holy See.⁴⁶

Because permanent observers are not mentioned in the UN charter, the protocol for their admission was a product of custom,⁴⁷ or as the UN archives suggest, a gentlemen's agreement that grew out of a relationship between two leaders. Unlike Palestine's path to its current standing, nonmember states have traditionally obtained permanent observer status by notifying the UN secretary-general that they have appointed an observer. If accepted, the secretary-general is then to acknowledge the appointment. According to an authoritative work on UN observers, nonmember states, unlike other entities such as nongovernmental organizations (NGOs), have not required an invitation from the General Assembly to send a permanent observer.⁴⁸ In 1960, when Secretary-General Dag Hammarskjöld explained how he decided whether to accept UN observers, the criteria were vague: "I have been following one line which seems to be the only possible one, that is, to accept observers when such an arrangement is proposed in the cases where the country in question is recognized diplomatically in this form or that form by a majority of UN members...."⁴⁹

Thus, when the Holy See gained permanent observer status, the bar was not set very high. In 1964, the Holy See followed this protocol and informed UN Secretary-General U Thant that it had dispatched a permanent observer to the UN's New York headquarters. The United Nations' archive of correspondence between the offices of Pope Paul VI and U Thant only documents the growth of their relationship during this time,⁵⁰ but contains no specific mention of the Holy See's acceptance as a permanent observer. An April 2, 1964, article in the *New York Times* mentions that the Holy See sent permanent observers to a United Nations Trade Conference.⁵¹

There is some question as to whether or not the Holy See actually did meet the criteria for permanent membership, however. According to the UN's International Law Commission, "From that statement [Legal Counsel's memorandum of 22 August 1962] of the position at United Nations headquarters, it was clear that observers were accepted only from nonmember States which were full members of one or more specialized agencies *and* were generally recognized by Members of the United Nations."⁵² [Emphasis added.]

In the case of Palestine, its admission into UN agencies was hampered by a US law requiring that the United States withdraw funding from any agency that recognizes Palestinian statehood, as happened in 2011 when Palestine joined UNESCO.⁵³ In addition, Palestine is a member of international bodies such as the International Trade Union Confederation⁵⁴ and the United Nations Economic and Social Commission for Western Asia.⁵⁵ As of 2012, 131 of the 193 UN member states award diplomatic recognition to Palestine.⁵⁶

The Holy See, by contrast, met the first condition through its membership in UN organizations such as the International Atomic Energy Agency, but it is questionable if it met the second criteria in 1964, the year it appointed an observer. In 1959, when Pope John XXIII acceded to the papacy, only 24 state ambassadors appeared at the Vatican to affirm their diplomatic relationship.⁵⁷ Even by 1985, only 53 countries had diplomatic relations with the Holy See.⁵⁸ (At that time there were 159 UN member states.) The United States did not formalize relations with the Holy See until 1984.

The US extended official recognition to the Holy See under President Ronald Reagan's leadership, although then-Senator Jesse Helms characterized this as "clearly a

"For a long time the church was seated at the king's table. Until the last century, it also had a temporal state. Since it has been freed from this 'ball and chain,' the church has more easily been able to engage in free reflection upon and be in full support of the promotion of human rights, cultural cooperation, peaceful coexistence, and the primacy of the person... Thus was born the true and proper social doctrine of the church."

— *Speech by then-Monsignor Celestino Migliore, Undersecretary for Relations with States at the Holy See's Foreign Ministry.*

Box 4: Five Types of Permanent Observers Recognized by the United Nations

1. **Nonmember states** (the Holy See and Palestine);
2. **Entities with a standing invitation to participate as observers** in the sessions and work of the General Assembly and maintaining permanent observer missions (Palestine was formerly the only entity in this category);
3. **Intergovernmental organizations** with a standing invitation to participate as observers in the sessions and work of the General Assembly and maintaining a permanent office (20 organizations, including the European Union and the Organization of the Islamic Conference);⁵⁹
4. **Other entities with a standing invitation to participate as observers** in the sessions and work of the General Assembly and maintaining a permanent office at UN headquarters (the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the Sovereign Military Order of Malta); and
5. **Specialized agencies and related organizations** maintaining a liaison office at UN headquarters (13 agencies including the World Bank, the World Health Organization and the International Monetary Fund).⁶⁰

violation of the First Amendment's guarantee of separation between the institutions of church and state."⁶¹ Furthermore, according to a report from the *Christian Science Monitor*,

*"A number of religious groups, including the National Council of Churches, joined Americans United for Separation of Church and State in a three-year effort to challenge the constitutionality of US diplomatic ties with a church, taking the challenge all the way to the Supreme Court. But the high court refused to review a lower court ruling that the president alone has the authority under the Constitution to conduct foreign policy."*⁶²

The same report contained the observations of a State Department official, who said, "The State Department was co-opted [by the White House] on this, without much dissent at high levels. It was not an atmosphere in which criticism could have been made."⁶³ The very recent accord between the Holy See and the United States did not spring out of a universal approval, then, but came as an order from the one person who had to have been convinced of its wisdom—the president.

There is no way to gauge support for the decision to grant the Holy See Permanent Observer status, as no vote was ever taken on the Holy See's presence at the UN by the General Assembly. The Holy See's membership in UN agencies such as the International Atomic Energy Agency—which helped it meet one of the criteria for a Nonmember State Permanent Observer—was also not subject to a vote by the General Assembly.

