THE HOLY SEE AND INTERNATIONAL LAW

By HORACE F. CUMBO (Doctor of Jurisprudence (Milan))
and of the Middle Temple, London

THE problem of the juristic personality of the Catholic Church has been discussed several times, but the present article is written with the twofold object of clarifying certain controversial issues and of bringing the subject up to date.

At the outset it is necessary to discuss the principle of the territoriality of the State, as according to one view of this principle the question of the Catholic Church as an international person simply does not arise. Put briefly, the view is that international persons must be independent 'inter se', but all who find themselves in the territory of any particular State—including the Catholic Church—far from being independent are subjects of the State, so that no Church can be said to be an international person. This view, which has been held for long enough by many lawyers, goes hand-in-hand with a certain view of territorial sovereignty. The matter is complicated by the fact that when discussing territorial sovereignty it is natural to discuss at one and the same time two meanings—the purely factual and the legal. Yet these two, although intertwined, are distinct. It is a fact that the State succeeds in affirming its sovereignty within its boundaries. The modern centralised State does not find, wherever its writ runs, anybody capable of resisting its authority. But although this authority remains unchallenged, insurrection or subversive parties within a State are capable of threatening its stability. In France, in the second half of the last century, associations of workers continued to display their power in spite of rigorous measures enacted by the State, and in more recent times there are not wanting proofs that Jellineck's 'irresistible power' of the State can be as strongly opposed as any other power on earth. The Catholic Church has always stood against the extreme view of territorial sovereignty; not only are declarations of submission lacking, but there are numerous representations against any possible challenge to her independence. The point must not be overlooked by the supporters of the unconditional sovereignty of the State. In this matter the position of the Catholic Church has been unique. While other organisations which opposed the State have been suppressed or forced to capitulate, that Church and her main body the Holy See, by constantly stressing their independence, have

obliged the secular power to recognise the independence of this, as many might call it, rebellious body. But the doctrine of sovereignty has had its effect and while the State has been forced to give up a degree of territorial claims, the Church has surrendered, on certain issues, to the State.

Territorial sovereignty may have an exclusively legal significance as well. This implies that laws are not concerned with what happens, or does not happen. They merely enact a code of behaviour which the citizens must obey. As a result the laws of the State can command the Church on matters over which the latter would not admit the State had power, while the Church makes laws to confirm her competence on matters over which her authority is hardly felt, without taking into consideration how far her orders are obeyed in practice. But a mere assertion of the abstract doctrine of territorial sovereignty does not, as it does not explain the facts, solve the question of the international personality of the Church.

The consideration of the Catholic Church's conception of her own independence is a no more fruitful line of research. Without undervaluing the important part she has played in the formation of the international order, one cannot burke the fact that that order is, at present, formed by States and for States, and the present consideration prescinds from the idea of a Church with a territorial basis. Nor does a consideration of the canon law solve the problem. That law states what the position of the Church ' should ' be both in the national and the international sphere. It lays down certain requirements to which both systems of law—municipal and international—should adhere lest they conflict with divine teaching. But it cannot say whether the laws of various States satisfy those requirements, and we are concerned here with finding what juridical condition is actually attributed to the Catholic Church, even though that condition be against the principles of canon law. In the present international order that condition can best be found by a consideration of how States conceive their relations with the Church in their own internal laws and codes. If these laws consider the Church as subject to their authority, then the international personality of the Church cannot exist. If, on the other hand, they consider the Church as outside their sphere of control, then that international personality is recognised and relations between Church and State fall to be regulated by international law. Independence of, or independence on, internal law, and personality or lack of personality are correlative terms. That independence may arise from the internal constitution of the body recognised—as with the Holy See; or, as happened with the Sovereign Military Order of Malta, and the International Institute of Agriculture in Rome, from the fact

that the State admits that the body concerned is a subject of international law. But if the Church is to be recognised as a subject of international law, what would this mean? Would the subject be the Church or the Holy See—the body comprising not only the Pope, but his auxiliary offices as well? Canon law does not give much help. It stresses the necessity of recognising both the Church and the Holy See—a recognition which would not be reconcilable with the ideas governing international law.

That the Catholic Church (as opposed to the Holy See) has no international personality is a real fact. That Church includes not only ecclesiastics but laymen, too. If the recognition should be extended to the Church, as canon law wishes, then even the individuals who pertain to her body would remain outside the authority of the State, a solution which would never be accepted. The functioning of ecclesiastical institutions everywhere is something allowed by the temporal power, which recognises the difficulty and, in certain cases, the impossibility of curbing them to its will. It remains clear, therefore, that the secular power is not bound by any external legal limitations in its attitude towards the Churches within its territory, except for reasons of internal order. In fact, according to circumstances, the State can give more or less freedom to ecclesiastics and their institutions, a discretion which would not exist if an insurmountable juridical limit were laid down by an international regulation.

