

NOTES

THE HOLY SEE AT UNITED NATIONS CONFERENCES: STATE OR CHURCH?

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“Should the Roman Catholic Church continue to be treated as a state?” demanded a petition circulated at the Fourth World Conference on Women held in Beijing in September 1995.¹ The petition called into question the status of the Holy See,² commonly referred to as the Vatican, at the United Nations.³ It urged the United Nations “to evaluate the appropriateness of allowing the Holy See, a religious entity, to act on a par with states.”⁴ The petition collected more than a thousand signatures in the first few days of the campaign.⁵

According to the petition’s initiators, the Holy See acts as a religious body, and not as a state, when it participates in UN activities such as the Fourth World Conference on Women.⁶ They argued that the use of the

1. A Call to the United Nations to Consider the UN Status of the Holy See [hereinafter Petition] (on file with the Columbia Law Review).

2. The Holy See is the central administration of the Roman Catholic Church. See *infra* notes 10–11 and accompanying text. It currently holds Non-Member State Permanent Observer status at the United Nations. For an explanation of Non-Member State Permanent Observer status, see *infra* Part I.A.1.

3. The Vatican’s claim to statehood has been questioned recently by two women’s advocacy groups, Catholics for a Free Choice, and the Center for Reproductive Law & Policy. See Catholics for a Free Choice, *The Vatican and the Fourth World Conference on Women (1995)* (on file with the Columbia Law Review); Center for Reproductive Law & Policy, *Church or State?: The Holy See at the United Nations (1995)* (on file with the Columbia Law Review).

Many international law treatises discuss the international status of the Holy See. See, e.g., Ian Brownlie, *Principles of Public International Law* 67–68 (2d ed. 1973); James Crawford, *The Creation of States in International Law* 152–61 (1979); Louis Henkin et al., *International Law: Cases and Materials* 299–300 (3d ed. 1993); Lassa Oppenheim, *Oppenheim’s International Law* 325–29 (9th ed. 1992). For an insightful overview of the Holy See’s international status written by one of its diplomats, see Hyginus E. Cardinale, *The Holy See and the International Order* (1976).

The role of the Holy See in the international sphere also has been the subject of numerous articles since the creation of the Vatican City in 1929. See, e.g., Horace F. Cumbo, *The Holy See and International Law*, 2 *Int’l L.Q.* 603 (1949); C.G. Fenwick, *The New City of the Vatican*, 23 *Am. J. Int’l L.* 371 (1929); Gordon Ireland, *The State of the City of the Vatican*, 27 *Am. J. Int’l L.* 271 (1933); Josef L. Kunz, *The Status of the Holy See in International Law*, 46 *Am. J. Int’l L.* 308 (1952); Herbert Wright, *The Status of the Vatican City*, 38 *Am. J. Int’l L.* 452 (1944).

4. Petition, *supra* note 1, at 1.

5. See Catholics for a Free Choice, *News Release, Campaign on UN Status of Holy See Mounted at Women’s Conference: Petition Asking UN to Evaluate Holy See’s Role Elicits Broad Support* 1 (Sept. 6, 1995) (on file with the Columbia Law Review).

6. See Petition, *supra* note 1, at 1–2.

UN system by the Holy See to advance the theological positions of the Roman Catholic Church was inappropriate.⁷ The petition further contended that the Roman Catholic Church has a voice at the United Nations unlike that enjoyed by any other world religion. Critics of the Holy See's status at the United Nations assert that it should not enjoy greater privileges than other world religions or non-governmental organizations at the UN.⁸ As it stands, the Roman Catholic Church is the only religion which is accorded statehood status at the United Nations.

This Note examines the legal status and participation of the Holy See at UN conferences, particularly the involvement of the Holy See in two recent high-profile conferences: the International Conference on Population and Development held in Cairo in 1994 and the Fourth World Conference on Women held in Beijing in 1995. The Holy See currently enjoys the privileges of a state at these conferences as a result of its Non-Member State Permanent Observer status at the United Nations.⁹ This Note argues that the Holy See does not meet the accepted definition of a "state" under international law. It proposes that the Holy See be treated as a non-governmental organization ("NGO") at future UN conferences because it is fundamentally a religious entity. As an NGO, the Holy See would cease to have a negotiating role on par with other states at UN conferences.

Part I of this Note analyzes the Holy See's Non-Member State Permanent Observer status at the United Nations. It then examines the extent to which the Holy See's designation as a "state" has provided it with undue influence at recent UN conferences. Part II presents the formal requirements for statehood under international law and contends that the Holy See is not a state but a religious organization. Part III proposes that the Holy See be treated as an NGO and not as a state at future UN conferences. This proposal has implications which go beyond the question of the Holy See itself; the current status of the Holy See at the United Nations implies that any other religion would be entitled to state privileges were it to have control over a few acres of land. This Note concludes that it is undesirable to open the gates of the United Nations to religions acting under the guise of states, and that the United Nations should reconsider the Holy See's statehood status.

7. See *id.* at 2.

8. The petition concluded:

We, the undersigned, believe it is highly inappropriate for the Roman Catholic Church to participate as a voting member in UN conferences—something it can do only by virtue of its UN status as a Non-Member State Permanent Observer. The United Nations has an ethical obligation to be neutral regarding religion. The privileges now granted to the Roman Catholic Church under the auspices of the Holy See violate such impartiality and, in the interest of fairness, should be revoked.

Petition, *supra* note 1, at 2 (emphasis omitted).

9. See *Catholics for a Free Choice, The Church at the United Nations*, in *The Vatican and the Fourth World Conference on Women*, *supra* note 3, at 1–2.

I. THE HOLY SEE AT THE UNITED NATIONS

The Holy See, a non-territorial entity composed of the Pope and the Roman Curia,¹⁰ is the “supreme organ of government” of the Roman Catholic Church.¹¹ The Holy See currently enjoys Non-Member State Permanent Observer status at the United Nations.¹² The term “Non-Member state” means that while the Holy See is not one of the Member states of the General Assembly at the United Nations, it is still considered a state. The Holy See’s state status allows it the same privileges enjoyed by nations at international conferences sponsored by the United Nations.¹³ The “Permanent Observer” designation affords the Holy See certain privileges within the United Nations and its subsidiary organs.¹⁴

This Part first provides an introduction to the United Nations and the conference system. It then describes the privileges accorded to the Holy See at the United Nations as a result of its Non-Member State Permanent Observer status. Finally, it examines the way in which the Holy See’s “state” status enabled it to wield considerable influence at two recent UN conferences.

A. *The United Nations*

The United Nations was created in 1945 to “maintain international peace and security”¹⁵ and to achieve international cooperation in solving worldwide economic, social or humanitarian problems and in promoting respect for human rights.¹⁶ The main organs of the United Nations include the Security Council,¹⁷ the General Assembly,¹⁸ the Economic and Social Council,¹⁹ the International Court of Justice,²⁰ and the

10. The Roman Curia is the central administration of the Roman Catholic Church. See Michael J. Walsh, *Vatican City State* xxv (1983).

11. Cardinale, *supra* note 3, at 85 (“The Holy See is to the Church what the government is to the State.”). The Holy See must not be confused with the Church. The Roman Catholic Church is composed of its members around the world, whereas the Holy See is the governing body of the Church. See *id.*

12. See United Nations, *Permanent Missions to the United Nations* 5 (1995) [hereinafter *Permanent Missions to the United Nations*].

13. See *infra* text accompanying notes 64–66.

14. See *infra* Part I.B.

15. U.N. Charter art. 1, para. 1.

16. See U.N. Charter arts. 1–2.

17. The Security Council, a 15-member body, has the authority to act on behalf of all Member states in times of crisis and to determine a course of action that is mandatory for all Member states. See 1 *Worldmark Encyclopedia of the Nations (United Nations)* 3 (8th ed. 1995) [hereinafter *Worldmark Encyclopedia (UN)*].

18. See *id.*

19. The Economic and Social Council organizes the UN’s work on economic and social matters. See *id.*

20. See *id.*

Secretariat.²¹ All Member states are represented in the General Assembly, the main forum in which Member states convene to discuss any question within the scope of the UN Charter, to make recommendations to promote political cooperation, international peace, and human rights, and to pass resolutions on these subjects.²² Apart from Member states, there are many other bodies and organizations that are affiliated with the United Nations. Important among these are the observers—including the Holy See.

1. *Observers.* — There are four general categories of observers at the United Nations: Non-Member states, intergovernmental organizations, national liberation movements, and NGOs.²³ The Holy See and Switzerland are the only entities with Non-Member state observer status.²⁴ The participation of observers is not formally provided for in the UN Charter, nor is there a uniform system of regulations governing their participation;²⁵ rather, the rules have arisen from practice and vary considerably with the type of observer.²⁶

In all aspects of the observer-function, such as acquisition of the status, access to UN functions and activities, scope of participation, and privileges and immunities, Non-Member states enjoy significant advantages over all other types of observers.²⁷ One scholar notes:

21. The Secretariat administers the organization. It is headed by a Secretary-General who is appointed by the General Assembly upon the Security Council's recommendation. See *id.*

22. See United Nations, *Basic Facts About the United Nations* 8–9 (1992). Each Member state, which may have up to five representatives, is entitled to one vote. See U.N. Charter art. 18, para. 1; Hans Kelsen, *The Law of the United Nations* 155 (1950).

The General Assembly is not a legislative body in the sense that Member states are bound by its decisions. See Leland M. Goodrich & Edvard Hambro, *Charter of the United Nations: Commentary and Documents* 24 (1st ed. 1946); United Nations, *Everyone's United Nations* 11 (9th ed. 1979). The General Assembly's recommendations thus have "moral," but not "legal," force. The only sanction that the General Assembly can impose on a Member State is expulsion from the organization, provided that the Security Council is in agreement. See 1 *Worldmark Encyclopedia (UN)*, *supra* note 17, at 22.

Although the decisions of the General Assembly have "no legally binding force for governments, they carry the weight of world opinion on major international issues, as well as the moral authority of the world community." *Id.* at 25. The effectiveness of a given resolution generally depends on whether it establishes goals that all Member states wish to achieve. The resolutions of the General Assembly "can be only as effective as the membership wants them to be." *Id.*

23. See R.G. Sybesma-Knol, *The Status of Observers in the United Nations* 24 (1981).

24. See *Permanent Missions to the United Nations*, *supra* note 12, at 5.

25. See Sybesma-Knol, *supra* note 23, at 24; see also E. Suy, *The Status of Observers in International Organizations*, 160 *Recueil des Cours d'Academie de Droit International* 83, 84 (1978) (noting that "there is no coherent legal theory about, 'observer status'").

