THE PAPACY AND INTERNATIONAL LAW.

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IT is an invariable rule that where a State accredits a representative to a foreign Court it must receive one from it, if the latter desires to send a minister. This rule does not apply in the case of representatives of the Pope. Great Britain since the Reformation has refused to enter into relations with the Roman Curia, and as a rule Protestant States refuse to receive Papal envoys; Russia and Germany, although they refuse to receive them, are both represented at the Vatican. The grounds of such refusal, broadly speaking, are that the reception of a Papal legate would be a recognition of the Papal claims, and also that legates and nuncios in the exercise of their functions tend to stir up opposition to the territorial law, and so to create an *imperium in imperio*. The question whether the Pope has a right of legation strictly so-called involves the wider one of his international position and his possession of international personality. The Montagnini incident of December 1906 showed that this is a question of practical importance; it also brought into prominence the divergent views of publicists on this matter.

English and American writers on international law do not as a rule deal with this question at any length; in fact, by some it is practically ignored. Continental publicists give it greater prominence, and the majority of these writers deny that the Pope is an international person in the sense in which that term is used in international law.

The position of the Papacy is exceptional; there is no institution in the history of humanity with which it can be compared. The fact that the Pope was for centuries both a temporal sovereign and the chief ecclesiastical dignitary in Western Christendom naturally raised doubts as to the capacity in which he was acting on a given occasion. When he ceased to be a temporal sovereign, the tradition which had so long attached to his dual position was not easily disregarded, and it is the continuance of this tradition which a distinguished French publicist asserts to be responsible for the anomalous position which, from the standpoint of international law, is now occupied by the head of the Roman Church.[1]

[1] The authorities dealing with this question are given in a note in the late Prof. F. Despagnet's *Cours de Droit international public*, §147, to which must be added the ninth

Down to the year 1870 the Pope was both the earthly head of the Roman Catholic Church and a sovereign monarch of one of the States of Europe, the Papal State. For a few years, at the end of the eighteenth and beginning of the nineteenth century, he was without territory—a dethroned temporal monarch; but on the fall of the Napoleonic Empire in 1814 he was restored to his temporal dominions, and remained in possession of a diminished kingdom (for a large part of the Papal States demanded and obtained union with the Kingdom of Italy in 1860) until, on September 20, 1870, the Italian troops entered Rome. This action of King Victor Emmanuel was endorsed after a plébiscite by an overwhelming number of the inhabitants of the Papal States on October 2, 1870. By a Royal Decree of October 9 in the same year it was declared that "Rome and the Roman provinces form an integral part of the Kingdom of Italy." This Declaration appears to undermine the position adopted by one writer, that as the Italian troops did not actually enter the Vatican, the Pope remained in undisturbed possession of a territory which, though minute in area, still sufficed to entitle him to rank as a territorial sovereign.[1] From the standpoint of the Italian Government, their possession of Rome was complete, and though the venerable Pontiff was undisturbed, the occupation of the Papal States was effective, and the Pope ceased to exist as a territorial sovereign. But though his territorial sovereignty was at an end, no change was or could be effected by the Italian Government in his ecclesiastical position. For a large part of Christendom he still personifies the greatest moral force in the world, and from his exalted position it follows that his spiritual subjects of every nation wish to continue to have access to him, and freely to receive his agents as in the past. Roman Catholic States therefore recognise that the Pope still occupies a special legal position, and his legates and nuncios are ranked with, and sometimes take precedence of, ambassadors in these States, a precedence which even before the loss of temporal power was accorded to the Papal representative as the ambassador of the highest dignitary in the Catholic Church, and not as a temporal sovereign.[2]

It is unnecessary for our purpose to trace even in outline the history of the struggles between the Papacy and the Empire, or the fight for

section of Prof. E. Nys' *Droit international*, vol. ii. pp. 297–323. See also G. Flaischlen, "La Situation juridique du Pape," *Revue de Droit inter.* vol. vi. (2nd series), p. 85; J. Westlake, *Peace*, pp. 37–9; L. Oppenheim, *International Law*, pp. 149–54. Sir R. Phillimore's *International Law*, vol. ii. pp. 343–531, affords the fullest treatment of the Papacy and its relation to the various European States.