Weighty arguments can show how religious institutions in a State cannot consider themselves subjects of international law. There are in the codes and in the legislation of several nations various articles curtailing certain actions of priests, which are regarded as misdemeanours. In claiming complete independence from the civil authorities, the Catholic Church is merely evolving the logical conclusion of her conception as an international personality; on the other hand, the secular power, contrary to the principles of canon law, always refused recognition of that personality 'ipso facto'. A totally different conclusion is reached when one considers the See which always claimed to enjoy a position of complete independence towards States in general, and towards Italy in particular, even when it had no proper territorial basis. Her independence was not simply admitted 'de facto', but openly recognised by the State laws.

The view commonly accepted, that the Holy See can only obtain an international 'status' when a territorial unity is recognised—in this case during the period 1870–1929, she was a dependent subject of Italy—clashes with the facts. Can the Law of Guarantees of May 13, 1871, which gave the Pope recognised prerogatives, be

understood in the light of this opinion? If its personality is denied the Holy See becomes a body of public law, although in a peculiar situation. Previous to 1929, the See was not considered subject to Italian law, but a body with no superior. According to some legal authorities, who tried to trace an analogy between it and other constitutional bodies in Italy, we would have had two distinct organisations, one, the State, dealing with temporal matters and the other, the Church, dealing with purely spiritual ones, in equal juridical positions. As the National Fascist Party, in days gone by, was accorded a particular 'status', as these legal heretics affirmed, similarly the See as the highest body of the Catholic Church, should have been fitted into the constitutional law of Italy. Moreover, with a Law of Guarantees which recognised the right of legation to the Holy See, Italy would have had a constitutional body with complete autonomy, enabling it to establish direct relations with foreign countries. Briefly, had this taken place, there would have been a real constitutional decentralisation. The absurdity of this thesis is proved by one of the cardinal principles in the policy of the old Italian liberal parties; the separation of the powers of the Church and State. The fact that the See remained for a while on Italian territory, and—as will appear later, the present writer does not accept this—is no obstacle to the recognition of her international personality; nor was the fact that her prerogatives were recognised by an Italian law—the Law of Guarantees.

Did the Holy See actually remain on Italian territory? Territorial sovereignty is sometimes withheld from certain bodies. Switzerland, for example, never claimed sovereignty over the League of Nations at Geneva; Italy recognises the independence of the International Institute of Agriculture in Rome. There are, then, institutions over which the sovereignty of the State does not extend, and the Holy See in the period 1870–1929, can be included amongst them. Neither is the character of the municipal Law of Guarantees an argument in favour of the negation of the Holy See's international personality. To say that the prerogatives it enjoyed were a mere concession on the part of Italy and always revocable, is rather hasty reasoning. To fall back on the previous example of the Institute of Agriculture, the immunities of its personnel were actually determined by an Italian law, but no one ever dreamt of declaring that they were a mere concession. The enactment of a certain type of legislation often implies the existence of a particular international situation. It is unthinkable that the State should grant exceptional privileges to a body, if it is not compelled to do so by the rules of international law. No obstacles existed against the recognition of the personality of the See; on the other hand, there are weighty

arguments which go to prove the existence of that personality. As far back as September 8, 1870, a few days before the conquest of Rome, the King of Italy explicitly admitted the independence of the See. In a letter addressed to Pope Pius IX, King Victor Emmanuel II stated that the Holy See was outside the imperium of 'any human power'—a line of policy that was subsequently announced to foreign countries by the Italian Cabinet. In the Lateran Treaty we see how the temporal power had regarded the See for nearly sixty years. Among other things the Preamble states that the contracting parties had recognised the convenience of guaranteeing 'to the Holy See, in a stable way, a "de facto" and "de jure" condition, in order that she may obtain an absolute independence for the accomplishment of her divine mission', and the necessity 'to guarantee to the Holy See a complete and visible independence and a sovereignty unassailable in international law'. It is evident that these statements did not create 'ex novo' the independence of the Holy See. Any other interpretation might distort the question. The study of the jurisprudence of several countries during the 'voluntary captivity' of the Popes leads to the same conclusion; the Supreme Court of Portugal, just to quote an isolated case, on January 13, 1928, deduced from the characteristics of the Holy See her capacity to stand in judgment through her diplomatic agents. However, the most weighty arguments in favour of the personality of the See are the Concordats. Whole libraries have been written on the subject. Various monographs try to prove that Concordats cannot be regarded as international acts, but do not attempt to give evidence to the contrary. To show their juridical nature is not a particularly difficult task. In the first place, Concordats are bilateral acts, never unilateral. An act called 'convention' by both parties, an act for the conclusion of which the parties nominate special delegates, and which acquires validity through the process of ratification, cannot by any means be considered a unilateral act. The theory that Concordats are acts belonging to the jurisdiction of the municipal law of the State is not convincing either. The best evidence to the contrary is that they are drafted in accordance with the procedure required by international law and never by that of municipal law. Concordats have such a small connection with the law of the land, that, once drafted, they produce no legal effect whatever, unless a decree is issued. The Lateran Treaty, for instance, and the Concordat came into effect in Italy only after the promulgation of the law of May 27, 1929, n. 810. If, in past centuries, Concordats might have had sometimes the nature of an international act, and sometimes that of an internal one, as, for example, the Concordat of Worms (1122), the outcome of the