26. See Sybesma-Knol, *supra* note 23, at 24.

27. Apart from the privileges of the observer-function, Non-Member states also enjoy certain powers afforded to them by the UN Charter (which are not available to NGOs). It should be made clear that while observers of any sort, including Non-Member state observers, are not formally provided for in the UN Charter, several provisions in the UN Charter apply to Non-Member states. Article 2 para. 6 provides that Non-Member states

To quite a large degree, a non-Member State may participate in the work of the UN on the same level as if it were a member. In this, the observer status of a non-Member State is fundamentally different from those of other observers, who, being not a State, can never qualify for participation *on an equal footing* with the Member States.²⁸

The acquisition of observer status is a simple procedure for Non-Member states. A legal opinion issued by the Secretariat of the United Nations states that while observers are not formally provided for, the accreditation of permanent observers is available to Non-Member states "which are full members of one or more specialized agencies and are generally recognized by Members of the United Nations."²⁹

In practice, Non-Member states can acquire the status simply by notifying the Secretary General of their decision, provided that a majority of member states recognize them as states.³⁰ All other observers, including NGOs, however, require an express invitation by the United Nations to achieve observer status.³¹ While Non-Member state observers are not permitted to vote at the General Assembly or in the UN's many committees and organs, they may attend and participate in such meetings "almost on an equal footing with the Members."³² They, along with other types of observers, are permitted to distribute documents and receive the official documentation of the organization.³³ Those Non-Member states that are actively involved in the UN's activities are required to contribute towards

must act in accordance with the principles of the Charter for the maintenance of international peace and security. Article 35 para. 2 enables a Non-Member state to bring to the attention of the General Assembly or the Security Council any dispute to which it is a party. This privilege is not available to NGOs. Under Article 32, a Non-Member state party to a dispute under consideration by the Security Council is able to participate, without vote, in the discussion of the dispute. Non-Member states may become party to the Statute of the International Court of Justice, as provided in Article 93. See U.N. Charter arts. 2, 32, 35, 50, 93.

The Rules of Procedure of the General Assembly, and those of the Security Council, authorize Non-Member states to place items on the provisional agenda. See Rule 13(h) of the Rules of Procedure of the General Assembly; Rules 6 and 7 of the Rules of Procedure of the Security Council.

28. Sybesma-Knol, *supra* note 23, at 63.

29. Selected Legal Opinions of the Secretariat of the United Nations and Related Inter-governmental Organizations, 1962 U.N. Jurid. Y.B. 236, U.N. Doc. ST/LEG/8 (on file with the Columbia Law Review).

At the time it became a Permanent Observer, the Holy See was a member of the Universal Postal Union and the International Telecommunications Union, which were specialized agencies. See Crawford, *supra* note 3, at 155–56; M.H. Mendelson, *Diminutive States in the United Nations*, 21 *Int'l & Comp. L.Q.* 609, 612 n.13 (1972).

30. See Suy, *supra* note 25, at 155; Sybesma-Knol, *supra* note 23, at 25–26.

31. See Sybesma-Knol, *supra* note 23, at 25, 28.

32. *Id.* at 39; see also *id.* at 30, 36, 69 (describing privilege of Non-Member states at UN); Suy, *supra* note 25, at 104 (same).

33. See Suy, *supra* note 25, at 120; Sybesma-Knol, *supra* note 23, at 39.

its expenses.³⁴ Apart from the right to vote, the participation of Non-Member state observers in the work of the United Nations is to a large degree the same as that of Member states.³⁵

NGOs are also eligible for observer status. The distinction must be maintained, however, between those NGOs that have gained observer status at the United Nations (of which there are three),³⁶ and the vast majority of NGOs affiliated with the United Nations which do not have observer status. The participation of non-observer NGOs affiliated with the United Nations is specifically provided for in Article 71 of the UN Charter.³⁷ The Economic and Social Council, a subsidiary organ of the United Nations, has developed a consultative system in which certain non-governmental organizations ("Article 71 NGOs") are asked to participate in those forums that address their areas of expertise.³⁸ There are approximately 800 NGOs in consultative status with the Economic and Social Council.³⁹ The consultative system is "restrictive" in that Article 71 NGOs do not enjoy the same range of participation and influence as observer NGOs.⁴⁰ The status of *both* observer NGOs, however, and Article 71 NGOs is markedly lower than that of Non-Member state observers within the UN system.

2. *United Nations Conferences.* — UN conferences are convened under the authority of either the General Assembly or the Economic and Social Council.⁴¹ The body which authorizes the conference passes a resolution providing the rules of admission and participation.⁴² Generally, conferences are open to all states.⁴³

The states at UN conferences adopt a Program of Action which contains objectives and proposed solutions to global problems.⁴⁴ Although the Program of Action is not binding on states, it provides an "interna-

34. The Holy See has to pay an annual fee of U.S. \$10,179 (established May 30, 1994). See 1 Worldmark Encyclopedia (UN), *supra* note 17, at 20.

35. See Sybesma-Knol, *supra* note 23, at 63.

36. See Permanent Missions to the United Nations, *supra* note 12, at 5. The three observer NGOs are the International Committee of the Red Cross, the International Federation of the Red Cross and Red Crescent Societies, and the Sovereign Military Order of Malta. See *id.*

37. See U.N. Charter art. 71.

38. See Suy, *supra* note 25, at 102.

39. See David J. Ettinger, *The Legal Status of the International Olympic Committee*, 4 Pace Y.B. Int'l L. 97, 102 (1992) (citing List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council in 1991, U.N. ESCOR, 1st Sess., U.N. Doc. E/1991/INF/7 (1991)).

40. See Sybesma-Knol, *supra* note 23, at 304.

41. See Suy, *supra* note 25, at 111.

42. See *id.*; Sybesma-Knol, *supra* note 23, at 27.

43. See Sybesma-Knol, *supra* note 23, at 69.

44. The Program of Action is the document that emerges from a UN conference. It is a long document, generally over 100 pages, that is signed by those states which have joined the consensus. For an example of a Program of Action, see United Nations, Report of the Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Beijing Report].

tionally recognized model" with considerable policy influence among the world's nations.⁴⁵ As such, the Program of Action is an "enabling" document which provides activists with a basis to lobby, for example, for women's reproductive health or for the environment. Governments can be called upon "to justify both action and inaction in terms of" the Program of Action.⁴⁶ The importance of such agreements cannot be overestimated. "The development of public international law can no longer be separated from the U.N. The Organization has become the most important world-wide law-creating body."⁴⁷ As the place in which global goals and norms are debated and articulated, the UN conference is emerging as the world's most important forum for international lawmaking.

Not only do NGOs exert considerably less influence than Non-Member state observers in the United Nations proper: they also have less power at UN conferences. Unlike states, NGOs around the world are not automatically entitled to attend conferences. For example, the Economic and Social Council resolution convening the International Conference on Population and Development outlined an accreditation process by which interested NGOs had to apply to the secretariat of the conference in order to attend.⁴⁸ A distinction must be maintained, however, between observer NGOs and Article 71 NGOs,⁴⁹ which are in consultative status with the Economic and Social Council, and all other NGOs, which do not have any ties to the United Nations. While Article 71 NGOs are automatically accredited by the Economic and Social Council, NGOs with no ties to the United Nations must apply for permission to attend.⁵⁰

Moreover, those NGOs that do attend the conference are subject to important restrictions not imposed upon states. The NGOs have no vote at the main conference, nor do they have direct authority to determine the language of the conference's Program of Action.⁵¹ Rather, NGOs meet in a parallel "NGO Forum" which is conducted simultaneously with

Recent United Nations conferences include the World Conference of the International Women's Year (Mexico City, 1975), the World Conference of the United Nations Decade for Women: Equality, Development and Peace (Copenhagen, 1980), the International Conference on Population and Development (Cairo, 1994), and the Fourth World Conference on Women (Beijing, 1995).

45. Larry B. Stammer, *Population Conclave Faces Sharp Clashes*, L.A. Times, Aug. 29, 1994, at A1.

46. E.g., Gita Sen, *The World Programme of Action: A New Paradigm for Population Policy*, Environment, Jan.-Feb. 1995, at 10, 15.

47. 5 *Encyclopedia of Public International Law* 280 (1983).

48. See E.S.C. Res. 1993/94, Annex, reprinted in 1993 U.N.Y.B. 823, U.N. Sales No. E.94.I.1 [hereinafter ECOSOC Resolution] (providing for participation of NGOs in International Conference on Population and Development and its preparatory process).

49. See *supra* text accompanying notes 38-40.

50. See, e.g., ECOSOC Resolution, *supra* note 48, at 823.

51. See, e.g., *id.* ("In recognition of the intergovernmental nature of the Conference, non-governmental organizations shall have no negotiating role in the work of the Conference and its preparatory process."). As a result, the vote of the Vatican at the conference carried more weight than all the NGOs combined.

the main state conference (although usually in a separate building).⁵² Their participation is limited to lobbying state representatives; they are permitted, at their own expense, to make written presentations during the preparatory process.⁵³

The extent of participation at UN conferences is markedly different for different types of observers. NGO observers do not have a negotiating role at the conferences, while Non-Member state observers participate in the conference with all the privileges of a state. Non-member state observers, including the Holy See, may vote at the main conference and otherwise determine the shape of the Program of Action, whereas NGOs are limited to lobbying efforts. As seen above, the Holy See's designation as a Non-Member State Permanent Observer provides it with access and advantages unavailable to NGOs and religious organizations involved in UN conferences.

B. *The Holy See's Non-Member State Permanent Observer Status at the United Nations and Its Conferences*

Pope Paul VI established the first Holy See permanent observer mission at the United Nations in New York on March 21, 1964.⁵⁴ Initially there was a question as to whether it would be the Vatican City or the Holy See which would maintain relations with the United Nations.⁵⁵ The

52. At the Beijing conference, for example, the parallel NGO Forum was shifted by the Chinese government from central Beijing to Huairou, a suburb 50 miles from Beijing. See Naomi Craft, *Beijing Diary: Ten Days at the Women's Conference*, 311 *Brit. Med. J.* 1010, 1010 (1995). Approximately 50,000 women gathered to participate in the NGO Forum. See Bella Abzug et al., *On Globalizing Gender Justice*, *Nation*, Sept. 11, 1995, at 230, 230.