[1] G. Flaischlen, *R.D.I.* vol. vi. (2nd series), p. 85.

[2] Pradier-Fodère, *Cours de Droit diplomatique*, vol. i. p. 120. Fénelon declared that the Papal nuncio was regarded simply as the ambassador of a foreign prince, and in 1788 a distinguished lawyer, Christian Henri de Römer, maintained that the right of legation belonged to the Pope as a temporal sovereign only (E. Nys, *Droit inter.* vol. ii. p. 310). The majority of modern writers hold that the Papal envoys represent the Pope in his ecclesiastical capacity (E. Lémonon, "Les Rapports de la France et du Saint-Siège," *R.D.I.* (2nd series), vol. ix. p. 415; W. E. Hall, *Inter. Law* (5th ed.), p. 314).

supremacy between the Conciliar party and the Pope, though it must be remembered that in the fifteenth century Œcumenical Councils received ambassadors from the Empire and kings, and these ambassadors took precedence of those of the Pope.[1] The Papalist cause was for the time being triumphant at the Council of Basle.

Out of these struggles there emerged the anti-Papal doctrine of the Divine right of secular governments to be free from Papal control, a doctrine which contributed in no small degree to the formation of the modern doctrines of sovereignty,[2] a doctrine which is still working in the anti-clerical movements of modern times.

The position of the Papacy down to the eve of the Reformation was a striking one. The Pope claimed, and not infrequently exercised, the position of arbitrator in international disputes. The good faith on which treaties were made brought international contracts within the sphere of the Canon Law. The Pope was an "independent international magistrate, head of the supreme tribunal for the settlement of international disputes, and the supervisor of engagements. With this object he used all the powerful moral forces at his command—admonition, censure, excommunication."[3]

The struggles in England between Anselm and Henry I. and Becket and Henry II. were typical of the constantly recurring struggles between the religious and civil forces in the States of Europe. Acting under Papal instructions, the clergy everywhere sought for, and in some cases obtained, exceptional positions and immunities from the civil laws. Popes issued bulls deposing and setting up kings, allotting kingdoms and dividing newly discovered lands. With the Reformation a great change took place. The Treaty of Westphalia of 1648 affords striking evidence of the existence of a new order of things. The legal equality of Protestant and Catholic States was acknowledged, the absence of the recognition of a common religious bond which had hitherto been a bar to equality of intercourse was thus removed, States met as secular institutions free from religious trammels, and the way was prepared for the ultimate admission of all civilised States, irrespective of creed, into the family of nations. The treaty, furthermore, abolished a crowd of petty ecclesiastical States in Germany, dependent in no small measure on the Pope. It was in vain that Innocent X. issued the Bull *Zelo domus Dei*, condemning and utterly annulling the Treaties of Münster and Osnabrück.[4] Papal protests against treaties cease henceforth to be effective, and the protest of Pius IX. against the Italian occupation of Rome in 1870 met with no response from the Powers of Europe.

This protest leads to a consideration of the theory of the Church as

[1] Nys, *op. cit.* vol. ii. p. 288.

[2] J. N. Figgis, *The Divine Right of Kings*, p. 44.

[3] R. de Maulde-la-Clavière, *La Diplomatie au Temps de Machiavel*, vol. i. p. 23, cited by E. Nys, *op. cit.* p. 300.