Instead, the process was reminiscent of Brother Bonaventure's "We have always been here, since we are here" idea, which was uttered in the 1940s but is still used 70 years later as a way of answering present-day questions about the Holy See's activities by pointing to its past.

During a press briefing in 1995, a journalist questioned the Holy See about its peculiar role at the UN. Lene Sjørup from Denmark, who attended the briefing, related how "the Vatican delegates retorted that *only* NGOs had questioned this status, which had been settled in the 12th century. The Vatican, according to its delegates, is the oldest international actor."⁶⁴ [Emphasis in original.]

Sjørup pointed out, however, that the complicated cluster of entities known as the Holy See, the Papal States and the papacy have not “always” existed uninterruptedly in the same form. There have been numerous schisms during the history of the church, and at times there has been more than one pope. In fact, “very many states only recently established relations with the Holy See.”⁶⁵

Thus, the duration and strength of the Holy See’s diplomatic relations—and the historical backing for its presence at the UN—all depend upon who is doing the arithmetic.

Nonmember State Permanent Observers: Beyond the General Assembly to International Conferences

The United Nations recognizes five types of permanent observers. [See Box 4.] Among these, there is a distinction between state and nonstate observers, with three categories comprised exclusively of international organizations that make no claim on statehood. The Holy See is currently the only observer recognized as a state.

While not required by UN procedure, as a Nonmember State Permanent Observer the Holy See is normally invited to attend UN conferences and participate in these conferences with “all the privileges of a state,” including the right to vote.⁶⁶ Other types of observers do not have this privilege. They may participate in UN conferences as nongovernmental organizations, which includes observing the proceedings, but may not vote or participate in the other formal aspects of the conference. Because UN conferences operate by consensus, the ability of a Nonmember State Permanent Observer—and the Holy See is one of only

two such entities—to disagree with the majority consensus carries significant power to shape conference outcomes.

The official documents from UN conferences on women and population and development are replete with objections to the majority consensus made by representatives of the Holy See. For instance, the Holy See expressed multiple reservations to the Beijing Platform for Action, the final report from the 1995 Beijing Conference on Women, by bracketing several sections of text, meaning that they were ultimately not approved by consensus. It took issue with the concepts of “women’s right to control their sexuality” and “women’s right to control ... their fertility,” asserting that these rights should be understood to refer only to “the responsible use of sexuality within marriage.” The Holy See also condemned family planning as “morally unacceptable” and disassociated itself with the consensus on the entire section on health, saying the text gave “totally unbalanced attention to sexual and reproductive health.”⁶⁷

In addition, the Holy See objected to the word “gender,” although it had previously been accepted at the 1994 International Conference on Population and Development in Cairo,⁶⁸ because it deemed the word a “profoundly elastic term, encapsulating a broad feminist rights strategy that includes abortion.”⁶⁹ Bracketed text is more easily disputed, as can be seen by this argument against gender from Beijing becoming a stumbling block in the process of establishing gender-based persecution as a crime against humanity in 1998.⁷⁰

Reproductive rights activist and legal scholar Doris Buss believes that the most significant opposition from the Holy See at Beijing was its framing of reproductive rights and feminism as an outdated, Western relic of imperialism while its own position was deemed to be “still fighting for [women and girls]” otherwise “abandoned” by reproductive rights activists. Her research

shows that after 1995, the Vatican continued playing the role of “informal leader of the ‘natural family movement at the UN,’” which she described as “provid[ing] the grounding for opposition to issues like abortion, contraception, feminism, and lesbian and gay rights.”⁷¹

Ironically, reproductive rights activist Rosalind Petchesky saw the Beijing conference as a catalyst for refining the very rights-based perspective to which the Holy See delegation took exception:

“Beijing was the pivot, the moment where our thinking about sexuality

Box 5: Full list of intergovernmental organizations and bodies and international programs with which the Holy See has a relationship⁷²

Observer	Representative	Member
UN – New York	International Atomic Energy Agency	International Institute for the Unification of Private Law
UN – Geneva		
UN – Vienna		
Council of Europe		International Organization of Supreme Audit Institutions
International Commission on Civil Status	International Committee of Military Medicine	International Telecommunication Union
International Fund for Agricultural Development		
International Labor Organization		
Office of the UN High Commissioner for Refugees	Other	League of Arab States
UN Economic and Social Council	Latin Union, Permanent Guest	Organization for Security and Co-operation in Europe
UN Educational, Scientific and Cultural Organization		
UN Food and Agricultural Organization		
UN Organization for Industrial Development		Organization for the Prohibition of Chemical Weapons
United Nations Centre for Human Settlements	Asian-African Legal Consultative Organization, Guest	Preparatory Commission for the Comprehensive Nuclear-Test Ban Treaty Organization
United Nations Development Program		
United Nations Environment Programme		United Nations Conference on Trade and Development
World Food Programme	African Union, Nonmember Accredited State	Universal Postal Union
World Health Organization		
World Meteorological Organization		
World Organization of Tourism		
World Trade Organization		

shifted. The Vatican's reactions and anticipatory attacks made us think. It was a dialectical process, and in that process concepts were developed."⁷³

The UN has acknowledged the particular importance of its international gatherings, saying that "policy ideas are often discussed, disseminated, and agreed upon in ... global conferences."⁷⁴ Not all of the ideas put forth are true, however. At Beijing, the Holy See objected to what it perceived as "the affirmation of new human rights,"⁷⁵ i.e., abortion. This position did not come from a privileged understanding of what human rights are, however, but as a way to obstruct the natural process of improving the implementation of those rights with additional safeguards for reproductive health. In reality, the UN High Commissioner for Human Rights believes NGOs, advocates and civil society are all charged with constantly refining our understanding of human rights,⁷⁶ in the same way that the law is a work in progress.