53. See, e.g., ECOSOC Resolution, *supra* note 48, at 823-24.

54. See Cardinale, *supra* note 3, at 232.

In 1944, the Holy See made informal inquiries as to membership in the United Nations. Secretary of State Hull replied that "it would seem undesirable that the question of membership of the Vatican State be raised now. As a diminutive state the Vatican would not be capable of fulfilling all the responsibilities of membership in an organization whose primary purpose is the maintenance of international peace and security." Letter from Secretary of State Hull to M.C. Taylor (Sept. 27, 1944), reprinted in Crawford, *supra* note 3, at 156.

The Holy See then decided against applying for membership in the United Nations. Membership would too directly involve the Holy See in international political affairs in direct contradiction to the neutrality principle expressed in the Lateran Treaty. See *id.* Article 24 of the Lateran Treaty states: "The Holy See . . . declares that it wishes to remain and will remain removed from the temporal competitions among other States and from international meetings convoked with such a purpose, unless the parties to a dispute make a unanimous appeal to its mission of peace In consequence the City of the Vatican shall always and in every case be considered neutral and inviolable territory." Treaty of the Lateran, Feb. 11, 1929, *Holy See-Italy*, art. 24, reprinted in 3 Amos J. Peaslee, *Constitutions of Nations* 668, 674 (2d ed. 1956) [hereinafter *Lateran Treaty*]. The Lateran Treaty was signed between Italy and the Holy See in 1929 and provided for the creation of the Vatican City State. See *infra* notes 165-168 and accompanying text.

55. See Cardinale, *supra* note 3, at 256.

Holy See is the supreme organ of government of the Catholic Church,⁵⁶ while the Vatican City is the 109 acre enclave located within Rome, Italy.⁵⁷ In the end, it was decided in an exchange of letters between the Secretary General of the United Nations and the Holy See that “[t]he presence of papal representatives under the title of the State of the Vatican City would have unduly stressed the temporal aspects of the Pope’s sovereignty.”⁵⁸ The decision to make the Holy See, rather than the Vatican City, the permanent observer immediately broadened the scope of the papacy’s interest in UN activities from mere temporal affairs affecting the Vatican City to the greater social and moral concerns of the Catholic Church.⁵⁹ As such, the Holy See’s participation at the United Nations, unlike that of nation-states, is fundamentally religious and spiritual in nature. Indeed, the clearest indication that the Holy See participates in the United Nations as a religious organization are statements made by the Church itself. For example, in Pope John Paul II’s address to the General Assembly in October 1995, he emphasized the “specifically spiritual mission” of the Holy See.⁶⁰

The Holy See’s Non-Member State Permanent Observer status permits it to participate in the work of the United Nations “on the same level as if it were a member.”⁶¹ Although the Holy See is not permitted to vote at the General Assembly, it may participate in all the General Assembly’s meetings.⁶² Furthermore, while heads of Non-Member states are not typically permitted to address the General Assembly in plenary, one exception has been made—the Pope. Pope Paul VI addressed the General

56. See *id.* at 85.

57. See 5 *Worldmark Encyclopedia of the Nations (Europe)* 469 (8th ed. 1995) [hereinafter *Worldmark Encyclopedia (Europe)*]. For a detailed explanation of the relationship between the Vatican City and the Holy See, see *infra* notes 172–175 and accompanying text.

58. See *Cardinale*, *supra* note 3, at 256.

59. See *id.* at 257.

60. Pope John Paul II, Address Before the Fiftieth General Assembly of the United Nations Organization (Oct. 5, 1995), in *Permanent Observer Mission of the Holy See, The United Nations: A Family of Nations?* 3 (May 8, 1996) (on file with the Columbia Law Review). For further discussion on the primarily spiritual nature of the Holy See’s mission at the United Nations, see *infra* notes 279–285 and accompanying text.

61. Sybesma-Knol, *supra* note 23, at 63. The Holy See is a permanent observer of the United Nations Educational, Scientific and Cultural Organization (UNESCO), and is a member of the following General Assembly organizations: the Executive Committee of the High Commissioner’s Programme for Refugees; the Trade and Development Board of the United Nations Conference on Trade and Development (UNCTAD); and the Industrial Development Board of the United Nations Industrial Development Organization (UNIDO). See Samuel W. Bettwy & Michael K. Sheehan, *United States Recognition Policy: The State of Vatican City*, 11 *Cal. W. Int’l L.J.* 1, 21 (1981).

62. See *Suy*, *supra* note 25, at 104; Sybesma-Knol, *supra* note 23, at 30, 36.

Assembly on October 4, 1965, and Pope John Paul II addressed the General Assembly on October 2, 1979, and on October 5, 1995.⁶³

The Holy See also participates actively at UN conferences. Because UN conferences generally are open to all "states,"⁶⁴ the Holy See, by virtue of its Non-Member state status, is automatically considered to be a "state" for the purpose of the conference.⁶⁵ As a result of its statehood status, the Holy See is permitted to participate on the same level as UN Member states at UN conferences: "[The] Holy See attends [UN conferences] as a full participant, rather than as an observer"⁶⁶ Consequently, the Holy See has full voting rights at the conferences.⁶⁷

At international conferences, the United Nations prefers to operate by consensus, rather than relying upon votes, in adopting the Programs of Action.⁶⁸ As a result, the Holy See has a stronger voice in proceedings than its one vote might otherwise suggest. Indeed, the UN's commitment to consensus provides the Holy See with a quasi-veto at conferences: the adoption of any measure is substantially contingent upon Vatican approval. The practice of operating by consensus provides the Holy See with considerable power in shaping the final document which is adopted at the conference. The Holy See, even if not supported in its position by any other state, has the ability to prevent a consensus from forming at the conference.⁶⁹

C. *Role of the Holy See at Two United Nations Conferences*

United Nations conferences are high-profile events.⁷⁰ Countries from around the world convene to discuss the most pressing problems facing humankind.⁷¹ The Programs of Action adopted at UN confer-

63. See Permanent Observer Mission of the Holy See, *supra* note 60, at 3, 11. Addressing the General Assembly is a privilege reserved for states. See Sybesma-Knol, *supra* note 23, at 72.

64. See Sybesma-Knol, *supra* note 23, at 69.

65. The reports that emerge from UN conferences list the states that have participated in the conference. The Holy See was listed as a participating state in the International Conference on Population and Development held in Cairo in 1994, see United Nations, Report of the International Conference on Population and Development at 121, U.N. Doc. A/CONF.171/13 (1994) [hereinafter Cairo Report], and the Fourth World Conference on Women held in Beijing in 1995, see Beijing Report, *supra* note 44, at 139.

66. Sybesma-Knol, *supra* note 23, at 70.

67. See *id.* at 77.

68. See Catholics for a Free Choice, *supra* note 9, at 2.

69. For example, the Holy See was able to block consensus at the International Conference on Population and Development held in Cairo in 1994. See *infra* Part I.C.1.

70. See Vivienne Walt, *Abortion Still Splits Conference*, *Newsday*, Sept. 6, 1994, at A4 (noting that "182 countries began negotiating on a plan to slow global population growth").

71. At the 1994 International Conference on Population and Development, for example, states convened to discuss the rapid growth in world population. See Cairo Report, *supra* note 65, at 9.

ences establish a framework by which nations cooperate to meet global objectives.⁷² Subject to intense media coverage, UN conferences raise awareness about issues ranging from human rights to nuclear disarmament.⁷³ At two recent and well-publicized UN conferences, the International Conference on Population and Development held in Cairo in September, 1994 (the "Cairo conference") and the Fourth World Conference on Women held in Beijing in September, 1995, (the "Beijing conference"), the Holy See took full advantage of its status as a "state" to press its religious agenda on the conferences' Programs of Action.

1. *The Holy See at the Cairo Conference.* — At the Cairo conference, delegates from 170 nations gathered to debate a twenty-year, \$17-billion a year action plan to stabilize global population.⁷⁴ The Cairo conference's "Programme of Action" called for a multifaceted approach to combat population growth, including the expansion of female education, greater maternal and child care, and access to family planning.⁷⁵ Acknowledging the importance of population challenges, the British delegation characterized the Cairo conference as "the most important UN conference of the decade."⁷⁶

The diplomatic maneuvering leading up to and including the Cairo conference can be analyzed in three stages. In each stage, the Holy See exploited its status as a state to significant advantage. Initially, months before the conference began, the Holy See attempted to persuade national leaders to support its stance on contraception and abortion.⁷⁷ Largely because the Holy See would be participating at the conference on par with other states and would have the power to singlehandedly prevent consensus, national leaders attempted to appease the Holy See.⁷⁸ During the second stage, the Holy See actively participated in three preparatory committee meetings ("PrepComs") and a series of regional meetings at which state representatives negotiated the draft Programme of Action.⁷⁹

72. See *supra* notes 44–47 and accompanying text.

73. For example, a LEXIS search in the Current News file under the term "Cairo conference" resulted in 1000 items. Search conducted on July 20, 1996.

74. See Charles Clover, *Battle to Curb the Global Baby Boom*, Daily Telegraph (London), Sept. 5, 1994, at 4. Without any concerted intervention by states, the population was estimated to explode to 19 billion by the year 2100. See *id.*

75. The core of the Cairo document recognizes "the realities of women's lives in terms of lack of power, economic insecurity, abuse, violence and coercion, unrecognized and unmet health needs, and poor-quality or no services." Sen, *supra* note 46, at 34. The Cairo conference represents a radical shift in recent years from focusing almost exclusively on controlling numbers to empowering women by providing women with reproductive health services and acknowledging their reproductive rights. See *id.* at 15. This shift in population paradigm is reflected in the Cairo document's preamble, which recognizes the need to empower women and support the "new concept of reproductive health." Cairo Report, *supra* note 65, at 9–13.