privilegium Callistianum and of the *Praescriptio Henrici V*, this does not alter the fact that a keen legal brain will discover whether this doubt does not arise out of a confusion of terminology. The case is not infrequent where a simple unilateral declaration is called Concordat.

Concordats are particular rules of international law. When States sign them, they do not consider the ecclesiastical bodies referred to in their paragraphs as subject to the power of the See rather than the secular authority; the See simply endeavours to obtain certain treatment in their favour. Concordats must not be put on the same level as treaties between States, which seek to obtain particular treatment for the citizens of one in the territory of the other, but should be compared with the general Conventions by which one State obtains from another an agreement to refrain or limit the exercise of its jurisdiction over its own citizens. A typical example in this respect is the provision contained in Article 34 of the Concordat with Italy of February, 1929. It states: 'Where personal separation is concerned, the Holy See "consents" that they may be judged by the Civil authority'. This paragraph points out that Italy considers an activity of her citizens completely outside her competence. A case of this kind if not unique, is certainly extremely uncommon. In order to understand other rules included in Concordats, one's attention must be focused on the principle that the See is not bound by international law to interfere with bodies or individuals which she considers as belonging to her jurisdiction, although they are treated by both international and internal law as subjects of the State. The nomination of bishops, a matter very often included in Concordats, does not grant an authority which the Church did not previously possess; it simply admits either that the State will not put any obstacle in the path of the See in this field, which she exercises independently of any State concession, or that the State undertakes to give juridical effect within its boundaries to certain acts of the See. On the other hand, when the See assumes ties under a Concordat, these ties generally concern that activity which even according to international law, she is not forbidden to exercise over her flock and her ecclesiastical bodies. Under a Concordat, the See binds herself not to exercise, in one sense or another, that particular activity, which from her point of view, is legal. Hence the existence of the rules by which the See first asks the approval of the secular power for the nomination of bishops, or for the bestowal of ecclesiastical benefices upon individuals not nationals of the State, where the benefice is situated.

It may be stated in conclusion that the general rules of international law consider the ecclesiastical institutions and their

individuals as being completely dependent on the State. This principle, however, is valid only as regards relations between one State and another. The secular power has, indeed, unrestricted freedom to adopt, in connection with individuals and their ecclesiastical bodies, whatever treatment it thinks best; *vice-versa* the See enjoys exactly the same freedom. The predominance of one will over the other is confined by international law to a purely factual matter. One therefore understands how clashes may be unavoidable; hence the extreme utility of Concordats, which are able to limit the respective spheres of influence of each of the contracting parties.

Turning now to the international personality of the Holy See, evidence of its existence is afforded by the Lateran Treaty of February 11, 1929. This treaty is an act of undoubted international nature which even bears the name of an international act; in other words, it assumes the existence of the international personality of both sides. Certain general rules of international law apply to the See, such as those recognising a series of requirements absolutely essential to an international subject. Moreover, the secular power is not allowed to give the help of its judicial arm to a person who might have been damaged by a writ enacted by the See in the exercise of her spiritual functions. The exercise of the jurisdiction of the secular power is barred in the same way as if the matter concerned a writ of another State. The Italian Law of Guarantees gave to the Pope the same prerogatives and personal immunities which are accorded by international law to the heads of foreign countries. The normal rules of international law are in this manner applicable to the See, in the sense that the Powers are bound to observe them. The law of nations, differing from canon law, which declares, as we have already seen, that the whole ecclesiastical organisation should be left outside the temporal power, does not recognise a number of individuals or bodies which are under the authority of the See. In fact, both religious congregations and persons belonging to them remain subject to the authority of the temporal power, and only the State can in international law extend to them diplomatic protection. The protection of Roman Catholics in the Near East, accorded to France by the Holy See, had a moral value, a value in fact, but never a value in international law. That protection was the result of the various Conventions concluded with Turkey and tacitly assented to by the Powers. It was extended, modified, extinguished, according to the agreements signed with these States, and not by any Convention signed by the See. Evidently this was one of the reasons why its international personality was not recognised, whereas this exclusion was rather a limitation of than a denial of that personality.