At the ICPD+5 conference at the Hague in 1999, Holy See Representative Msgr. Frank Dewane "forcefully reaffirmed" the rights of parents over and above young people's access to sexuality education.⁷⁷ The *Earth Times*, a paper produced at the conference by the *New York Times*, characterized the Holy See's stance as "fundamentalism" and another conference paper, the *ICPD+5 Watch*, said that it "look[ed] forward to the day the Holy See comes into the twentieth century."⁷⁸

According to Lisa Clarke and Cynthia Rothschild, activists who attended Beijing+5 in the year 2000, "Tactics used by the Holy See to influence the tone of the document included peppering the text, wherever possible, with references to 'strengthening the family' and 'in support of the family.' The Holy See and conservative religious groups claimed total ownership of the notion of 'family' and 'motherhood'"⁷⁹ Another activist who attended the conference, Charlotte Bunch, said that conservative

religious NGOs from North America "worked with representatives from a handful of determined and very vocal countries and the Holy See to water down the Beijing commitments, or at least stall any efforts to go forward from them."⁸⁰

More recently, the Holy See opposed the inclusion of reproductive rights language at the 2012 Rio+20 Conference on Sustainable Development. In a preliminary document, Holy See Permanent Observer Archbishop Francis Chullikatt stated, "The economy needs objective moral formation in order to function correctly."⁸¹ From its supposed grasp of the "objective" and the "moral," the Holy See's brackets to the draft text created a series of indefensible contradictions, such as affirming women's control over "all matters related to their sexuality," when that "all" *doesn't* include sexual and reproductive health. Similarly, the Holy See called for "giving particular attention to maternal and emergency obstetric care," but excluded "sexual and reproductive" care, which would apply to all women, pregnant or not.⁸² The Holy See then boldly mischaracterizes its opponents' motives with the assertion that a rights-based model of reproductive health "constitutes the greatest violation of human dignity,"⁸³ according to Archbishop Chullikatt.

These objections represent sectarian religious positions, not governmental public policy positions. Yet, when they are entered formally into the final report of the conference, they serve to weaken support for the conclusions of the majority, and thus, the United Nations' effectiveness at addressing real-world issues related to reproductive health. This is exactly what the Vatican and its handful of allies—nations such as Libya and Sudan that do not support the recognition of full human rights for women—intend.

Nevertheless, many advocates at Rio+20 did conceive of a view of human dignity that encompassed reproductive rights, among

"Of course the nature and aims of the spiritual mission of the Apostolic See and the church make their participation in the tasks and activities of the United Nations organization very different from that of the states, which are communities in the political and temporal sense."

— Pope John Paul II, *address to the General Assembly, 1979.*

them, countries with significant Catholic populations such as Peru, Bolivia, Uruguay and Mexico.⁸⁴ The Holy See, however, allied with Syria, Egypt and some member states belonging to the G77 group of countries to ensure that reproductive rights language did not make it into the final document.⁸⁵

Despite the importance it grants to international meetings, a 2004 UN report suggested moving away from big international conferences, saying, “Member States have little appetite, however, for more such events, seeing them as costly and politically unpredictable.”⁸⁶ The report indicated that these meetings could be “only used sparingly to establish global norms,” and an alternative “might be small, informal, high-level roundtable forums to allow real exchanges of experience and avoid entrenched positions.”⁸⁷

Beyond these special conferences, the Holy See is very active in many areas of the UN. Nonmember State Permanent Observers have other privileges not accorded to lesser types of observers, including the right to place items on the provisional agenda of the General Assembly and greater access to the plenary sessions of the UN and its main committees, as well as to the Security Council.⁸⁸

The Holy See’s Two Doors, Temporal and Spiritual

As we have seen, the arguments used by the Holy See at UN conferences betray a mixture of fact and doctrine, and this can be a confusing—and useful—combination. The Holy See has the unique advantage of being able to decide when it is treated as a state, and when as the head of a religious group—in fact, its representatives frequently employ religious language to describe their “mission.” In an article about the Holy See, the *Economist* referred to “a certain

flexibility” enjoyed by the pope, which allows him to visit a country as either a head of state or a religious leader.⁸⁹ This duality has made it easier for the Holy See to make its own way in the international sphere, leaving it up to others to find the technical objections to a role that, unlike that of other state actors, is defined only by nebulous and highly technical precedent.

The Holy See’s access to UN proceedings is much greater than that of other religious groups who “like all NGOs, may watch UN proceedings but may speak to delegates only in the corridors,” according to a *Ms. Magazine* article about UN conferences.⁹⁰ During UN proceedings it often must be decided when to treat the Holy See as one religious group among many, and when to treat it as a kind of state. In a discussion about the Holy Land, a committee at the General Assembly asked:

“Should the Holy See be invited to submit its opinion as a State, i.e., as the Vatican, or as the representative of the Catholic Church? In the latter case, other religious bodies had as great an interest as the Holy See in the protection of the Holy Places.”⁹¹

The UN has on occasion decided to treat the Holy See as the latter—a representative of a religion. In 1999, UN Special Rapporteur Abdelfattah Amor conducted a series of visits to major religious communities, including the Holy See, which accepted the visit as a religious entity, not a state.