76. Clover, *supra* note 74, at 4.

77. See *infra* Part I.C.1.a.

78. See *id.*

79. See 1993 U.N.Y.B. 822–23, U.N. Sales No. E.94.I.1; *infra* Part I.C.1.b.

This draft Programme of Action was then debated at the conference and adopted, with modifications.⁸⁰ In the third stage, the Holy See used its political clout as a "state" at the conference to shape the draft Programme of Action and to block consensus in order to force other states to accede to its demands.⁸¹

a. *The Holy See on the World Stage.* — Months in advance of the Cairo conference, the Vatican launched a "fiery crusade"⁸² against the conference's Programme of Action, claiming that it encouraged abortions on demand, approved of adolescent sexual activity and condoned homosexuality.⁸³ In April, the Pope declared that the "United Nations wants to destroy the family."⁸⁴ In July, a senior Roman Catholic Cardinal, López Trujillo, head of the Holy See's Council for the Family, stated that the Cairo conference would lead to "the most disastrous massacre in history" if it did not ban abortions outright.⁸⁵ According to the U.S. Ambassador to the Holy See, Raymond L. Flynn, "[n]o issue has affected Pope John Paul II in a more profound way throughout his 15-year papacy than the Cairo conference."⁸⁶

In an unprecedented move, the Pope sent a letter in March to all heads of state with a warning that the Cairo conference could result in "a serious setback for humanity."⁸⁷ In the same month, the Pope received Dr. Nafis Sadik, the Secretary General of the Cairo conference. He warned her about the "culture of death" and stated that "abortion . . . is a heinous evil."⁸⁸ The Pope charged that "there is a tendency to promote an internationally recognized right to access to abortion on demand."⁸⁹ In response, Nafis Sadik stated to the press: "We are not recommending the legalization of abortion; in fact, we are trying to fight illegal abortion, to prevent it."⁹⁰

In August, the Holy See, arguing that the "future of humanity" was at stake, issued a statement attacking the U.S. position on contraceptives

80. See Cairo Report, *supra* note 65, at 4.

81. See *infra* Part I.C.1.c.

82. Patricia Clough, Pope Unlikely to Convert Clinton on Birth Control, *Independent*, May 31, 1994, at 11.

83. See *id.* The draft Programme of Action, however, did not encourage abortions on demand. The provision regarding abortion is quoted *infra* note 121.

84. See Clough, *supra* note 82, at 11 (quoting Pope John Paul II).

85. See Paul Kaihla et al., *Apocalypse When?*, *Macleans*, Sept. 5, 1994, at 22, 25.

86. Joe Heaney, Flynn Says Pontiff Was Offended by U.S. Delegation Members' Comments, *Boston Herald*, Sept. 5, 1994, at 012; see also Kenneth L. Woodward et al., *A Heavyweight Contest*, *Newsweek*, June 6, 1994, at 82, 82 ("John Paul II is furious.").

87. Woodward et al., *supra* note 86, at 82.

88. Holy See, Press Release, *The Family as the Sanctuary of Life 3* (Mar. 18, 1994) (on file with the Columbia Law Review).

89. *Id.* at 5.

90. *Catholics for a Free Choice, The Pope and Population Policy: False Charges: Vatican Objections to the Programme of Action*, at 1, 2 (1994) ("The draft document never calls for legalization of abortion where it is currently illegal.").

and abortion.⁹¹ The Holy See expressed concern that phrases such as “reproductive health” include abortion as a central component.⁹² American officials reportedly referred to this statement as the “latest maneuver” in the “most vehement and concerted diplomatic campaign the Vatican has waged in recent years”⁹³ to “bend an international program in conformity with Catholic teaching.”⁹⁴ In an effort to reach a compromise, President Clinton had a tense visit with Pope John Paul II in the Vatican City five months before the conference.⁹⁵ The Pope was “angry over Mr. Clinton’s support for more liberal abortion language in the United Nations Population Control Plan” to be adopted at Cairo.⁹⁶ A few days before the conference was scheduled to begin, the Vatican made “an unusual, personal attack”⁹⁷ on Vice President Al Gore signalling the “deep feelings the issue had engendered within the Roman Catholic Church’s conservative leadership.”⁹⁸ Finally, the Pope engaged in efforts to forge an alliance between the Vatican and Islamic states, such as Iran and Libya.⁹⁹ The Vatican, however, denied that it was seeking a pact with Muslim states.¹⁰⁰

91. Alan Cowell, *Vatican Attacks Population Stand Supported By U.S.*, N.Y. Times, Aug. 9, 1994, at A1.

92. See *id.*

In its definition of reproductive health in Chapter 7, paragraph 1, the Cairo document states that men and women have a right to access to “safe, effective, affordable and acceptable methods of family planning of their choice . . . and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.” Cairo Report, *supra* note 65, at 43. The Pope’s spokesman, Dr. Navarro-Valls, was reported as saying “ ‘this expression sounds like abortion on demand.’ ” Cowell, *supra* note 91, at A12.

The United States countered that the document, rather than promoting abortion, seeks to reduce abortion rates by expanding counseling and contraceptive services. See Alan Cowell, *Does This Mean Abortion? Vatican and U.S. Battle Over Document for Population Talks*, N.Y. Times, Aug. 11, 1994, at A10. Indeed Chapter 8, paragraph 25 refers to “proper counseling to reduce the rate of abortion.” Cairo Report, *supra* note 65, at 43.

93. Cowell, *supra* note 91, at A1.

94. Stammer, *supra* note 45, at A1.

95. See Conor O’Clery, *Abortion to Raise Tension as Clinton Meets Angry Pope*, Irish Times, May 31, 1994, at 8.

96. *Id.*

97. Alan Cowell, *Vatican Says Gore Is Misrepresenting Population Talks*, N.Y. Times, Sept. 1, 1994, at A1.

98. Laurie Goodstein, *Vatican Official Criticizes Gore in Attack on Population Policy: Church Maintains U.N. Document Endorses Abortion*, Wash. Post, Sept. 1, 1994, at A2.

99. See *A Rather Unholy Religious Pact*, Independent (London), Aug. 11, 1994, at 17.

Unlike the Holy See, the Islamic nations were less concerned about abortion than they were about women’s general empowerment. Their area of agreement was issues such as their opposition to privacy for adolescents seeking reproductive health care, sexual health and sexual rights. The political alliance between the Holy See and Islamic governments dissolved once the draft document dropped the language of sexual rights. See Sen, *supra* note 46, at 12.

100. See John Tagliabue, *Vatican Seeks Islamic Allies to U.N. Population Dispute*, N.Y. Times, Aug. 18, 1994, at A1 (noting that even though it was clear that the Holy See was

In the months preceding the Cairo conference, the Holy See's ability to capture the attention of world leaders, such as President Clinton, was aided by its status as a "state" at the United Nations. Because the Holy See would be a full participant at the Cairo conference, state leaders were anxious to appease the Holy See, before the conference even began, in order to increase the potential for consensus.

b. *Pre-Conference Meetings.* — The Holy See participated actively in attempting to shape the draft document at all the PrepCom and regional meetings held before the Cairo conference.¹⁰¹ As one journalist noted, Holy See diplomats "have proven particularly adept at working the corridors of the UN to lean on governments and in orchestrating a full-scale propaganda onslaught on the draft UN population agreement."¹⁰² The preparatory meetings "sparked a series of pitched battles" between the Vatican and family planning advocates.¹⁰³

The "first major clash between the Holy See and women" occurred at PrepCom III in April 1994 at which the Holy See attempted to "square bracket"¹⁰⁴ over 100 references to sexual and reproductive rights, reproductive health,¹⁰⁵ or safe motherhood, for fear that these terms implied

forging ties with other religious states, it persisted in denying that it was seeking a pact with Muslim nations).

101. See Permanent Observer Mission of the Holy See to the United Nations, *The Holy See at the United Nations 27* (1994) (on file with the Columbia Law Review).

102. Leonard Doyle, *The Pope Confronts UN Over Abortion: A Papal Crusade Against Artificial Birth Control Is Threatening Attempts To Avert Global Over-population*, *Independent* (London), Aug. 15, 1994, at 10.

103. Bhaskar Menon, *Battle Lines for Cairo*, *World Press Rev.*, Aug. 1994, at 44, 44.

104. See *Catholics for a Free Choice*, *The Pope and Population Policy: The Vatican and the Programme of Action: Bracketing "Progress"*, at 1-2 (1994). To "square bracket" wording indicates that it has not been agreed upon and is subject to further negotiation. The Holy See bracketed "reproductive health" 112 times, "family planning" 41 times, and "fertility regulation" throughout the document. See *id.* at 2.

105. The Cairo draft document defined key terms as follows:

Reproductive health is a state of complete physical, mental and social well being . . . in all matters relating to the reproductive system. . . . Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right [sic] of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of fertility regulation of their choice, and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant

Sexual and reproductive rights embrace certain human rights that are already recognized in various international human rights documents The cornerstone of sexual and reproductive health rests on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so

What the U.N. Document Says on Abortion, *N.Y. Times*, Sept. 1, 1994, at A8.

The draft document further provided that reproductive health care should include "family planning counseling, information, education, communication and services;

abortion.¹⁰⁶ At the pre-conference meetings, the "Vatican . . . [was] virtually alone in its objections."¹⁰⁷ Mainly because of the Holy See's resistance, about ten percent of the draft document remained in "square brackets" before the Cairo conference began.¹⁰⁸ The sections at issue concerned reproductive health and rights, contraception and abortion.

The Holy See exercised a remarkable degree of power in shaping the draft document before the Cairo conference even began. It is questionable whether any world religion should be able to influence in such manner the agenda for a conference of nation-states.

c. *The Holy See at the Cairo Conference.* — Despite the fact that the Vatican City has a total population of only one thousand,¹⁰⁹ the Holy See had one of the largest delegations attending the Cairo conference.¹¹⁰ To allay the fears of the Vatican's large contingent, Vice President Gore assured the assembled nations at the opening of the Cairo conference that " 'the United States does not seek to establish a new international right to abortion . . . [nor should] abortion . . . be encouraged as a method of family planning.' "¹¹¹ Unlike Vice President Gore, however, Prime Minister Gro Harlem Brundtland of Norway sharply criticized the Holy See and added, " 'I have tried in vain to understand how the term "reproductive health care" can be read as promoting abortion as a means of family planning. Rarely if ever have so many misrepresentations been used to imply a meaning that was never there in the first place.' "¹¹²

The most contentious issue in the Draft Programme of Action for the delegation of the Holy See was paragraph 8.25, which recognized unsafe abortion as a major health problem affecting women.¹¹³ On the second day of the conference, September 6, 1994, the delegation, "[a]fter a day of tortuous closed-door talks,"¹¹⁴ almost reached compromise on the

education and services for prenatal care, safe delivery, pregnancy termination and postnatal care." *Id.*

106. See Andy Pollack, Religious Marshall Troops to Combat Birth Control, *Irish Times*, Aug. 20, 1994, at 6; Nicholas Schoon, Sacred and Secular Clash in Cairo: Sexual Freedom and Religion Are at Odds in the Population Debate—And Myths Are Confusing the Issues, *Independent (London)*, Sept. 5, 1994, at 7; Sen, *supra* note 46, at 11.