The Holy See, by establishing diplomatic relations with foreign countries and by signing Conventions with them, both voluntary acts, thus comes within the orbit of international law. She not only has the international capacity to set these acts in motion, but, once performed, to supervise the normal working of these international relations. Two provisions, one of general, the other of particular international law, prove this. The first relates to the provision in the Vienna Convention of March 18, 1815, establishing the Nuncio as the Dean of the Diplomatic Corps in Catholic countries; the other deals with the position of diplomats accredited to the Holy See and obliged to reside in Italian territory. The latter is mentioned in paragraph 2 of Article 12 of the Lateran Treaty: 'The envoys of foreign countries accredited to the Holy See continue to enjoy in the Kingdom [now read Republic] all the prerogatives and immunities which belong to diplomatic agents, according to the rules of international law. Residences may still remain in Italian territory always enjoying their immunities even if the States have no diplomatic relations with Italy'. This clause is not in the least precise; it remains the 'legal Alsatia' of the treaty.

THE LATERAN TREATY

The Lateran Treaty of 1929 gave juridical recognition to the international personality of the Holy See and the present analysis of the treaty will deal mainly with this aspect of the question. One of the chief aims of the treaty was the constitution of the territorial sovereignty of the See. By acceding to its demands and allowing the establishment of the tiny State known as the 'State of the Vatican City', Italy's purpose was to settle the Roman Question once and for all. From this territorial basis new rights and obligations arose which are part of the jurisprudence of international law. The Lateran Treaty must not therefore be looked upon as another of those Conventions concluded between the Holy See and other Powers and known as Concordats. Rather should it be compared with the normal treaties concluded between States—in fact, it bears the same titles as they do.

Hardly had the treaty been signed before writers began to theorise about it—particularly did they discuss the question who were the signatories of the treaty. Clearly Italy was one of the signatories but the theories regarding the other contracting party may be reduced to four:—

(1) The treaty was signed by the State of the Vatican City. The Holy See intervened only as the supreme organ of the State, or probably as its representative, but never as a spiritual body; (2) the

treaty was concluded with the Holy See as the spiritual and the highest body of the State of the Vatican City. In this theory the contracting parties were three—Italy, the Holy See, and the Vatican City through its representative, the Holy See; (3) the treaty was concluded exclusively with the Holy See, representing both the spiritual and temporal powers recognised by the treaty, and (4) the treaty was concluded with the Holy See alone as a separate and distinct body of the State of the Vatican City. This latter, accordingly, is considered as existing in itself but not as actually participating in the treaty.

Before discussing further these doctrines, two points may be made. In the first place the Holy See had an international personality even before the Lateran Treaty; moreover, even before the treaty, a Vatican State was in existence.

The view that a Vatican State existed uninterruptedly from 1870 to 1929, was upheld by Professor D'Avack, of the University of Florence, in a very detailed analysis of the situation. Several other writers cite the Theodoli-Martinucci dispute, brought before an Italian court by an employee of the Vatican administration for works done by him in the Vatican palaces. On that occasion, the See claimed that the dispute was outside the jurisdiction of the Italian courts, and for this reason appointed two commissions composed of prelates to decide all controversial issues arising between the Palatine administrations. Soon after the dispute, a note was sent by the Vatican Secretary of State to the Diplomatic Corps accredited to the Pope stating that: 'When the invaders occupied Rome on September 20, 1870, they respected the boundaries of the Vatican where the Holy Father with his Guards, his Ministers, surrounded by the love and faith of his subjects, continued to exercise all those rights of which he was invested before September 20: in other words, if "stricto jure", he never renounced his title of Sovereign of Rome and of the States of the Church, similarly he still remained in the same position within the boundaries of the Vatican'.

What Italy thought of the See during all those years is mirrored in the speeches of the Italian Premier of the time, which were delivered soon after the signature of the treaty. He stated: 'The Law of Guarantees had created as to three-quarters a sovereignty "de jure", and for the rest a sovereignty "de facto". Within the Vatican territory in which the Pope lived after 1870 no governmental action was ever exercised affirming its power. The Bronze Gates were never crossed by Italian authorities; that was not the threshold of a palace, but the border of a State'. The provisions of the Lateran Treaty, corroborating the idea of Professor D'Avack, prove the existence of a territorial sovereignty of the See before 1929.