“This altogether untypical visit differed from previous missions undertaken by the Special Rapporteur insofar as it was one of several consultations of representatives of the main religions. While the Holy See is of course a State under international law, it is also the representative of Catholicism, one of the main religions in the world....”⁹²

Being able to utilize these two identities is important for the Holy See, which tends to stress its religious authority when justifying its activities in the public sphere. When Pope Paul VI addressed the United Nations in 1965, he downplayed the statehood angle, saying of himself,

“[H]e is vested—if it please you so to think of Us—with only a minute and quasi-symbolic temporal sovereignty, only so much as is needed to leave him free to exercise his spiritual mission and to assure all those who treat with him that he is independent of every worldly sovereignty.”⁹³

Being independent of other authorities, as the pope described his presence at the UN, can translate into a considerable dominion for the Holy See that is not easily challenged. The pontiff described the Holy See’s self-sufficient, spiritual presence at the United Nations as “an expert in humanity” that others could not help but treat with deference: “You know well who We are. Whatever your opinion of the Roman Pontiff, you know Our mission: We are the bearer of a message for all mankind.”⁹⁴

Having one foot on either side of the divide between the religious and the temporal can be advantageous, but being given a platform from which to speak to the entire human race is even more powerful. However, the Holy See must avoid being seen as just another religious group, or it would lose many of the privileges it enjoys as a permanent observer, which have very real, and very negative, implications for policies related to sexual and reproductive health and rights.

One of many examples of the Holy See inserting itself into center stage occurred at the Cairo+5 conference at the Hague, when Holy See delegate John Klink spoke five times in an hour to object to confidential sex counseling for adolescents. His actions

led conference chair Anwarul Chowdhury of Bangladesh to plead, “I appeal to delegates of the Holy See to join the consensus.”⁹⁵ Attendees described numerous obstruction tactics such as “opposition to specific inclusion of important new safe and effective options that increase women’s control over their reproductive capacity [that] undermined the final document.”⁹⁶

Contrast this access to the spotlight with the lack of access experienced by other world religions. Anglican Archbishop Desmond Tutu said in 1994 about the impending Cairo conference, “There are very many in other parts of the world who believe the issues raised there are crucial issues.... [O]ur church thinks we should use scientific methods that assist in planning of families.”⁹⁷ Although the Anglican church is the third largest Christian sect in the world,⁹⁸ it did not have the same access to intervene in the conference proceedings as the Holy See, whose many objections at Cairo delayed the conference for a full week⁹⁹ in order to exclude abortion from the definition of “reproductive health.”¹⁰⁰

The Holy See spoke at the conference as if it had a mandate from “believers and non-believers alike,”⁸¹ but what happened at Cairo trickled down to the many national policies modeled on the conference without the voices of other faith groups, or even many Catholics, being heard.

Dana Rosemary Scallon, an ultra-conservative former member of the European Parliament, summarized the impact of this failure:

“All Member States of the [European] Union endorsed the Programme of Action adopted at Cairo. The Union has never adopted an alternative definition of ‘reproductive health’ to that given in the Programme of Action, which makes no reference to abortion.”¹⁰²

“As 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—which is religious and not political—extends over one billion persons scattered throughout the world.... The real and only realm of the Holy See is the realm of conscience.”

— Then-Archbishop and Holy See Permanent Observer to the United Nations Renato Martino, speaking at the Theological-Pastoral Congress, October 2000.

Unlike any other political or religious entity, the Holy See exists in an ambiguous realm between the well-defined expectations for state members and NGOs. The Holy See wields this uncertainty to advance its draconian agenda against sexual and reproductive health and rights, despite lacking any constituency or other secular authority to do so.

Reserving the right of self-definition provides a useful shelter from accountability—reflected in the Holy See’s pick-and-choose compliance with other UN treaties. For instance, it has not lived up to reporting guidelines that are not optional, and not viewed as such by other states. When signing on to the Convention on the Rights of the Child, the Holy See expressed misgivings about family planning language in the document, warning that by signing it the Holy See did “not intend to prescind in any way from its specific mission which is of a religious and moral character.”¹⁰³ Subsequently the Holy See did not submit a progress report due on the Rights of the Child in 1997. More than a decade later in 2011, Permanent Observer Archbishop Silvano Tomasi promised the report would be released later that year, but only in late 2012 did the report materialize, appearing with no fanfare on the website listing the state reports for the Committee on the Rights of the Child.¹⁰⁴

Amnesty International released a report in 2011 pointing to this failure to produce the report for more than 14 years as part of an overall trend, “the enduring failure of the Catholic church to address” the ongoing clergy sexual abuse scandal.¹⁰⁵ While the 2012 report does have a section dedicated to explaining the response to sexual abuse, both at the Vatican and local levels, there is room for more clarity. For instance, when describing the Catholic church’s penal canon law proceedings, the report affirms that these

must be kept secret “in order to protect the witnesses, the accused and the integrity of the Church process” but that “this fact does not forbid or even discourage anyone from reporting the underlying allegations to civil authorities.”¹⁰⁶ This seems to fall short of requiring the reporting of a suspected instance of abuse. This ambivalence about reporting is echoed in one of the documents cited as proof of the Holy See’s response to the abuse crisis. A set of guidelines on dealing with clergy sexual abuse, published in 2011 by the Congregation for the Doctrine of the Faith, says, “Without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed.”¹⁰⁷ In other words, mandatory reporting does not extend to information gleaned behind the confessional seal.