[4] Phillimore, *International Law*, vol. i. p. 395.

regards its temporal power. It is important to understand why the Pope attaches so much importance to the possession of temporal sovereignty when he claims a spiritual world-empire. The Holy See has always considered that the States of the Church were a domain with which the Pope had been endowed for the purpose of assuring his independence in the exercise of his spiritual functions. The keeper of the oracles of God, the standing witness for truth and righteousness in the world, should, it was argued, be free from all physical compulsion, and this absolute freedom could only be maintained by the possession of a definite territory uncontrolled by any temporal power. The area of the temporal dominions of the Pope was never very large, but popes and cardinals on admission to office swore to preserve the domains intact, and sought by means of physical force and spiritual weapons to ward off all encroachments.

One important result of the view taken by the Papacy of the character of the domains of the Church and the necessity for the preservation of the temporal power is clearly dealt with by Despagnet.[1] The Church contended that it was the duty of all Catholic States to protect the Pope against any change, external or internal, which might compromise his temporal sovereignty, and thus militate against the free exercise of his spiritual functions. Interventions in the Papal States were the result of this teaching. Napoleon Bonaparte, on the plea of better affording protection, took the extreme step of making Pius VII. prisoner and removing him to France. France, Austria, and Spain at different times during the nineteenth century intervened in the Papal States, and the movements in favour of popular government in these States were suppressed. From 1849 until the outbreak of the Franco-Prussian War in 1870, French troops guarded the Pope. Their withdrawal led to the entry of the Italian troops and the fall of the temporal power.

The allegiance of Western Christendom to the Pope had in early times led to the growth of a regular service of Papal agents.

The earliest representatives sent by the Pope were the *Apocrisarii* or *Responsales*, who were sent first by the Bishop of Rome in the time of Constantine to reside at Constantinople; subsequently they resided at the Courts of the Frankish kings. They were sent as spiritual agents, and it is not improbable that at first their presence was required by the emperors, who to some extent were enabled to supervise the doings of the Pope. But the decay of the Roman Empire synchronised with the increasing power of the Bishops of Rome and their growing claims to the obedience of Christendom. It was not, however, until the eleventh century that the institution of legates appears.[2] The Papal envoys were sent for various purposes, of which English history affords ample illustration. Gradually they became differentiated in rank according to their missions.[3] *Ablegati* were those who had no political mission, but were sent for such purposes as

[1] *Droit international*, §150; see also Phillimore, *International Law*, vol. i. p. 635.

[2] Nys, *op. cit.* vol. ii. p. 303.

[3] Phillimore, vol ii. p. 525.

bearing the cardinal's hat to a newly elected member of the Sacred College; *legati* with a political mission were either *legati a latere*, who were always cardinals and occupied the highest rank, or *legati missi*, who were never cardinals but were invested with similar powers to the former; when sent as permanent residents, they were known as *Nuntii*. These agents of the Pope were ranked with ambassadors in the first class in the Regulations adopted by the Congresses of Vienna and Aix-la-Chapelle for settling the precedence of diplomatic agents.

The chief reason for the institution of resident agents from the Papal Court was the negotiation and execution of concordats. Concordats have been described as agreements between the Holy See and the governments of States the inhabitants of which are either wholly or in part Catholic, not on questions of faith or dogma, but on matters of ecclesiastical discipline, such as the organisation of the clergy, the boundaries of the dioceses, the nominations of bishops and parish priests.[1] Concordats resulted from the struggles between the civil and ecclesiastical authorities in the Middle Ages; they were compromises between Church and State. Two or three instances will suffice to show the importance of these agreements. The Concordat of Worms in 1122 between Calixtus II. and the Emperor Henry V. settled the long-disputed question of investitures. The Concordat of Vienna in 1448 between Nicholas V. and the Emperor Frederick III. marked the triumph of the Papacy after the Council of Basle. The Concordat of 1516 between Leo X. and Francis I. of France, which lasted till the outbreak of the French Revolution, regulated the relations of France and the Church for nearly three centuries; and lastly the Concordat of July 15, 1801, between Pius VII. and Napoleon Bonaparte, took the place of that of 1516, and was terminated by the *Loi de séparation* of December 9, 1905. Whether the law which thus dissolved the union of Church and State was such a denunciation as is required for the termination of an international treaty, and whether the relations between France and the Holy See are merely suspended or entirely dissolved by the recall of the Apostolic Nuncio, turns entirely upon the view taken as to the international position of the Pope and the nature of the concordats.[2] What, then, is the nature of these concordats? Are they treaties made with the Pope as a temporal sovereign, and thus ranking with and governed by the rules ordinarily applicable to engagements entered into between States; or are they arrangements which a State makes for the regulation of its internal well-being entered into with the Pope as the head of Catholic Christendom?