Article 3, read in connection with Article 2, shows that territorial rights were simply recognised and not attributed to the Holy See. Moreover, paragraph 2 of Article 26 presumes already the existence of the State of the Vatican City. Article 5, by stating that before the ratification of the treaty, Italy will free the Vatican territory from all sorts of ties and from all possible occupants, and the Holy See, on her part, will manage to close up their access, presumes that a sovereignty of the Holy See existed before the treaty. The analysis of D'Avack upset the established view that the Holy See actually lost her sovereignty after 1870, but acquired it again with the Lateran Treaty.

This view was maintained by the Italian Government for reasons due mainly to one of the cardinal points of her policy, the separation of State and Church, and resulted in the contention that the Papal States were destroyed by 'debellatio' in 1870. It invoked in favour of this contention the international principle that total and material occupation of a territory is not indispensable for 'debellatio'. If the Vatican palaces were not occupied by the troops of Cadorna, so several lawyers reasoned, that portion of territory on which the Pope lived did not compromise the Italian occupation of the Vatican State. This concept was universally sponsored and largely accepted. Jurists failed to see that no State could ever have existed in a few palaces and a small garden. So minute a territory was nevertheless governed quite independently by the See, whose power does not emanate from material elements only. On that garden and on that palace, the State of the Vatican City was more or less shaped. It proved in the long run so successful a solution that the experts of Lake Success are now considering it as a model for the future buildings of the UNO. Briefly, Italian sovereignty was extended purely theoretically over that minute territory, in contrast with the reality of facts and the principle of 'debellatio'. The Lateran Treaty was not concluded between Italy, a body endowed with territorial sovereignty, and the Holy See, a body deprived of that personality and receiving as a 'donation' whatever the former wished to concede, but between two bodies enjoying equal rights. The treaty does not 'revise' the Roman Question, but finally concludes it by resolving all those points upon which both parties, up to then, had not succeeded in reaching an agreement. It could be compared to a peace treaty. The financial convention annexed to it has all the characteristics of those conventions so frequent in peace treaties, whenever a territorial concession takes place.

Reverting to the identification of the body which signed the Lateran Treaty, there is no doubt that the Holy See alone, in her quality of spiritual body, participated in its signature. The State

of the Vatican City could not possibly be one of the contracting parties because the constitution of the State was a consequence and not a premise of the treaty, as shown by Article 3. The following extracts from the pact bear out this thesis:—the Preamble: 'in order to assure to the Holy See her absolute and visible independence'; Article 24: 'the Holy See in connection with the sovereignty due to her in the international field'; Article 26: 'the Holy See thinks that the agreements signed today adequately guarantee her whatever is necessary for the provision of due freedom and independence for the pastoral government of the Dioceses of Rome and of the Catholic Church in Italy and all over the world'.

As the State of the Vatican City was created by the treaty, it is very important to see what kind of relation exists between the See and the Vatican State. To begin with, the Vatican State is a body of its own, quite distinct from that of the See. The laws concerning the State of the Vatican City clearly reveal the determination of the See to constitute an independent legal system, in which each competence is clearly determined. The Pope himself cannot avoid this rule and receives his competence not from canon law, but from Article 1 of the fundamental law of the State of the Vatican City of June 7, 1929. This conception was not merely confined to the will of the Holy See, but obtained full recognition from Italy too. In fact, after having acknowledged in Article 2 'the sovereignty of the Holy See in the international field', Italy, in Article 26, 'recognises the State of the Vatican City under the sovereignty of the Pope'. In other words, there are two separate recognitions, the second of which actually refers to the Vatican City. It is important to realise that the State has concluded several agreements with Italy as well as with other foreign Powers, underlining in this way her personality as an independent body. In examining the relations between the two bodies, adequate consideration must be given to those particular juridical institutions known as vassal States. The Christian States and Egypt, which in the last century were dependent on Turkey, and the Colonies of the British Empire before acquiring their complete independence, were in this category. In the case of 'vassal States', the suzerain grants a certain degree of independence to a part of the territory which, although remaining bound to the central government by its internal law, has nevertheless attained such a degree of independence of the suzerain State as to be able to develop an autonomous activity, thereby possessing a separate and distinct international personality. The State of the Vatican City, in its relation to the Holy See, belongs to this category. Its fundamental laws are not original laws as are those of sovereign States, but are laws issued by the Pope in his position