While the report emphasizes in several ways that canon law “is not intended to usurp or otherwise interfere with [State criminal laws] or with State civil actions,”¹⁰⁸ the information on how this parallel legal system is to cooperate with civil laws is scarce. For example, the Holy See’s report to the Committee on the Rights of the Child is undermined by this passage repeated from its original document of ratification: “That the application of the Convention be compatible in practice with the particular nature of the Vatican City state and of the sources of its objective law...”¹⁰⁹ Yet the 2012 report admits that this law is woefully inadequate concerning measures to protect the welfare of children: there are currently “no specific penal laws enacted for the VCS that criminalize the sale of children, child prostitution and child pornography...”¹¹⁰ The prosecution of these and other crimes against children is left to a labyrinth of overlapping or contradictory statutes—canon law, Italian law and international law—leaving the impression that the arrow of ultimate responsibility points anywhere but to the Holy See.

Likewise, being able to claim sovereignty in the world's courts has been a way to avoid prosecution for crimes related to the sexual abuse crisis, but any responsibilities associated with this sovereignty have been more nebulous.

As a legal analysis of the Holy See's sovereign status described it,

*“Thus, fitting the Holy See and Vatican City State into the international legal order has been much like fitting a square peg into a round hole, and while interim fit may have been achieved, the contours of that fit have been ill-defined, leaving lots of legal wiggle room.”*¹¹¹

Lawsuits filed in US courts in 1987,¹¹² 1994,¹¹³ 1999,¹¹⁴ 2004,¹¹⁵ 2005¹¹⁶ and 2006¹¹⁷ all tried, and failed, to challenge the sovereignty of the Holy See, the Vatican or the pope in relation to a sexual abuse case. [See Box 6.] The US case that has done the most to challenge the Holy See's sovereign immunity has been *John Doe v. Holy See*, a Supreme Court case dealing with a string of alleged assaults committed by the late Rev. Andrew M. Ronan.¹¹⁸ The Ninth Circuit Court of Appeals found that in the *Doe* case, “the Holy See ... engages in a range of non-sovereign activities in the United States, and the FSIA's commercial activity exception lifts the shield of immunity from such non-sovereign activities.”¹¹⁹ In other words, according to the Federal Sovereign Immunities Act, which generally protects states from prosecution, sometimes the Holy See acts as an employer, and thus it can be sued like other employers.

In December 2011, however, a US district judge ruled that attorneys for the plaintiff had not proved there was a basis for an exception to the immunity given to sovereign entities. In the ongoing lawsuit *Doe's* legal defense team is still planning to prove that Ronan was an employee of the Holy See.¹²⁰

A recent decision in a British court may be a sign that the Holy See's purported wall of sovereignty might not be strong enough to act as a dam against the flood of sexual abuse accusations. In November 2011 the British High Court set a new precedent by ruling that the Portsmouth Diocese “may be vicariously liable” for a priest's abuse because he is an employee of the church.¹²¹ In July 2012, the diocese lost its appeal before the High Court, which ruled that the diocese is indeed liable to pay for the wrongdoing committed by members of clergy.¹²²

Holy See Diplomacy: A Two-Fronted Strategy to Oppose Reproductive Rights

The Holy See's style of diplomacy is different from the prevailing UN culture, which emphasizes parity among cultures and states. Hiding behind the Holy See's language that seems to affirm rights is often a rejection of rights. The Holy See evokes its religious and historical dimensions to claim a privileged understanding of women's reproductive health needs, human rights and religious freedom and then attempts to maneuver this perceived advantage into creating stumbling blocks for sexual and reproductive rights.

Perhaps no other entity would use language like that employed in 1963 by Pope Paul VI when he praised the United Nations:

*“[The Holy See] holds a very high conception of that international organism; it considers it [the UN] to be the fruit of a civilization to which the Catholic religion, with its driving center in the Holy See, gave the vital principles.”*¹²³

“[T]he Vatican City State was not established with an autonomous purpose, but as a means to support a religious body.”

— Hyginus Eugene Cardinale, then-*Titular Archbishop of Nepté and Apostolic Nuncio to Belgium, Luxembourg and the European Community, in The Holy See and the International Order, 1976.*

While the Catholic tradition can claim to have played a role in shaping the course of history, the same can be said of Islam, Judaism, Eastern Rites, Buddhism and the Greco-Roman tradition, to name a few. None of these cultural or religious heritages is singled out at the United Nations, which devotes considerable energy to brokering parity between diverse cultures, as expressed in the UNESCO Universal Declaration on Cultural Diversity.¹²⁴ When Pope Paul VI intimated that the Holy See was the originator of the UN's vital principles, it was a notable departure from the strictly observed equality at this international body, which has its own extensive document on flag protocol to ensure that no country's flag is larger or placed above another.¹²⁵

Situating the UN and its ideals within the provenance of the Holy See is a potent rhetorical device. In a 1980 address to UNESCO, Pope John Paul II said about "the message of Christ and the [Roman Catholic] church," "That link is indeed fundamentally creative of culture."¹²⁶ He continued, "The nation exists 'by' culture and 'for' culture," and then exhorted the United Nations audience to "use every means at your disposal to watch over the fundamental sovereignty possessed by every nation by virtue of its own culture."¹²⁷ In this one speech the pope wove a tangled web of logic that amounted to placing the church as both the font from which the supranational force of culture springs, and the recipient of other nations' protection because of that link.