107. Woodward et al., *supra* note 86, at 83.

108. See Charles Clover, 180 Nations Set to Agree Curbs on Population, *Daily Telegraph (London)*, Aug. 18, 1994, at 4; Paul Gray, Empire of the Spirit (Man of the Year), *Time*, Dec. 26, 1994–Jan. 2, 1995, at 53, 56.

109. See *infra* note 203 and accompanying text.

110. See Schoon, *supra* note 106, at 7 (noting that Holy See had 17 members in its delegation to Cairo conference).

111. Anton La Guardia, EC Leads Effort to Defuse UN Abortion Row: Vatican Denies Any "Holy Alliance" With Leaders of Islam, *Daily Telegraph (London)*, Sept. 6, 1994, at 10 (quoting Vice President Gore).

112. Barbara Crossette, Population Meeting Opens with Challenge to the Right, *N.Y. Times*, Sept. 6, 1994, at A1 (quoting Norwegian Prime Minister Gro Harlem Brundtland).

113. See Barbara Crossette, Vatican Holds Up Abortion Debate at Talks in Cairo, *N.Y. Times*, Sept. 8, 1994, at A1.

114. Alan Cowell, Vatican Rejects Compromise on Abortion at UN Meeting, *N.Y. Times*, Sept. 7, 1994, at A1.

abortion issue, but "the effort stalled at the last minute when the Vatican raised objections."¹¹⁵ Muslim countries and the Vatican's traditional Latin American and African allies agreed on the compromise language, but "[s]tanding alone, Vatican diplomats blocked consensus."¹¹⁶ In an effort to reach consensus, almost all of the other 170 nations agreed to insert the following clause sought by the Holy See: "in no case should abortion be promoted as a method of family planning."¹¹⁷ Notwithstanding the addition of this proviso, the Holy See continued to object to compromise language that guaranteed safe abortion services and reliable counseling to women seeking abortions in countries where abortion is legal.¹¹⁸ The Holy See wanted no implication in the final document that abortion is legitimate.¹¹⁹

On September 7, 1994, the Vatican was able to postpone debate over the abortion issue for another two days in an "unexpected maneuver . . . that angered many participants in the United Nations population conference."¹²⁰ Once again, the Holy See objected to a single paragraph in a 113 page document that guaranteed safe abortion in those countries in which it is legal.¹²¹

"Is the Vatican ruling the world? Is the Vatican deciding what every country must have?" demanded Maher Mahran, Egypt's Population Minister. "The Vatican has a population growth rate of zero, and it is in Italy, which has one of the lowest growth rates in the world."¹²² "We respect the Vatican. We respect the Pope. But if they are not going to negotiate, why did they come?"¹²³ Similarly, Lady Chalker, Britain's Overseas Development Minister, stated, "This conference is not, and was never expected to be, a conference on abortion."¹²⁴ A column in *USA Today* observed: "The Roman Catholic Church, claiming the prerogatives of a secular state, is working feverishly to heap its anti-abortion doctrine

115. John Lancaster & Boyce Rensberger, *Abortion Objections Stall Forum: Vatican Rejects Cairo Compromise as Unacceptable*, Wash. Post, Sept. 7, 1994, at A1.

116. Cowell, *supra* note 114, at A1; see also Dominic Evans, *Vatican Stands Alone Against Compromise over Abortion*, Herald (Glasgow), Sept. 7, 1994, at 4 ("The Vatican today unilaterally blocked consensus on a key part of UN population document on abortion."); Lancaster & Rensberger, *supra* note 115, at A1 (reporting "that the Vatican appeared to be the principal holdout").

117. Lancaster & Rensberger, *supra* note 115, at A1.

118. See *id.*

119. See *id.*

120. Crossette, *supra* note 113, at A1.

121. The controversial paragraph 8.25 read in part: "In no case should abortion be promoted as a method of family planning. . . . [A]ll attempts should be made to eliminate the need for abortion. In circumstances in which abortion is legal, such abortion should be safe. . . . In all cases, women should have access to quality services for the management of complications arising from abortion." Crossette, *supra* note 113, at A8.

122. Ramon G. McLeod, *Harsh Criticism for Vatican's Abortion Stand: Egypt Leads Counterattack*, S.F. Chron., Sept. 8, 1994, at A1 (quoting Maher Mahran).

123. Crossette, *supra* note 113, at A1 (quoting Maher Mahran).

124. John Hooper, *Protest at Vatican Abortion Block*, Guardian, Sept. 8, 1994, at 22 (quoting Lady Chalker).

upon a gathering of nations.”¹²⁵ There were widespread accusations that the Vatican had “hijacked” the Cairo conference and held the world hostage to its anti-abortion stand.¹²⁶ As a result of the Vatican’s holdout, delegates charged that the more important areas of the draft proposal were being ignored.¹²⁷ Nafis Sadik, the Secretary General of the conference, said “‘[t]he African countries are complaining to me bitterly that we have spent days on one paragraph when they wanted to discuss broad population policy and issues like how aid will be channeled to them.’”¹²⁸ Because UN conferences prefer to operate by consensus, however, participants at the Cairo conference made every effort to ensure that all states agreed to the final document.¹²⁹

On September 10, the Vatican finally surrendered and announced that it would set aside its objections to references to “safe abortion” and “family planning.”¹³⁰ In a written statement issued at the closing of the conference, the Holy See stated that it had joined the consensus in a “partial manner.”¹³¹ The Holy See agreed to join the consensus on six chapters of the Programme of Action, but “because of its specific nature [did] not find it appropriate to join the consensus on the operative chapters of the document.”¹³² Nor did the Holy See join the consensus on Chapters VII and VIII which concerned reproductive health.¹³³ In the

125. DeWayne Wickham, *Why Let Pope Dictate Population Policy?*, USA Today, Sept. 7, 1994, at 11A.

126. See Kim Murphy, *Abortion Accord Unravels at Talks*, L.A. Times, Sept. 8, 1994, at A1 (“There are charges that the Vatican has ‘hijacked’ Cairo Conference.”); Boyce Rensberger & John Lancaster, *Vatican Abortion Stance Riles Many at Forum*, Wash. Post, Sept. 8, 1994, at A30; see also Jessica Mathews, *The Abortion Distraction: The True Subject at Cairo is Population—It’s a Lot More Urgent than Some Think*, Wash. Post, Sept. 12, 1994, at A23 (“Delegates to the Cairo population conference are baffled and angry that so much of a meeting on which so much rides should have been hijacked by the Vatican.”); Bruce Wallace, *The Power of the Pope: Pope John Paul II Flexes His Moral Muscles on the World Stage*, Maclean’s, Sept. 19, 1994, at 30, 30 (“The world’s smallest state is making the biggest headlines these days.”).

On September 29, 1994, the European Community adopted a resolution accusing the Vatican of forcing the Cairo conference “up the ‘blind alley’ of abortion,” thereby preventing the issues of overpopulation and development from being properly debated. See *Rancor Continues Over Population Conference*, 111 *Christian Century* 1039, 1039–40 (1994).

127. See Rensberger & Lancaster, *supra* note 126, at A30.

128. See Alan Cowell, *As Abortion Fight Rages, Population-Plan Accord Nears*, N.Y. Times, Sept. 9, 1994, at A10 (quoting Conference Secretary General Sadik).

129. See McLeod, *supra* note 122, at A1.

130. See Barbara Crossette, *Vatican Drops Fight Against U.N. Population Document*, N.Y. Times, Sept. 10, 1994, at A5; Vivienne Walt, *Vatican Won’t Block Compromise: Lets Language on Abortion Stand*, *Newsday* (N.Y.), Sept. 10, 1994, at A10.

131. *Cairo Report*, *supra* note 65, at 147.

132. *Id.* The operative chapters of the report, chapters XII to XVI, concerned national and international action plans to implement the goals of the conference. See *id.* at 7.

133. See *id.* at 147.

end, the Vatican formally expressed its general reservations¹³⁴ on eight chapters, and also listed reservations on certain terms such as "reproductive health."¹³⁵

The Holy See's obstinate intervention throughout the Cairo conference prompted criticism of its status at the United Nations. Many diplomats asked whether it was "appropriate to have a religion represented at a convocation of nation states."¹³⁶ Critics of the Vatican argued that "unlike all other states which have to govern people with health problems and formulate population policies, the Vatican was in Cairo principally to defend the tenets of a religion."¹³⁷ Werner Fornos, president of the Population Institute, remarked that "[t]here are no women and children in the Vatican, and yet they are making policy for women and children around the world."¹³⁸

2. *The Holy See at the Beijing Conference.* — The Holy See maintained a lower profile in the Fourth World Conference on Women held in Beijing in 1995, undoubtedly as a reaction to the criticism it received at Cairo. Even so, the Holy See's involvement at the Beijing conference followed the same three stage pattern: first, pressure in the international sphere; second, involvement with the preparatory meetings; and finally, intense

134. The Vienna Convention on the Law of Treaties defined the term "reservation" as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 2(1)(d), 1155 U.N.T.S. 331, 333.

Generally, a law of reservations that allows a state to amend the treaty results in greater participation in the agreement thereby giving the treaty increased consensual force. The use of reservations, however, may undermine the integrity and purpose of the treaty. See Catherine L. Piper, Note, Reservations to Multilateral Treaties: The Goal of Universality, 71 Iowa L. Rev. 295, 297 (1985).

As mentioned previously, the Programs of Action are not binding upon the signatory states, as are treaties. The law of treaties has a rich jurisprudence with regard to the legal significance of reservations, but does not shed light on agreements such as the Program of Action. It would appear, in the present case, that the Holy See's reservations indicate no more than its lack of acceptance of certain terms and principles of the Cairo Programme of Action.

135. See Cairo Report, *supra* note 65, at 148-49. The Holy See listed reservations about the terms "sexual health," "sexual rights," "reproductive health," and "reproductive rights." It reiterated its ban on artificial contraceptives as being "morally unacceptable." *Id.* at 148. The Holy See expressed reservations about the term "couples and individuals," understanding it to mean the individual man and woman who constitute the married couple. See *id.*

136. Mark Nicholson, Vatican Makes Waves at Cairo Conference, *Fin. Times* (London), Sept. 8, 1994, at 4; see also Peter Hebblethwaite, How Many Divisions Has the Pope?, *Guardian*, Sept. 10, 1994, at 23 ("Why should this mini-state, with only male citizens, have so much power?"); Hans Kung, P.S.: Lonely Power of Vatican City, *Guardian* (London), Sept. 16, 1994, at 22 ("The special status of the Vatican 'state' at UN conferences is questioned on many sides.").