of head of the Church, and emanating exclusively from him. The State of the Vatican City derives its constitution from the system of the Catholic Church and from her superior body, the Holy See. A graphic example might help to understand the inter-relation between the two bodies. In the 'Acta Apostolicae Sedis', the laws concerning the Vatican are published separately from those of the Catholic Church. The head of the State is the Pope who is, at the same time, the supreme head of the Holy See. Comparing this case with some other institutions of international law, there is a striking likeness to a royal union though it is not totally identical. There is a far greater similarity to that particular form of royal union which existed between Prussia and the German Empire when the King of Prussia was at the same time the German Emperor, in other words, head of two bodies, one dependent on the other. This dependent relationship was not only recognised but expressly desired by Italy. In Article 26, as already mentioned, Italy did not merely recognise the sovereignty of the Pope over the Vatican City, but throughout the treaty, the dependence of the temporal body on the spiritual one is ever present. As the See was a contracting party to the Lateran Treaty, the Vatican City was 'a res inter alios acta'. The body which should have had a paramount position in the pact remained outside it. Admitting in the abstract the validity of the theory which stresses that international subjects have no other obligations except those which they themselves have contracted, undoubtedly that point concerns exclusively those States which are totally independent, and not those which are considered dependent on others. In particular, when a State grants a degree of autonomy to one of its territories and permits the establishment of independent international relations, this newly assumed 'status' cannot serve as a pretext for provoking a change in the international obligations already binding on the suzerain. A case might illustrate the point. In the *Case of the Lighthouses of Crete and Samos*, decided in 1937 by the Permanent Court of International Justice, France and Greece did not entertain any doubt that the international obligations contracted by the Turkish Empire were still valid even after the islands had become autonomous. It is not surprising, therefore, that the Vatican City should find itself invested with international rights as a result of the activity of the Holy See. With the signature of the Lateran Treaty all those obligations contracted by the See were, according to the practice mentioned, passed on to the new subject. The right of territorial sovereignty would remain meaningless if referred exclusively to the Vatican State. That right would be extinguished if the Vatican State should one day be completely destroyed by

'debellatio'. In the case of the Holy See, supposing the hypothetical destruction of the State, her survival would never be questioned. Various Articles of the Italian fundamental laws of June 7, 1929, constituting the State of the Vatican City, for instance, Articles 3 (paragraph (*c*)), Article 5 (paragraph (*c*)), Article 20 (paragraph (*c*)), and some of the conventions signed by the Vatican with Italy—the monetary one of 1930 is often quoted—show that the Vatican acted as a sovereign State through its organs. In other words, having both internal and external jurisdiction, one would have a dependent State different from those already known. In fact, in those territories where there are two bodies dealing with similar matters, one is bound to curtail the competence of the other; in the present case, where the superior body, the Holy See, concerns itself with spiritual matters, the Vatican finds itself raised to the rank of State with all its attributes.

The rights of the Vatican City are very strictly defined in the Lateran Treaty. Italy either binds herself to refrain from extending her jurisdiction over the territories subject to the sovereignty of the See (Article 4 of the treaty) or, always with reference to the See, agrees to adopt a certain attitude towards the future State of the Vatican City (Article 24). This treaty bears a striking resemblance to those conventions whereby States stipulate in favour of third parties. The obligations of the See, as already stated, consist in shaping the Vatican State in a determined form. The execution of these provisions remains implicit in the fact that the Pope is the supreme authority, and can, in every single case, set in motion the machinery of the State in accordance with the obligations undertaken by it. This explains various omissions in its constitution; for instance, no mention is made of the territorial limits of the Vatican City. Certain subjects, such as the law on nationality, were dealt with for internal rather than international reasons.

Before going any further, Article 24 needs adequate consideration. It runs as follows: 'The Holy See, according to the sovereignty due to her, even in the international field, declares that she wants to remain and will remain outside temporal disputes between the other States, and remain aloof from all international meetings held for that object, provided that the contending parties appeal to her peaceful mission, reserving, however, to herself the right to impose her moral and spiritual power. In consequence the Vatican City will always be considered a neutral inviolable territory'. Although there is an inaccuracy in its terms—when it links together the Holy See with other States—the importance of the Article may be readily seen. The See will continue to exercise her activity in international relations for spiritual ends in harmony with her nature, yet she

will not take advantage of her territory or of her State to display political activity towards any other Power. The international activity of the State of the Vatican City must be determined exclusively by juridical reasons, never by political ones. Italy, on her part, recognises the inviolability of the Vatican.