This speech, and many others like it, illustrate the difficulties in challenging the Holy See's statements, because when confronted with one angle, it can attack or defend from a second front: either by claiming to be a larger force that encompasses the UN, or one of the cultural or religious entities the UN is bound by its charter to protect.¹²⁸

“Disinterested” or “Indifferent”? Critiques of the Holy See’s Status and Impact on Reproductive Health

The Holy See attests to having a particular expertise in human rights. The website for the Holy See Mission to the United Nations in Geneva says, "It is worth noting that the language of the UN human rights discourse and that of the Holy See and of the social doctrine of the Church coincide to a very significant degree."¹²⁹ In an article titled "How the Holy See Works on the International Scene," then-Permanent Observer Archbishop Migliore stated, "The humanitarian nature of the Holy See means it maintains a balanced, realistic and even prophetic view of today's world."¹³⁰ Msgr. William F Murphy concurred with this depiction of the Holy See in the Archdiocese of Boston's newspaper, the *Pilot*: "Lacking any political or economic power and thus any political or economic self-interest, the Holy See is often the one voice in international affairs that can be objective and disinterested in the best sense of those words."¹³¹

In practice, however, this claim to a privileged understanding of human rights often translates into an uncompromising attitude towards those with different ideas about rights, such as when Pope John Paul II referred to the 1994 UN Conference on Population and Development (ICPD) in Cairo in no uncertain terms as "the work of the devil."¹³² The pope was protesting the efforts to prioritize reproductive health access at the conference in stronger terms than would be expected from an "objective" or "balanced" onlooker. Interestingly, polarizing an opposing view into the embodiment of evil is a tactic that can just as easily be used

against the Holy See as by it. In 1994 the Vatican sent special envoys to Tehran and Tripoli to drum up support for the Holy See's planned anti-reproductive rights stance at the forthcoming ICPD conference—a collaboration with radical regimes that *Washington Post* columnist Jim Hoagland likened to “sup[ping] with the devil.”¹³³

In 1999, the Holy See earned many critics for its objection to the provision of emergency contraception to women who had been raped in Kosovo—a “deeply inhuman” attitude according to the Swedish Association for Sex Education.¹³⁴ Likewise, Ingar Brueggemann, then-director general of the International Planned Parenthood Federation (IPPF), said that she was “appalled by the potential consequences of the Vatican's position and the apparent indifference it indicates towards the human suffering which will result from its stand on this issue.”¹³⁵ The IPPF pointed to this unpopular stance as evidence that the Holy See's presence at the UN is dedicated “to further[ing] its own political and religious interests at the global level.”¹³⁶

To its critics, the Holy See should be judged—not by some presumed moral high ground, but by the concrete results of its policies. Bene Madunagu, chair of the Nigeria-based NGO Girls Power Initiative, described its impact: “The Catholic church, through the activities of the bishops here in Nigeria, and its position at the United Nations, works hard to keep the status quo, where talk about sex is taboo, and talk about preventing unplanned pregnancies and sexually transmitted diseases is forbidden.”¹³⁷ In her analysis, “The role that the Roman Catholic church has played as an obstacle to AIDS education in Africa calls into question its moral right to a high status at the United Nations.”¹³⁸

National policymakers have also objected to the Holy See's position at the UN and what it does with it. In 2000, Italian politician Marco Pannella called for abolition of the Vatican state because “not even at Mecca, the church is a state, even though

some Islamic countries are confessional countries.”¹³⁹ In the same year, a group of Dutch parliamentarians took a stand against the Holy See's role at the United Nations, saying that the Vatican uses this special status to block policies that would benefit women's rights and work to distribute condoms for HIV prevention. “The Catholic Church is the only religion that is represented as a state in world politics, and this is unjust,” said the deputies' joint statement, published in the newspaper *Trouw*.¹⁴⁰

In 2010, UK politicians joined other prominent figures to sign an open letter published in the *Guardian* newspaper to protest the way the pope was to be received during an upcoming visit. The letter called the country to “reject the masquerading of the Holy See as a state, and the Pope as a head of state, as merely a convenient fiction to amplify the international influence of the Vatican”¹⁴¹ It also mentioned the Holy See's concordats, which “negatively affect the human rights of citizens of those states.”¹⁴² Far from an unquestioning acceptance of its international role, the Holy See is dogged by questions about its statehood and the effect it has on global welfare.

The Responsibilities of State

Politicians and advocates are not the only ones who fault the Holy See for irresponsible use of its power. In the area of treaty ratification, its equivocal “state” status has some troubling implications in the realm of international law. Some of the UN treaties to which the Holy See is a party have to do with the environment or trade, while others deal with areas related to human rights, such as victims of war and human trafficking.¹⁴³

The Holy See's purportedly unique understanding of human rights has not translated into a commitment to international human rights norms, as illustrated by the fact

“It will be clear to all, we hope, that the pope really has only the territorial space indispensable for the exercise of a spiritual power entrusted to men. We do not hesitate to say that we are glad that this is so; we are pleased to see our territorial realm reduced to such minute proportions that it may and must itself be considered spiritualized by the immense, sublime and truly divine spiritual power which it is destined to support and serve.”