[1] Bonfils Fauchille, *Manuel de Droit international public* (4th ed.), pp. 492, 896.

[2] Ernest Lémonon, "Les Rapports de la France et du Saint-Siège," *R.D.I.* (2nd series), ix., p. 415. (The 44th article of the law of December 9, 1905, repealed the law of 18 *Germinal*, An X., confirming the agreement made on 26 *Messidor*, An IX., between the Pope and the French Government.) See also Phillimore, *International Law*, vol. ii. p. 428, for the history of the relations between France and the Papacy.

There appear to be two cogent reasons why concordats cannot be viewed as treaties. In the first place the parties making them are not now (since 1870) independent sovereign Powers, and in the second, the object of the concordats is foreign to that of treaties. It is contended by M. Lémonon that the absence of temporal power is no bar to the treatment of the Pope as an international person, that he is one by reason of his position under the Italian Law of Guarantees of 1871; this point will be discussed subsequently. The subject-matter of concordats is, however, clearly not a matter of international law. Treaties are concerned with a State's external policy and concern its relations to other States. Concordats purport to regulate a State's internal affairs in regard to the religious worship of its own subjects. The parties to a concordat are, moreover, not on a footing of equality, a breach of it involves no principles of international law, the Pope has no armed forces with which to retaliate on a State for breach of its obligations. Failure to carry out a concordat on the part of a State appears to be merely a failure to abide by arrangements made for certain internal matters, in the regulation of which the State must be guided by circumstances. The continued maintenance of a concordat may be incompatible with the exercise of civil authority necessarily incident to sovereignty, and it is admitted that even a treaty becomes voidable under such circumstances.[1]

Viewing concordats as constitutional arrangements which States make to regulate the relations between the lay and the ecclesiastical authorities, they become subject to denunciation, modification, or even non-fulfilment without denunciation, whenever changes in the constitution or the political opinions of the State with which they are made render such a course advisable. The dissolution of a concordat may be fraught with serious consequences to the internal order of a State, but this is not a matter for international law.[2]

It will now be necessary to inquire whether the Italian Law of Guarantees of May 13, 1871, can be relied on as giving the Pope a position of international personality. Previous to the occupation of Rome by Victor Emmanuel, Italy had made overtures to the Powers and the Pope with reference to the position of Rome, and in 1868 the Italian Government submitted to Pius IX. a scheme which left him with the sovereignty of that part of Rome known as the Leonine City, having a population of about 15,000 persons. These overtures were rejected, and the complete annexation of the city was effected on October 9, 1870. Unlike previous drafts, the law of May 13, 1871, was not submitted to any foreign Power. It is a municipal statute of the Kingdom of Italy. It is not the result of an arrangement with the Pope, who has not ceased to protest against it. It has, moreover, not even the special sanctity of a constitutional law which requires special forms to be observed to modify or repeal it: it is an ordinary statute which the Italian legislature can at any time by its ordinary legislative procedure amend or

[1] Hall, *International Law* (5th ed.), p. 357.

[2] See Despagnet, *op. cit.* §§ 157-9.

repeal at will. Further, its provisions only apply so long as the Pope resides on Italian territory.

In the discussion of this law in its passage through the Italian Parliament, the *Rapporteur* stated that the draft did not recognise the sovereign character of the Pope and his exterritoriality, as to do so would be an admission of its consequences, such as claims to rights of jurisdiction and rights to conclude treaties of alliance; and a provision in the original draft which provided that the Pope should enjoy immunity from the jurisdiction of the State was suppressed.