The other Articles of the treaty specify places and persons over which the sovereignty of the Holy See is extended. Article 3 and the first 'annex' determine with great precision the boundaries of the Vatican City. The rights of both the Holy See and the Vatican City within these boundaries are similar to the territorial sovereignty accorded by international law to other States. However, certain restrictions on her sovereignty, not in accordance with the general rules of international law, are enacted in Article 3, paragraphs 2 and 3, concerning St. Peter's Square: 'It is understood that St. Peter's Square, although part of the territory of the Vatican City, shall normally continue to remain open to the public and will be subject to the authority of the Italian police and civil servants. They will not advance beyond the entrance to the stairs of the Basilica, which shall remain accessible to the people for worship, and will refrain from climbing them and entering the Basilica, unless they are invited by the competent authority. If the Holy See, in view of particular functions, might temporarily deprive the public from entering St. Peter's Square, the Italian authorities, unless invited by the competent authority, will retire beyond the external limits of the Berninian colonnade and its prolongation'.

The second restriction to the territorial sovereignty of the See is contained in Article 18: 'The scientific and art treasures in the Vatican City and the Lateran Palace will remain on show to scholars and visitors. To the Holy See, however, is left complete freedom to regulate the access of the public'.

On her part Italy has undertaken certain obligations, regarding her territories on the confines of the City. In Article 7, the State undertakes to forbid construction of buildings round them. Moreover, Italy, in Articles 13 and 14 of the treaty recognises the See's rights of ownership over the Patriarchal Churches of St. John Lateran, of St. Mary Major, of St. Paul with its annexes, the edifice of St. Callisto near St. Mary in Trastevere, and of the Papal palace of Castel Gandolfo with all its dependencies. The Italian State also agreed to the transfer to the See of the property of Villa Barberini in Castel Gandolfo, of the buildings in the zone north of the Gianicolo and of the ex-monasterial buildings annexed to the Church of the XII Apostles and to the Church of St. Andrew della Valle and of St. Charles di Catinari. All these immovable properties,

in addition to those where Papal Institutes have their seat, cannot be subject to expropriation for reasons of public utility, except if an agreement is previously reached with the See. They are also exempt from taxation (Article 16). The immunities accorded to the residences of diplomatic agents (Article 15) are applicable to all these buildings, excluding the Papal Institutes and the ex-monasterial edifices. The existence of these immunities was weakly challenged by defending counsel for Signor Caruso in 1944, when the latter was on trial for crimes against humanity. His indictment included the violation of the annexes of St. Paul's. Identical immunities are enjoyed by the Palace of the Dataria, of Propaganda Fide and of the Holy Office. In addition, the immunities are extended to all churches, even outside Rome, at all times when religious ceremonies are celebrated with the intervention of the Pope.

The treaty contains an important provision relating to the acquisition of Vatican citizenship which is made to depend on stable residence inside the Vatican City (Article 9). Cardinals, if resident in Rome, are Vatican citizens (Article 20). There is no citizenship acquired by birth, but merely that which takes into account the residential factor. Once residence ends, citizenship expires. A bearer of a Vatican passport enjoys the same treatment as any citizen of any State.

The Article dealing with criminal jurisdiction also deserves consideration. Article 22 says : ' At the request of the Holy See or by a power of delegation either in single cases or permanently, Italy, on her territory, provides for the punishment of crimes committed in the Vatican City, unless the accused takes refuge in Italian territory, in which case, he will be proceeded against according to Italian laws. The Holy See will hand over to the Italian State persons who take refuge in the Vatican City, accused of acts committed on Italian territory which are regarded as crimes by the laws of both States. The same action will be taken against those persons, who take refuge in the buildings declared immune by Article 15, unless those in charge prefer to invite Italian authorities to arrest them '.

This Article shows the desire, on one hand, of the Holy See to free herself from the burden of exercising her criminal jurisdiction, and on the other hand, the willingness of Italy to exercise in its widest sense, both in her own interests and those of the Holy See, that same jurisdiction for crimes committed in the Vatican City. The very wide right of extradition given to Italy finds no counterpart in that given to the Holy See. On the contrary, when the treaty recognises Italy's right to punish a culprit directly and the See goes so far as to hand him over to Italy, one sees the implication

of this rule which is opposed to the rules of international law. These exceptional powers of criminal jurisdiction raise the question which is very often debated, whether analogous powers are allowed to Italy in St. Peter's Square, which is controlled, as already mentioned in Article 3, by the Italian police forces. The problem raises the question whether, once the accused is in the hands of the Italian police, they have the right to hand him over to the Italian or to the Vatican judicial authorities. Examination of the treaty suggests that the latter solution would be better, as no particular rights are given to Italy in St. Peter's Square, but, by invoking Article 22, this solution can be rejected. There is no difference between a crime committed in the Square and one committed in a foreign country. The Holy See is under obligation to extradite a culprit if the two following conditions exist: (1) The act has been committed on Italian territory, and (2) the act is considered criminal by the laws of both countries.