137. Nicholson, *supra* note 136, at 4.

138. Hebblethwaite, *supra* note 136, at 23 (quoting Werner Fornos).

lobbying at the conference itself. In a break with tradition, the Holy See delegation was headed by a woman, Harvard Law Professor Mary Ann Glendon.¹³⁹

The Holy See's strategy before the Beijing conference began was low key compared to its pre-Cairo participation, but it still attempted to influence the draft document that ultimately defined the conference's agenda.¹⁴⁰ In anticipation of the Beijing conference, the Pope issued a "Letter to Women" apologizing for the church's complicity in denigrating women.¹⁴¹ The Pope's letter begins by thanking mothers, wives, daughters, sisters, and working women.¹⁴² The letter advocates "equal pay for equal work, protection for working mothers, fairness in career advancements, [and] equality of spouses with regard to family rights."¹⁴³ The Pope's letter was seen as a "strategic move" aimed at garnering support for the Holy See's position at Beijing.¹⁴⁴ The Pope received Gertrude Mongella, the Secretary General of the Beijing conference, at the Vatican several months before the conference began.¹⁴⁵ The Vatican attempted to silence its critics by asking the United Nations to deny certain religious NGOs, such as Catholics for a Free Choice, an organization that opposes the Holy See's stance on contraception and abortion, permission to attend the Beijing conference.¹⁴⁶ Frances Kissling, the president of Catholics for a Free Choice, stated: "'[t]his is the same misuse of the Holy See's status as an observer at the United Nations that they were so roundly criticized for in Cairo—that they would take an internal church dispute between some adherents to Catholicism and the hierarchy and turn it into a U.N. matter.'"¹⁴⁷ The Holy See's attempt to block its critics from attending the conference underscores its willingness to influence the Program of Action at almost any cost.

139. See Holy See Statement of Prof. Mary Ann Glendon, Head of the Delegation of the Holy See to the Fourth World Conference on Women (Sept. 5, 1995) (on file with the Columbia Law Review).

140. The 150-page Platform of Action which emerged from the Beijing conference called for women's empowerment, including the right of women to control their fertility, equal participation in society, the promotion of women's economic independence, and the elimination of all forms of violence against women. See Beijing Report, *supra* note 44, at 5-7.

141. See Pope John Paul II, Letter to Women, 25 *Origins* 137, 139 (1995).

142. See *id.* at 140.

143. *Id.* at 140.

144. See Kenneth L. Woodward, *Who's Sorry Now?*, *Newsweek*, July 17, 1995, at 65.

145. See Pope John Paul II, Address to Mrs. Gertrude Mongella, Secretary General of the Fourth World Conference on Women of the United Nations (May 26, 1995) (on file with the Columbia Law Review).

146. See Barbara Crossette, U.N. Talks On Women Under Fire: Vatican and China Seek to Bar Critics, *N.Y. Times*, Mar. 17, 1995, at 7.

147. *Id.* (quoting Frances Kissling).

The Holy See was also an active participant at all the regional and preparatory meetings for the Beijing conference.¹⁴⁸ At the PrepCom Session in March, the Holy See, joined by Catholic and Muslim states, challenged one third of the draft Platform of Action and square bracketed all references to "gender" and "gender equality."¹⁴⁹ Shortly before the Beijing conference began, the Holy See issued a statement of its position on the Platform of Action,¹⁵⁰ objecting to references to abortion and questioning the meaning of "gender," "sexual orientation," and "lifestyle."¹⁵¹

As at the Cairo conference, the Holy See lobbied to have the words "unsafe abortion," "unwanted pregnancy," "contraception," "sex education," and "reproductive health" excised from the draft document.¹⁵² Although the Holy See eventually joined the Platform of Action, it added a list of reservations to the document registering disagreement with paragraphs concerning sexual and reproductive rights such as access to contraceptives.¹⁵³

This overview of the Holy See's involvement in the Cairo and Beijing conferences underscores the power it wields as a result of its Non-Member State Permanent Observer designation at the United Nations. As the Vatican demonstrated at Cairo and Beijing, this designation is no mere formality, but rather translates into tangible power on the world stage. Because UN conferences operate by consensus, the Holy See was able, on at least two occasions, to thwart compromise even though it was the only state objecting to the Program of Action. Doubts were raised at both conferences about the Holy See's "state" status. The next Part examines the Holy See's claim to statehood.

148. The Holy See sent a delegation to five regional meetings: Asia-Pacific (Jakarta, Indonesia, June 1994); Latin America-Caribbean (Mar del Plata, Argentina, September 1994); Europe (Vienna, Austria, October 1994); Western Asia (Amman, Jordan, November 1994); and Africa (Dakar, Senegal, November 1994). The Holy See also participated in the 39th Session of the Commission on the Status of Women, held in New York, at which the Beijing conference's Platform of Action was negotiated. See Statement by Archbishop Jean-Louis Tauran, *The Holy See's Position on the Draft of the Platform for Action for the Fourth World Conference on Women 1* (May 26, 1995) (on file with the Columbia Law Review).

149. See Editorial, *Is the Patriarch a Feminist?*, *America*, July 29, 1995, at 3.

150. See Statement of Archbishop Jean-Louis Tauran, *supra* note 148.

151. See *id.* at 2, 5.

152. See Susan V. Lawrence & Emily MacFarquhar, *Drawing Battle Lines in Beijing*, *U.S. News & World Rep.*, Sept. 11, 1995, at 43, 43.

153. See Beijing Report, *supra* note 44, at 161-65.

The Holy See expressed reservations about the terms "couples and individuals," "reproductive rights," "sexual health," and "gender." It refused to endorse the use of condoms even to prevent the spread of the AIDS virus. See *id.* at 163. The Holy See also objected to any wording that appeared to condone homosexuality or abortion. See *id.* at 164. For the legal significance of reservations, see *supra* note 134.

II. THE INTERNATIONAL STATUS OF THE HOLY SEE

The Holy See, rather than the Vatican City, maintains relations with the United Nations.¹⁵⁴ The Holy See and the Vatican City are distinct entities that should not be confused.¹⁵⁵ The Holy See, a non-territorial entity composed of the Pope and the Curia,¹⁵⁶ is the government of the Roman Catholic Church.¹⁵⁷ The Vatican City is a 109 acre enclave located within Rome.¹⁵⁸

Until 1870, the Pope was the monarch of a defined territory known as the Papal States.¹⁵⁹ Italy annexed the Papal States in 1870, thus depriving the Holy See of its temporal power.¹⁶⁰ The opinion of most legal theorists was that the Holy See thereby lost its claim to statehood.¹⁶¹ To compensate for this loss of territory, the Italian Parliament passed the "Law of Guarantees" in 1871, which provided the Pope with those rights and privileges necessary to execute his spiritual mission.¹⁶² No Pope formally recognized the relationship between the Holy See and Italy as cre-

154. See Oppenheim, *supra* note 3, at 328 n.6.

155. See *supra* note 10.

156. See Cardinale, *supra* note 3, at 85.

157. See 5 *Worldmark Encyclopedia (Europe)*, *supra* note 57, at 469.

158. For histories of the Holy See and the papacy, see Joseph Bernhart, *The Vatican as a World Power* (George N. Shuster trans., 1939); Carl C. Eckhardt, *The Papacy and World Affairs* (1937).

159. Even though the Popes were monarchs of the Papal States, their position was "anomalous." The influence and respect accorded to the Pope by other states was due in great part to his being the head of the Roman Catholic Church. See Lassa Oppenheim, *International Law* 150 (1905).

160. See Crawford, *supra* note 3, at 153.

161. See Fenwick, *supra* note 3, at 371. The issue of whether the Holy See continued to enjoy full international personality has been hotly debated since 1870. The issue is an important one, for if the Holy See did lose its sovereignty, it would have been incapable of signing the Lateran Treaty. For an intermediate position, see Oppenheim, *supra* note 159, at 153 (stating that after 1870 the Holy See was not a state but "ha[d] a *quasi* international position").

Other scholars, however, argued that the Holy See continued to be a subject of international law (though not necessarily a state) after the 1870 annexation of the Papal States. See, e.g., Crawford, *supra* note 3, at 157 (arguing that Holy See retained "degree of international personality"); Kunz, *supra* note 3, at 311 ("[T]he Holy See remained . . . a subject of general international law . . . between 1870 and 1929.").

Those scholars who claim that the Holy See retained international personality despite its lack of territory rely in large part on the Holy See's relations with other states between 1870 and 1929. The Holy See conducted concordats with other states, which, according to some scholars, were international treaties. See, e.g., Cumbo, *supra* note 3, at 607 ("[T]he most weighty arguments in favour of the personality of the See are the Concordats."). But see Mario Falco, *The Legal Position of the Holy See Before and After the Lateran Agreements* 16 (A.H. Campbell trans., 1935) (arguing that concordats are not international treaties); Ireland, *supra* note 3, at 288 (same).

162. See Ireland, *supra* note 3, at 271. These privileges included personal inviolability, freedom of communication, the right to keep an armed guard, and the right to send and receive envoys. See *id.*

ated by the Law of Guarantees.¹⁶³ The Law of Guarantees constituted a municipal law of Italy and did not confer any international status upon the Pope.¹⁶⁴

The "Roman Question" was resolved in the Lateran Treaty of 1929 between Italy and the Holy See.¹⁶⁵ The Lateran Treaty provided for the creation of the Vatican City State.¹⁶⁶ In Article 3 of the Lateran Treaty, Italy declared that the Holy See has "full ownership, exclusive and absolute power, and sovereign jurisdiction over the Vatican."¹⁶⁷ Italy also recognized the sovereignty of the Holy See in the international sphere.¹⁶⁸

There remains, however, considerable confusion about whether sovereign statehood is vested in the Holy See or in the Vatican City. The Holy See claims that its sovereignty is based upon the Roman Catholic Church's "conception of itself as a sovereign entity on par with secular sovereign states."¹⁶⁹ The papacy does not base the independence of the Holy See on its territorial enclave in Rome, but rather upon "the Pope's representation of some 800 million Catholics in his capacity as Bishop of

163. See Falco, *supra* note 161, at 13-14; Oppenheim, *supra* note 3, at 326. Although the Popes refused to recognize the Law of Guarantees, in practice they made use of the Law's provisions. See *id.*

164. See Angelo P. Sereni, *The Italian Conception of International Law* 188-89 (1943).

165. See Lateran Treaty, *supra* note 54, at 668. At the time the Lateran Treaty was signed, it was controversial whether it was indeed a treaty under international law. The conventional understanding is that a treaty has to be conducted between states. Some scholars argued that the Lateran Treaty was signed between a state (Italy) and a non-state (the Holy See), and as such, was not a treaty but a concordat. (Concordats were agreements that foreign states conducted with the Holy See. See Oppenheim, *supra* note 3, at 326.) This contention was based on the premise that the Holy See, having lost its dominion over the Papal States, could no longer be considered a state. Neither could the Vatican be the signatory as the Lateran Treaty itself was the instrument which created the Vatican state. For an excellent analysis and summary of the debate, see Falco, *supra* note 161, at 23-28. Falco's resolution of the problem is that international treaties do not necessarily have to be conducted between states. See *id.* at 28.