The Law of Guarantees is in two parts;[1] the second deals with the relations between Church and State in Italy, and therefore need not be considered. The first part contains thirteen articles, and is concerned with "the prerogatives of the Sovereign Pontiff and the Holy See."

By the first article the person of the Pope is declared to be sacred and inviolable; the expression probably being the outcome of long usage and reverence for the head of the Church. This inviolability does not extend to his officials, who have on more than one occasion been proceeded against in the Italian Courts by creditors of the Holy See. The Pope is not declared to be an Italian citizen, but the death of Leo XIII. was registered before the civil authority in Rome as that of "His Holiness the sovereign Roman Pontiff, Vincenzo Giocchino Raffaele Luigi Pecci," and all the formalities required by Italian law were observed in proving his will.[2] He enjoys all the honours of a sovereign and the precedence allowed by Catholic sovereigns, "so that he would take precedence of the King if they happened to meet."[3] He is allowed to keep the same number of troops for a body-guard as before the annexation, but they are not his subjects; no Italian state-official may enter his palaces without his permission. The places left in the occupation of the Pope—the Vatican, the Lateran, and the Villa of Castel Gandolfo, his ordinary or temporary residence and places occupied by a Conclave or Œcumenical Council—are withdrawn from Italian control unless the Pope, a Conclave, or Council calls for it, but these places and the works of art and archives are the property of the Italian State. The Pope has complete liberty in the exercise of his spiritual functions; in Rome he may order notices with reference to the services of the Church and directions to the faithful to be affixed to the churches. He has the right of free communication with the Episcopate and the Catholic world and is entitled to his own post and telegraph offices in the Vatican, and may appoint the clerks. He retains complete control of the educational establishments for the clergy in Rome and the suburbicarian dioceses. Envoys of foreign governments to the Pope enjoy in the Kingdom of Italy all the prerogatives and immunities which belong to diplomatic agents by

[1] For text (in Italian), see Phillimore, vol. ii. p. 655.
[2] E. Nys, *op. cit.* vol. ii. p. 315.
[3] Westlake, *Peace*, p. 38.

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international law. Offences against them are subject to the same punishments as offences against envoys to the Italian Government. The Papal envoys to foreign Powers are given in Italy the privileges and immunities accorded by international law when going and coming on their missions. Lastly, the annual sum of £129,000 is provided by the Italian budget for "the sacred Apostolic palaces, the Sacred College, the ecclesiastical congregations and the diplomatic service of the Church." This amount is only to be reduced in case the Government takes over the maintenance of the museums and library. No Pope has ever availed himself of this sum annually placed to his credit.

Such being the position of the Pope according to the Italian Law of Guarantees, can it be said that he is thereby invested with an international personality? Is he thereby a member of the international state society? The correct answer appears to be given by M. Brusa, who says: "The Pope is inviolable, but this is by virtue of an Italian statute; he has rights of legation under the same statute; he enjoys immunity as regards his residence, but this also is by virtue of the law of a particular State and not by virtue of international law."[1]

The law of one State cannot create an international personality any more than it can effectively neutralise a portion of the State's territory. If the Pope is not an international person apart from the Italian Law of Guarantees, that statute does not make him one. But though this statute has no international effect, it is nevertheless a law of international interest. It concerns the relation of Church and State in Italy and as affecting the Italian Constitution forms part of the public law of Europe, though it forms no part of public international law.[2] The Italian Parliament by enacting this law gave official recognition to the fact of the Pope's residence in Italy, and made provision for the honours to be accorded him there. The civil authority asserted its territorial supremacy while at the same time it made concessions for the purpose of facilitating intercourse between the Pope and the Roman Catholic world. Presumably the Catholic Powers were satisfied by the terms accorded to the Pope, as no protest was made to the Italian Government with reference to this law. Whether they would view with unconcern its modification, or even its total repeal and the subjection of the Pope and the Papal palaces to the Italian common law, is a matter of conjecture.