In conclusion, a few words may be said about the Concordat, which was signed simultaneously with the Treaty, and the Financial Convention. [The financial clauses were discharged immediately and are no longer effective.]

The simultaneity of the two documents, the similarity of their contents and the solution of the Roman Question, which both strive to achieve, made people wonder why the two documents, although distinct and separate, could not be considered inter-related, since the eventual extinction of one may bring about the extinction of the other. Pope Pius XI clarified this idea with the historical phrase 'simul cadent, simul stabunt'. It is possible, however, that though the non-existence of one of the two documents might influence some of the provisions contained in the other, both documents could still bear a substantial value, independently of each other. The fact that they are not rescindable is due not to objective, but subjective causes, derived from the will of the parties and their intention to inter-relate one pact with the other. Those authors who have examined this intention of the parties from the standpoint of private law rather than of international law, have necessarily arrived at divergent conclusions.

The law of nations permits a particular kind of sanction against offences known as reprisals. Reprisal implies the unilateral denunciation of a convention against the offender. In the case of a group of conventions signed simultaneously between two international subjects, if one party illegally denounces a convention, it is always open to the other to denounce the other conventions by way of reprisal. The importance of the 'rebus sic stantibus' clause in international law also deserves some consideration. It is understood

that the clause can always be invoked, in the case of one convention, stipulated simultaneously with other conventions, as in the case of the Lateran Pacts.

The new Constitution of the Italian Republic has regulated the position of both Church and State in Article 7. It runs as follows: 'The State and the Catholic Church are, in their own sphere, independent and sovereign. Their relations are regulated by the Lateran Pacts. The modification of the pacts accepted by both sides, does not require a process of constitutional revision'. The Lateran Pacts were inserted in the new 'Statute'. Their future depends entirely on the political evolution of the Italian Republic. A fierce legal battle will certainly be initiated, if ever a left wing group comes to power, on the provisions of Article 29 of the Italian Constitution, and of Article 34 of the Concordat which relate to marriage. Even in 1929, this thorny argument proved to be the 'crux' of the preliminary discussions. Several legal authorities consider it, unjustly, a grave infringement of Italian sovereignty, but it still remains the interrogation mark of the pacts.

BIBLIOGRAPHY

Ettore Anchieri: *Antologia Storico-Diplomatica.* Ed. I.S.P.I. (Milan.)

Ireland: *The State of the City of the Vatican.* (American Journal of International Law, 1933, p. 271.)

Jemolo: *La Questione Romana.* Ed. I.S.P.I. (Raccolta di Documenti.) (Milan.)

Del Giudice: *La Questione Romana e i rapporti fra Stato e Chiesa fino alla Conciliazione.* (Rome 1948.)

Del Giudice: *Corso di Diritto Ecclesiastico italiano.* (Milan.)

Piola: *Trattato e Concordato tra Italia e S. Sede.*

C. A. Biggini: *Storia inedita della Conciliazione.* (Documenti inediti.) (Milan.)

De la Brière: *La condition juridique de la Cité du Vatican.* (Recueils des Cours, 1930, Vol III.)

Scritti nel decennale della Conciliazione: *Vita e Pensiero.* (Milano 1939.)

Binchy: *State and Church in Fascist Italy.* (The standard work in English.) (R.I.I.A. 1941, Chaps. 6, 7, 8, 9, 10, 11, 12, 13.)

Anzilotti: *La condizione giuridica internazionale della S. Sede in seguito agli accordi del Laterano.* (Rivista di diritto internazionale, 1929, p. 165).

Rousseau : *Etat de la Cité du Vatican.* (Revue générale de droit international public, 1930.)

Hobza: *Questions de droit international concernant les religions.* (Recueils des Cours, 1924, Vol. 5.)

Le Fur : *Le Saint Siège et le droit des gens.* (Paris 1930.)

Giannini : *I Concordati post bellici.* (Milan, Vol. II, pp. 49–126.)

Wagnons : *Concordats et Droit International.* (Louvain 1935, pp. 35–85, 289–310.)

Charles-Roux : *La France et les Chrétiens d'Orient.* (Paris, Chaps. V–VI.)

D'Avack : *Chiesa, S. Sede e Città del Vaticano.* (Firenze 1937.)

Balladore-Pallieri : *I rapporto tra Chiesa Cattolica e Stato Vaticano secondo il diritto ecclesiastico ed il diritto Internazionale.* (Rivista Internazionale di Science Sociali, 1930, p. 195 ff.)

Constitution of the Italian Republic. (Gazzetta Ufficiale of December 27, 1947, n. 298.)

Delos : *Le traité du Latéran, etc.* (Revue générale de droit international public, 2e ser., t. XI (1929), pp. 452–478.)