— *Pope Pius XI, in a speech in Rome following the signing of the Lateran Treaty, 1929.*

Box 6: Legal Cases Involving Holy See Sovereignty

Year filed	Location	Case	Outcome
1987	Mississippi, USA	<i>English v. Thorne</i> ¹⁴⁴	Dismissed
1994	Texas, USA	<i>Guardian v. Archdiocese of San Antonio et al.</i> ¹⁴⁵	Dismissed
1999	California, USA	<i>Alperin v. Vatican Bank</i> ¹⁴⁶	Dismissed in 2007 due to sovereign immunity ¹⁴⁷
2004	Kentucky, USA	<i>O’Bryan et al. v. Holy See</i> ¹⁴⁸	Dismissed due to sovereign immunity ¹⁴⁹
2004	Oregon, USA	<i>John Doe v. Holy See</i> ¹⁵⁰	Ongoing
2005	Texas, USA	<i>Patino-Arango v. John Does I II III IV</i> ¹⁵¹	Dismissed, with pope’s role shielded by sovereign immunity ¹⁵²
2006	Mississippi, USA	<i>Dale v. Colagiovanni</i> ¹⁵³	Dismissed
2011	UK	<i>JGE v. Portsmouth Diocese</i> ¹⁵⁴	Diocese may be held “vicariously liable” for priest’s wrongdoing

that it has not ratified several key treaties in this area. [See Box 1.]

Three of the major conventions the Holy See has signed were with notable qualifications.

The Holy See specified that the Convention Relating to the Status of Refugees “must be compatible in practice with the special nature of the Vatican City State,” an open-ended caveat frequently employed by or about the Holy See at the UN. Repeatedly invoking its ill-defined “special nature” serves to undermine its very commitment to a treaty or convention and make requirements for the Holy See seem more flexible and less binding than for the other signatories. For example, a disconcerting caveat added to the Holy See’s accession to the “International Convention for the Suppression of the Financing of Terrorism” and to the “United Nations Convention against Transnational Organized Crime”¹⁵⁵ reads,

“In respect to article 5 of the Convention, the Holy See notes that, due to the particular nature of the Holy See and of Vatican City State,

*the concept of criminal liability of legal persons is not embodied in their domestic legal principles.”*¹⁵⁶

In other words, the Holy See does not recognize that either Vatican City or the Holy See itself can be prosecuted. This view is related to the type of legal person the Holy See considers itself to be. A legal person, which is either a body of persons or an entity like a corporation, has rights and responsibilities in the eyes of the law.¹⁵⁷ Usually this means that the legal person can sue or be sued.¹⁵⁸ The terms “legal person” and “legal personality” are widely attributed to the Holy See. Sometimes this status is derived from language in the Lateran Treaty,¹⁵⁹ while other times the Holy See’s legal personality is considered the result of “unwritten law.”¹⁶⁰

Why would the Holy See sign on to a convention against crime if it does not buy into the concept of legal persons’ criminal responsibility? It could be that it recognizes the value in legal responsibility for some, but not all, legal persons. The Holy See considers itself a class apart, a *sui generis* entity that

doesn't fit in the general classification system and doesn't necessarily rely on the possession of territory.¹⁶¹

Challenging the Holy See's Status at the UN

Over the years, representatives from diverse faith-based groups as well as HIV & AIDS service providers and sexual and reproductive health advocates have been galvanized into action because of the impact the Holy See's UN activities have had on global health. Many have sought a review of the Holy See's role at the United Nations.

Their arguments are simple. Clearly the Holy See—the government of the Roman Catholic church—is not a state, nor does it act like one. As such, it should not participate in the UN as a state, but as a religion. Immediately after the 1994 ICPD conference in Cairo, *Nature* magazine published an editorial titled “Has the Holy See become an NGO?” with the following premise:

“The Vatican’s disruption of the Cairo population conference last week is a sign that it should in future enjoy the status of just another pressure group in relation to international negotiations.”¹⁶²

The article marked the beginning of a decades-long wave of criticism about the Holy See's position at the UN. In 1995 a petition was circulated at the UN Fourth World Conference on Women in Beijing. Titled “A Call to the United Nations to Consider the UN Status of the Holy See,”¹⁶³ the petition “in only a few days gained more than one thousand signatures,” according to the *Chicago Defender*.¹⁶⁴ Co-initiated by Catholics for Choice along with 10 other NGOs, one of the requests was that the UN “establish parity between the Roman

Catholic church and other religious and nongovernmental institutions.” As Malini Mehra, representative from the Amsterdam-based co-initiating group SOVB, said, “The Holy See does not have a divine right to be at the United Nations. It has no electorate, no citizens and absolutely no accountability.” Gita Sen, head of Development Alternatives with Women of a New Era, another co-initiator, expressed her qualms about the religious exclusivity inherent in the spiritual and temporal aims frequently contained in Holy See statements.