The question of the right of the Papacy to rank with temporal Powers appears to have received a definite solution by the refusal of the representatives of the Powers at The Hague Conference in 1899 to receive the Papal envoy. Italy protested against his admission on the ground that he did not represent a State interested in international arbitration. Notwithstanding the fact that the Russian project had been communicated to

[1] E. Brusa, "La Juridiction du Vatican," *R.D.I.* vol. xv. p. 134.
[2] Westlake, *Peace*, p. 38.

the Pope and his moral support had been obtained for the Tsar's proposals, his representative was excluded.[1]

The Pope ceased in 1870 to be a temporal sovereign; but long before the Papacy was stripped of its temporal power that power was a mere accessory. The Papacy was concerned not with temporal aggrandisement, but with a spiritual propaganda, and it may well be contended that the Papacy, by becoming a purely spiritual institution, free to devote itself to the furtherance of religion, has increased in authority since the Pope ceased to be the temporal sovereign of a petty Italian State.

Sovereignty in the sense in which that word is used in political philosophy is generally associated with bodies of men banded together for political objects on a definite territory. The Pope is no longer such a political sovereign as is contemplated by international law, he is no longer the head of a State. But in all countries where there are congregations belonging to the Roman Catholic Church, his authority is supreme over the consciences of the members. It is impossible for statesmen and publicists to ignore the difficulties which ensue when religious and civil duties are found to be in conflict, and States in which an important portion of the inhabitants are members of the Church of Rome frequently find it to their interest to enter into communication with the Roman Curia for the purpose of adjusting difficulties as they arise. Politics and religion are frequently closely allied; national interests are involved, Church and State at times form two opposing camps, an internal dispute may pass beyond the mere territorial frontiers and become an international one. It is enough to recall the fact that the Catholic party in several of the States of Europe, especially in Germany, France, and Belgium, has an influence which on occasion may prove decisive in matters of home or foreign policy.

Early in June 1908 the riotous behaviour of the students in the University of Innsbruck and their refusal to attend lectures, a refusal which spread to other Austrian Universities, resulted in the closing of the Universities of Vienna, Innsbruck, and Gratz. The influences producing these results afford further striking evidence of the power of the Papacy in the internal politics of Catholic countries. The Professor of Canon Law in the University of Innsbruck had published a pamphlet which the Catholic party considered to be offensive. The Papal Nuncio at Vienna demanded the dismissal of the Professor, and although the Austrian Government did not take this extreme step, the Professor was compelled to abandon his lectures, and, as before stated, the Universities were closed. The dispute spread from the Universities to the general political world, and appears to have produced a cleavage in the political parties in Austria and a possible transference of voting power in the Reichsrat which may have important consequences.

Non-Roman Catholic States, such as Germany and Russia, find it to

[1] See Despagnet, *Cours de Droit international public*, § 153.

their advantage to have agents at the Papal Court. France only withdrew her representative on the eve of the passing of the *Loi de séparation*; Austria, Spain, and many other Catholic States accredit ministers to and receive envoys from the Papal Court, and an honorary precedence is sometimes accorded to the Papal envoy by the *Corps diplomatique* in Catholic States.[1] But the fact that some States find it an aid in the art of government to treat directly with the official head of the religion to which an important number of their subjects belongs carries with it no consequence of importance in international law.

It has been suggested that resort to the fruitful field of legal fictions may result in the discovery of institutions bearing the features of international personality analogous to those claimed for the Pope, and that therefore the Papacy, if not a "natural" person in international law, may yet be ranked with the *personæ fictæ*. Creations of the Powers such as the European Commission of the Danube, the Postal Union, and other similar international institutions may possibly be compared to the fictitious or moral persons of private law; but even here the analogy appears strained. The Papacy has not been erected into a *persona ficta* of international law by reason of the fact that Roman Catholic States have continued their intercourse with the Holy See on the same footing as before its loss of temporal power. The tacit acceptance of a situation or the continuance of a practice by a certain number of States is not sufficient to create a position legally binding on other States. The international commissions and unions neither send nor receive envoys; no State accepts their presidents as monarchs; they make no treaties. They are express creations of the Powers for the better fulfilment of certain special purposes for the common benefit of all.