166. Italy recognized the "state of the City of the Vatican under the sovereignty of the Sovereign Pontiff." See Lateran Treaty art. 26, *supra* note 54, at 674.

The Lateran Treaty was accompanied by a Concordat and a Financial Convention. The Concordat, signed by Italy and the Holy See, regulates the position of religion and the Catholic Church in Italy. See Concordat, Feb. 11, 1929, Holy See-Italy, reprinted in 3 Peaslee, *supra* note 54, at 675. Italy agreed in the Financial Convention to provide the Holy See with a payment of approximately \$40 million in cash and \$60 million in bonds to compensate for the loss of the papal states. See Ireland, *supra* note 3, at 280-81; George H. Williams, John Paul II's Concepts of Church, State, and Society, 24 *J. Church & St.* 463, 483 (1982). The Concordat and the Financial Convention were revised in 1984. See Oppenheim, *supra* note 3, at 327.

167. Lateran Treaty art. 3, *supra* note 54, at 668.

168. See *id.*, art. 1, *supra* note 54, at 668.

169. Mark T. Van Der Molen, Note, *Diplomatic Relations Between the United States and the Holy See: Another Brick from the Wall*, 19 *Val. U. L. Rev.* 197, 199 (1984); see also Francis X. Murphy, *Vatican Politics: Structure and Function*, 26 *World Pol.* 542, 543-44 (stating that Holy See's claim to sovereignty often is based upon "Church's traditional and universal character").

Rome and Supreme Pastor of the Holy See.”¹⁷⁰ Yet the Church has claimed the need for a secular domain to assure the Holy See full autonomy in the exercise of its mission.¹⁷¹

There have been numerous attempts to classify the nature of the relationship between the Holy See and the Vatican City with the view to determine which, if either, constitutes the “state” under international law. In general, there are three classifications of the relationship between the Holy See and the Vatican City. The first, and most widely held theory, is that the Holy See is the sovereign entity which governs the Vatican as a vassal state.¹⁷² According to adherents of the second theory, the Vatican City is the state and the Holy See is its government.¹⁷³ The third theory posits that both the Holy See and the Vatican City are international per-

170. Francis X. Murphy, *Vatican Politics: The Metapolitique of the Papacy*, 19 *Case W. Res. J. Int'l L.* 375, 375 (1987).

171. See Maria L. Hekker, Note, *Constitutional Issues Raised by Diplomatic Relations Between the United States and the Holy See*, 15 *Hastings Const. L.Q.* 101, 103 (1987).

172. See Samuel W. Bettwy, *United States-Vatican Recognition: Background and Issues*, 29 *Cath. Law.* 225, 238 (1984); Bettwy & Sheehan, *supra* note 61, at 9 (“Vatican City is but a vassal State of the Holy See.”); Walsh, *supra* note 10, at xxi-xxii (“The Holy See is, and has long been, recognized in international law as itself a sovereign entity. . . . [T]he Vatican City would seem to be not itself a sovereign entity but a vassal state of the Holy See.”). In international law, vassal states possess only those rights and privileges which have been expressly granted to them. See *Black’s Law Dictionary* 1554 (6th ed. 1990).

In keeping with this line of reasoning, the Vatican, although a body distinct from the Holy See, is not a sovereign state. See Kunz, *supra* note 3, at 313 (“This state of the City of the Vatican is a state, a subject of international law, different from the Holy See. . . . But it is not a sovereign state. . . . Its constitution is not autonomous, but derived from the Holy See. It is a vassal state of the Holy See.” (footnotes omitted)); Sereni, *supra* note 164, at 293 (noting that the Vatican is “owned entirely by its sovereign, the Holy See”); Walsh, *supra* note 10, at xxi (“Vatican City is not, as it is usually presented, a sovereign entity.”).

Support for this view is found in the preamble of the Lateran Treaty which declares the “necessity . . . of constituting the ‘City of the Vatican’ . . . by recognizing the full ownership, exclusive and absolute power, and sovereign jurisdiction of the Holy See over this territory.” See *Lateran Treaty*, preamble, *supra* note 54, at 668. Articles 2, 3, 4 and 24 of the *Lateran Treaty* also refer to the sovereignty of the Holy See over the Vatican. See *id.* arts. 2-4, 24, *supra* note 54, at 668-69, 674. Furthermore, it was the Holy See, in its spiritual capacity, and not the Vatican City, which was a party to the *Lateran Treaty*. Its fundamental laws are determined by the Pope as head of the Roman Catholic Church and by the Holy See as the supreme governing body of the Church. See *Cumbo*, *supra* note 3, at 613-14. Its purpose is to provide a territorial base for the Holy See. See *Walsh*, *supra* note 10, at xxi.

173. See *Crawford*, *supra* note 3, at 157; *Oppenheim*, *supra* note 3, at 328. In the *Lateran Treaty*, Italy recognized the “state of the City of the Vatican under the sovereignty of the Sovereign Pontiff.” *Lateran Treaty* art. 26, *supra* note 54, at 674. According to certain scholars, the Vatican fulfills the requirements of statehood under international law. Furthermore, the Vatican is endowed with legislative and judicial authority within its territory. The Vatican has been involved in international affairs and is party to many multilateral and bilateral treaties. See *Crawford*, *supra* note 3, at 155. Under this view, the Holy See is often characterized as having a dual role. The primary role is to exercise its spiritual sovereignty as head of the Roman Catholic Church. See *Van Der Molen*, *supra* note 169, at 198. Its secondary, temporal role is to govern the Vatican City. See *Crawford*, *supra* note 3, at 160 (claiming that Holy See as government of Vatican has “an additional

sonalities joined in a "real union."¹⁷⁴ Irrespective of classification, it is clear that the Holy See/Vatican City claim to statehood is based on some relationship of the two entities.¹⁷⁵ The question still remains, however, whether the Holy See/Vatican City, considered together in varying combinations, satisfy the requirements for statehood in international law.

A. *The Traditional Meaning of Statehood*

The petition circulated at the Beijing conference¹⁷⁶ demanded that the Holy See's Non-Member State Permanent Observer status at the United Nations be revoked on the grounds that the Holy See does not satisfy the requirements of statehood.¹⁷⁷ In this section, the traditional criteria of statehood will be applied to both the Holy See and the Vatican to determine whether either of these entities constitutes a state.

Before applying the formal criteria of statehood, it is important to note the debate between proponents of the constitutive and declaratory theories of state recognition.¹⁷⁸ The question is whether a previously unrecognized entity becomes a state because it is recognized by other states as such, or whether it becomes a state because it has attained the factual

non-territorial status, which is in practice more significant than its status *qua* government of the City of the Vatican").

In 1984, after the United States established full diplomatic relations with the Holy See, the State Department justified this move by emphasizing this (alleged) dual role of the Holy See. The U.S. government, in order to avoid charges of Establishment Clause violations, argued that it was merely engaging in relations with the Holy See as the government of the *secular* Vatican City. See Van Der Molen, *supra* note 169, at 198. For a discussion of why the characterization of the Vatican City as a "secular" state is inaccurate, see *infra* text accompanying notes 278-285.

174. Falco, *supra* note 161, at 41 (emphasis omitted); see also *id.* ("Once it is proved that the Vatican City is a state . . . there are now two international law persons, the Holy See and the Vatican City.").

The nature of a real union is described as "two institutions [which] keep their separate internal and international personality, although for organic reasons inherent in their structure they are joined in a permanent manner by having a common supreme head." *Id.* at 41-42. As the supreme head of both the Holy See and the Vatican City, the Pope unites these two entities. Another explanation is provided by Cardinale, who posits instead that the Pope, as sovereign of the Roman Catholic Church and the Vatican City, "uses the Holy See as the common supreme organ through which he exercises his sovereignty with regard to both these international bodies." Cardinale, *supra* note 3, at 116. This latter view is subject to criticism because it relies on an untenable assumption that a religious organization can be vested with an international personality amounting to statehood.

175. See Oppenheim, *supra* note 3, at 328 (stating that despite the difficulty in classifying the relationship, "it is accepted that in one form or the other there exists a state possessing the formal requirements of statehood and constituting an international person recognised as such by other states").

176. See *supra* notes 1-8 and accompanying text.

177. For a list of the formal requirements of statehood, see *infra* text accompanying note 191.

178. See Ti-Chiang Chen, *The International Law of Recognition* 13-14 (1951); Crawford, *supra* note 3, at 16-25.

indicia of statehood. According to the constitutive theory of recognition, it is "recognition [by other states] which constitutes the new state as a member of the international community."¹⁷⁹ The act of recognition by existing states alone creates the legal personality of the emerging state.¹⁸⁰ Adherents of the constitutive theory would argue that the Holy See is a state because it has been recognized as such by other states, without respect to its inability to satisfy the formal requirements of statehood.¹⁸¹ According to the declaratory theory, however, a state is a subject of international law only after it has satisfied the formal criteria of statehood. Under this view, recognition is merely a political acknowledgment of the existence of a state as a matter of fact, and does not "constitute the legal personality of the State."¹⁸²

Recent scholarship has brought the difficulties inherent in the constitutive position under attack.¹⁸³ A significant problem with the doctrine of recognition is that it fails to indicate how many states must recognize the new state.¹⁸⁴ Another difficulty is the doctrine's relativism: a state's legal existence is dependent upon its relations with other states.¹⁸⁵ The constitutive theory also would seem to imply, contrary to actual practice, that the refusal by one state to recognize a well-established state would thereby extinguish the latter state's international personality.¹⁸⁶ Furthermore, the doctrine does not explain the legal status of a state that is recognized by some states but not by others.¹⁸⁷ The constitutive theory also has been criticized for giving individual states the "arbitrary power" to refuse to recognize an entity as a state.¹⁸⁸ Due to the shortcomings of the constitutive theory, the declaratory theory is now "predominant"¹⁸⁹ and preferred.¹⁹⁰

179. Oppenheim, *supra* note 3, at 129. The most prominent explanation of the constitutive view is found in Hersch Lauterpacht, *Recognition in International Law* (1947). Some scholarship suggests that membership in the UN is a modern form of recognition, although scholars are divided on the issue. See John Dugard, *Recognition and the United Nations* 43 (1987).