“As a Hindu, I am deeply insulted by the fact that the representatives of a religion who would not recognize my soul’s right to heaven want to have a say in my body’s well-being on earth.”¹⁶⁵

The 1995 campaign highlighted the inherent contradiction between the UN's “ethical obligation to be neutral regarding religion” and “the Holy See operat[ing] at the United Nations to promulgate religious viewpoints.”¹⁶⁶ In 1999, a new initiative was launched, calling on UN Secretary-General Kofi Annan to conduct an official review of the Holy See's Nonmember State Permanent Observer status.¹⁶⁷

The “See Change” Campaign referred to the conferences in Cairo and Beijing as evidence of the Holy See's use of obstructionist tactics to enforce its minority objection to policies on women's rights and reproductive health. Anika Rahman of the Center for Reproductive Rights pointed out that the Holy See does not meet the Montevideo criteria for statehood. “In secular terms, it is as if the (former) Soviet Union's Politburo had had nonmember state observer status at the United Nations.”¹⁶⁸ Amparo Claro of the Latin American and Caribbean Health Network said that the Holy See “has a privileged position which it consistently uses to oppose widely accepted health measures such as contraception and sexuality education.”¹⁶⁹ Far from representing the

views of all Christians, she added, the Holy See “does not even reflect the multiple voices of the Catholic community.”¹⁷⁰

The Holy See at the United Nations: The Costs of “Special”

A detailed analysis of the Holy See’s movements on the international stage has revealed some unanswered questions about its statehood, which provide a surprising amount of “wobble room” for its interaction with recognized legal frameworks. Yet the lack of structure inherent in its “peculiar” nature gives the sense that it can duck from one side of the statehood line to the other, as it sees fit, with the expectations of statehood somehow less demanding for the Holy See. This exceptionalism tends to undermine some of the foundational principles of the United Nations, such as the rule of law,¹⁷¹ non-intervention in sovereign nations¹⁷² and an equal respect for diversity.¹⁷³

On the Holy See’s home turf of religion it supposedly has a commitment to respect for diversity of belief. The Permanent Observer home page says, “In its activities at the United Nations, the Holy See Mission works to advance freedom of religion...”¹⁷⁴ Specifically, “the experience and activity of the Holy See is directed towards attaining freedom for every believer...”¹⁷⁵ This egalitarian mission would seem to be at odds with the Holy See’s privileged position at the United Nations. Yet instead of advocating for equal status for all religions, the Holy See does not appear to be on record as ever advocating for another faith to share its special permanent observer status. Neither does it seem that the Holy See is considering taking on the NGO status shared by other religious groups, as evidenced by its continued insistence that the situation of the

Holy See alone demands the privileges, if not the responsibilities, of a state.

Such a double standard is a profoundly disingenuous statement about the Holy See’s mistrust of the existing mechanisms protecting religious entities at the UN. Other religious groups must be satisfied with speaking to delegates in the corridors, and there is little evidence that their concerns are what occupy the Holy See’s representatives in their special access to UN proceedings.

As for members of the Catholic church, according to the *Irish Times*, many Catholics view the Holy See’s status with “skepticism”:

“It is no longer appropriate for the Vatican to be masquerading as a ‘state,’ with accompanying trappings, including a huge diplomatic corps. Many [Catholics] believe it would be appropriate now for the Vatican to pare back the pomp and pretense, as a signal of the humility it nowadays protests.”¹⁷⁶

Doing away with all the loopholes and inconsistencies surrounding the Holy See’s status can only bring greater clarity to the United Nation’s relationship to all communities of faith by focusing its responsibility on all religious groups equally. Instead of engaging in the perpetual defense of its statehood, the Holy See could then concentrate all of its talents and resources on defending the most vulnerable of society at the UN and beyond.

Though it works hard to imply otherwise, the Holy See’s situation at the United Nations is not written in stone. International law expert Ian Brownlie wrote, “It would seem that the personality of political and religious institutions of this type can only be relative to those states prepared to enter into relationships with such institutions on an international plane.”¹⁷⁷ If many of the underpinnings of the Holy See’s current

situation fall back on circular reasoning, in this sense, states can choose to step outside of the cycle and shape their relationships with the Holy See, rather than vice versa.

Time for a Change in the Holy See's Status

The “See Change” Campaign and other efforts calling for a review of the Holy See’s status at the UN did not grow out of a desire to denigrate the Catholic church or its contribution to the world. The Roman Catholic church has made significant improvements to the well-being of Catholics and non-Catholics throughout the world through its emphasis on social and economic justice, particularly for those in developing nations. At the same time, its actions have been detrimental to many women and men. From decrying emergency contraception for women who had been raped in Kosovo¹⁷⁸ to burning boxes of condoms as AIDS ravages Africa,¹⁷⁹ the hierarchy of the Roman Catholic church has allowed outdated doctrinal concerns to take priority over the

lives of real people. Nowhere is that more evident than at the UN, where the Holy See insists on foisting its limited and largely rejected views of gender, sexuality and reproductive health onto a world intent on creating a more progressive personal ethic that is respectful of the common good. When one looks beyond the rhetoric, the concrete effects of the Holy See’s UN activities are more than enough reason to overturn the precedent that keeps the Catholic church in a Nonmember State Permanent Observer position only as long as international consensus allows it to be there.

While the Holy See has the right to a voice at the United Nations, that voice should only be as loud as those of the world’s other religions. NGO status would allow the Holy See to continue to advocate for its positions, but without the benefit of a special platform for its views. Seeking NGO status for the Holy See would protect the rights of all religions at the UN and the right of the institutional Catholic church to be heard and appreciated as a religious body, not as a quasigovernmental entity.

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