The Papacy is unlike these international commissions in all respects. The Pope is an *individual*. He is a "sovereign pontiff" who enters into personal relations with States by means of agents assimilated in their treatment to those sent on purely diplomatic missions. He makes agreements with States which are akin to treaties in form, but different from them in subject-matter. He is a sovereign pontiff whose subjects are in no one land and yet in all lands, at whose commands statesmen have trembled and ministries fallen. The Papacy, like the King, never dies; on the death of a Pope the agents of the Holy See need no renewal of their powers.[2] The Church of which he is the earthly head and whose unity he personifies was old before any of the States which make up the family of nations were in existence, and before the rules which they are evolving and have evolved to regulate their mutual intercourse commenced to take shape. Outside all

[1] See Pradier-Fodère, *Cours de Droit diplomatique*, vol. i. p. 249, for an interesting account of a discussion at Lima in 1878, when the majority of the *Corps dipomatique* refused to recognise the Papal Envoy as doyen. The doyen, however, with the consent of the members of the body, expressed the desire to yield the precedence to the Nuncio.

[2] Pradier-Fodère, *Cours de Droit diplomatique*, vol. i. p. 251.

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States and yet working within all are the forces personified by the Pope, and guided by the Roman Curia—forces with which most Christian States have to reckon. Whether such forces are increasing or diminishing in power is a matter outside our subject. The Roman Church is a factor which is still potent in many modern States, and the Pope and his agents still play no inconsiderable part in international politics.[1]

"The Papacy is a unique phenomenon in history," says Geffcken. It refuses to fall into any tabulated arrangement of States or sovereignties. In some departments of its activities legal analogies are valueless, but in others they are extremely useful. The principles of international law relating to the treatment and privileges of diplomatic ministers appear to be applicable to Papal envoys, though they may not be capable of enforcement by the Pope. Most of the States which before the fall of the temporal power received Papal envoys have continued their intercourse with the Holy See, and by implication have guaranteed to such envoys a continuance of treatment similar to that which they received when the Pope was a temporal sovereign whose right of legation had been recognised by the Congresses of Vienna and Aix-la-Chapelle. It would be nothing less than a breach of good faith to give these agents less favourable treatment than they have by long usage received without due notification to the contrary. But they cannot claim more favourable treatment than diplomatic agents, and therefore a Papal envoy guilty of acts of interference in local politics has no ground of complaint if the State resorts to the extreme step of expulsion. The French Government expelled Mgr. Montagnini, who had been Secretary to the Papal Nuncio, from France in December 1906.[2] Diplomatic ministers have received similar treatment for serious violation of the laws of the State to which they were accredited. It is an extreme step to take, and one which has rarely been taken. More usually his passports are handed to the minister and he is requested to depart within a fixed time. On his departure, the minister's hôtel and papers are either left in charge of a

[1] The influence of the Holy See in international politics is still manifested, says the late Prof. Despagnet, in three directions: (1) It determines in certain countries the formation of a Catholic party, such as the Catholic centre on the German Reichstag. Leo XIII. gave a powerful impulse to the action of the Church in political and social questions (see the Encyclical of January 10, 1890, *De præcipuis civium christianorum officiis*, and that of May 15, 1891, *Di conditione opificum*). (2) The Pope disposes of an important means of influence in non-Christian countries by the protectorate of the Catholics there, as in the Ottoman Empire. The Treaty of Berlin of 1878 confirmed the position of France, a position which it would seem the Pope cannot alter notwithstanding the rupture of his relations with France. (3) The Pope has even in recent times acted as mediator and arbitrator, even in disputes to which Protestant Powers were parties: *e.g.* Leo XIII. mediated between Germany and Spain in 1885 on the subject of the Carolines, in 1895 he arbitrated between Hayti and St. Domingo, and in 1898 he offered to mediate between the United States and Spain (*Cours de Droit international*, pp. 168, 169 *note*).

[2] E. Lémonon, "Expulsion de Mgr. Montagnini," *R.D.I.* vol. ix. (2nd series), p. 90; *Rev. gén. de Droit int.* vol. xiv. p. 175.

subordinate official or, if there be none, an inventory of the effects is taken, and the archives and effects are sealed by the agent of some friendly Power. In the case of Mgr. Montagnini, the agents of the French Government took possession of the papers in the Nunciature. The legality of the expulsion of Mgr. Montagnini is admitted, but the action of the French Government in entering the official residence and searching for and seizing the papers therein calls for examination. When Count Gyllenborg, the Swedish Ambassador in London in 1717, contrived a plot against George I., he was expelled from the kingdom, his cabinet opened, and his papers, which furnished proofs of his guilt, were seized. The papers of Count Cellamare, Spanish Ambassador to France in 1718, who was expelled for similar reasons, were also searched and seized.[1] In the former case the *Corps diplomatique* protested against the seizure. It is certain that the seizure of papers at a minister's residence can only be justified by the existence of very exceptional circumstances. The French Government in this case entered the house which had formerly been the official residence of Mgr. Lorenzelli, the Apostolic Nuncio. In July, 1906, France had in effect handed his passports to Mgr. Lorenzelli, and recalled her ambassador from the Vatican. Relations with the Holy See were broken off. In Rome a subordinate member of the French mission was left in charge. Mgr. Montagnini had been left in charge of the archives at the house where Mgr. Lorenzelli had formerly resided. The Government suspected him of engaging in correspondence with the French bishops and several of the local clergy, with a view of preventing the carrying into execution of the *Loi de séparation*, and having arrested him and escorted him across the frontier, the *juge d'instruction*, accompanied by an official of the Foreign Office, took possession of the whole of the papers of which Mgr. Montagnini was in charge. They examined them with the view, it was said, of separating those which were of a date anterior to the rupture of relations from the papers of Mgr. Montagnini, and transmitting the former to Rome, or the agent of a friendly Power, using the others for evidence of the culpability of Montagnini. The Pope addressed a note to his representatives at foreign Courts on December 21, 1906, strongly protesting against this violation of the privilege of inviolability of the official residence of his agent. By making the distinction between the two sets of papers, France appears to have in a manner recognised the inviolability of the Nuncio's archives, but had the Nuncio been a diplomatic agent, it is hardly conceivable that the Government would have taken such a step unless it was prepared for war. When in 1887 the archives of the French Consulate at Florence were violated by a local magistrate, the French Government sought and obtained reparation from the Italian Government, and the position of a consul is far less privileged than that of a diplomatic minister.[2] Nothing but the gravest

[1] Ch. de Martens, *Causes célèbres*, vol. i. p. 154.

[2] *Journal du Droit international privé*, vol. xv. p. 53.

offence on the part of a minister could justify such a step; it is never resorted to even when an ambassador is withdrawn on the outbreak of war. But war with the Papacy in the literal sense is impossible, and nothing remained for the Pope but a protest. The occurrence brings out in the strongest relief the anomalous position of the Holy See in its relations with temporal Powers. The violation of the Papal archives cannot have been a breach of international law for reasons already stated, but unless there was a necessity approximating to self-preservation, it appears to have been a breach of the tacit understanding on which France had for so long conducted her relations with the Papacy. A Papal Nuncio, when he is received in his official capacity, should receive the treatment of a diplomatic agent. In the strict meaning of the term he is not such an agent, for like the Pope whom he represents, he is a "unique phenomenon."