180. See Oppenheim, *supra* note 3, at 128 ("The grant of recognition is an act on the international plane, affecting the mutual rights and obligations of states, and their status or legal capacity in general.").

181. For the formal requirements of statehood, see *infra* text accompanying note 191.

182. Chen, *supra* note 178, at 14.

183. For further discussion of the shortcomings of the constitutive view, see Brownlie, *supra* note 3, at 94.

184. See *id.* at 93.

185. See Crawford, *supra* note 3, at 19.

186. See Chen, *supra* note 178, at 16 ("The establishment of diplomatic relations is a super-addition to international personality, and not the essence of it.").

187. See Dugard, *supra* note 179, at 79.

188. See *id.* at 79-80.

189. Crawford, *supra* note 3, at 22, 24 ("[T]he international status of a State 'subject to international law' is, in principle, independent of recognition . . .").

190. See Brownlie, *supra* note 3, at 93 ("Cogent arguments of principle and the preponderance of state practice thus dictate a preference for [the] declaratory doctrine . . .").

Under the declaratory theory, statehood is dependent on the achievement of certain factual conditions. The classic definition of a state is found in Article 1 of the 1933 Montevideo Convention on Rights and Duties of States:

The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.¹⁹¹

It should be noted that the UN Charter does not define a "state" for purposes of UN membership. The criteria for eligibility for membership in the United Nations are set out in Article 4 of the UN Charter: "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations."¹⁹² The process for admission is found in Article 4, paragraph 2, which provides that a state's admission "will be effected by a decision of the General Assembly upon the recommendation of the Security Council."¹⁹³ The International Court of Justice has restated the criteria for membership as follows: "[T]o be admitted to membership in the United Nations, an applicant must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so."¹⁹⁴ Neither the UN Charter nor the court defined the requirements of statehood. The criteria for statehood in the Montevideo Convention are traditionally accepted¹⁹⁵ and will be employed in the analysis that follows.

B. *The Questionable Status of the Holy See as a State*

This Note contends that the Holy See and the Vatican City, whether considered together or apart, do not meet the traditional criteria of statehood.¹⁹⁶ Even those scholars who maintain that the Holy See/Vatican City constitutes a state caution that it is a special case. Oppenheim warns that "the constituent elements of statehood are, in the case of the Vatican City, highly abnormal or reduced to a bare minimum."¹⁹⁷ Similarly,

191. Convention on Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19, 25. Despite the widespread acceptance of this definition of statehood, international law scholars caution that the Convention's criteria are "no more than a basis for further investigation." Brownlie, *supra* note 3, at 74.

192. UN Charter art. 4, para. 1.

193. *Id.* art. 4, para. 2.

194. Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), 1948 I.C.J. 57, 62 (May 28).

195. See Brownlie, *supra* note 3, at 74.

196. A "state," which has full international personality, should be distinguished from an entity that may have some international personality. See Oppenheim, *supra* note 3, at 120 ("[A]n international person need not possess all the international rights, duties and powers normally possessed by states.").

197. Oppenheim, *supra* note 3, at 327.

Crawford admits that “[i]t cannot be denied that the position of the Vatican City is peculiar and that the criteria for statehood in its case are only marginally—if at all—complied with.”¹⁹⁸

1. *A Permanent Population.* — The first criterion of statehood is the existence of a permanent population.¹⁹⁹ The Holy See, which is the non-territorial administrative body of the Roman Catholic Church, is by definition devoid of a permanent population.²⁰⁰ Similarly, the Vatican City does not have a permanent population as the concept is generally understood. There are about 400 citizens of the Vatican City.²⁰¹ Other individuals are authorized to reside in the city temporarily but are not considered citizens.²⁰² The total number of inhabitants, citizens and non-citizens, is approximately one thousand.²⁰³

Citizenship in the Vatican is granted by the Pope and is established by residence within the city.²⁰⁴ Vatican citizenship is lost when residence in the city is voluntarily surrendered, authorization is revoked, or when the citizen’s employment comes to an end.²⁰⁵ When Vatican citizenship is lost, the holder returns to being a citizen of his or her previous country of citizenship.²⁰⁶ The Lateran Treaty provides that all cardinals, even if they reside in Rome outside the Vatican City, shall be considered citizens.²⁰⁷

The Constitutional Laws of the City of the Vatican provide that citizens are “[t]hose who reside in the City of the Vatican . . . because of their rank, office, service or employment.”²⁰⁸ The “population” of the Vatican City is thus composed “almost exclusively of persons residing

198. Crawford, *supra* note 3, at 154.

199. See *supra* text accompanying note 191.

200. See *supra* text accompanying note 10.

201. See 5 *Worldmark Encyclopedia (Europe)*, *supra* note 57, at 469; Walsh, *supra* note 10, at xxii (stating that there were 352 Vatican City citizens as of 1980).

202. See Cardinale, *supra* note 3, at 108.

203. See 1 *Countries of the World and Their Leaders* 645 (1996) [hereinafter *Countries of the World*]. There are other states, of course, with small populations: Liechtenstein (28,777), Nauru (8,100), Tuvalu (10,090). See *The Statesman’s Year-Book*, 1995-96, at 882, 979, 1293 (Brian Hunter ed., 132d ed. 1995). Crawford asserts that “no minimum limit is apparently prescribed” for the population’s size. Crawford, *supra* note 3, at 40; see also Nii Lante Wallace-Bruce, *Claims to Statehood in International Law* 53 (1994) (“[T]here must be people identifying themselves with the territory, no matter how small or large the population might be.”).

204. See *Constitutional Laws of the City of the Vatican*, Law No. 3, art. 1, reprinted in 3 Peaslee, *supra* note 54, at 687. If Vatican City residents, however, are on Italian territory, they are subject to Italian law or to the law of the state to which he or she belongs. See *Lateran Treaty* art. 9, *supra* note 54, at 670.

205. See *Constitutional Laws of the City of the Vatican*, Law No. 3, art. 6, reprinted in 3 Peaslee, *supra* note 54, at 687-88.

206. See Walsh, *supra* note 10, at xxii.

207. See *Lateran Treaty* art. 21, *supra* note 54, at 673.

208. *Constitutional Laws of the City of the Vatican*, Law No. 3, art. 1, reprinted in 3 Peaslee, *supra* note 54, at 687.

therein by virtue of their office,"²⁰⁹ such as dignitaries, officials, support staff, other employees and the staff of papal missions.²¹⁰ Vatican citizenship is extended to "the wife, children, parents, brothers, and sisters of a Vatican citizen, on the condition that they live with him and are authorized to reside in the City of the Vatican."²¹¹ The authorization for the children ceases automatically when the children reach the age of twenty-five and for daughters when they marry.²¹² The provision regarding family residence, however, does not apply to the majority of Vatican citizens and inhabitants who, by virtue of their office, are celibate clergy and nuns.²¹³ The population is not self-perpetuating, nor permanent, as the population is in every other state.²¹⁴

As Cardinale observes, "this population is very different from that of other States" in large part because of the absence of a national community.²¹⁵ Indeed, Vatican law does not speak of Vatican nationality, but rather of Vatican citizenship that is based on regular employment in the city.²¹⁶ Citizenship is thus "relative to a specific function which is wholly intended to serve the spiritual interests of the Catholic Church."²¹⁷ In other words, the "population" of the Vatican City is functional in nature because all "citizens" of the Vatican City are Church officials and employees and their "citizenship" is temporary.

The Vatican does not meet the requirement of a "permanent population."²¹⁸ The provisions regarding citizenship in the Vatican City underscore the temporary nature of the population,²¹⁹ and citizenship in the

209. Oppenheim, *supra* note 3, at 327-28.

210. See Cardinale, *supra* note 3, at 107.

211. Constitutional Laws of the City of the Vatican, Law No. 3, art. 2, reprinted in 3 Peaslee, *supra* note 54, at 687.

212. See *id.* art. 4, reprinted in 3 Peaslee, *supra* note 54, at 687.

213. See Mendelson, *supra* note 29, at 612 ("[I]t can hardly be said to have a permanent population capable of maintaining and reproducing itself. Apart from a few lay officials and their families, the population consists entirely of celibate clergy and nuns"); 5 Worldmark Encyclopedia (Europe), *supra* note 57, at 472 ("The labor force consists mainly of priests and other ecclesiastics"). Only 14 people were born within the Vatican City between 1929 and 1980. See Walsh, *supra* note 10, at xxii.

214. See Falco, *supra* note 161, at 38 (stating that Vatican "is different from any other state, even the smallest, because [of its] lack of a people in the true sense, a people which perpetuates itself naturally and is capable of development and expansion"); Mendelson, *supra* note 29, at 612 (noting that the Vatican "can hardly be said to have a permanent population capable of maintaining and reproducing itself").

215. Cardinale, *supra* note 3, at 107.

216. See Constitutional Laws of the City of the Vatican, Law No. 3, art. 1, reprinted in 3 Peaslee, *supra* note 54, at 687.

217. Cardinale, *supra* note 3, at 109.

218. See Crawford, *supra* note 3, at 40 (stating that population of Vatican City is challengeable "as much because of the professional and non-permanent nature of its population as its size").

219. See Ireland, *supra* note 3, at 275.

Vatican is, by definition, functional.²²⁰ It follows that the officials working in the Vatican City cannot be said to constitute a permanent population.

2. *A Defined Territory.* — The Vatican City, which has a total area of 109 acres,²²¹ is the smallest territory in the world that claims to be a state.²²² A state within a state—indeed, a state within a city—the Vatican City is located entirely within Rome.²²³ Approximately two-thirds of its area is covered by gardens and pavement, while another third is comprised of buildings.²²⁴ The Pope rules the Vatican City as an absolute sovereign, in both spiritual and temporal matters.²²⁵ The land is the private possession of the Holy See, with the Pope as its head administrator.²²⁶ Citizens or inhabitants of the Vatican City are not permitted to own real estate within the city.²²⁷ Furthermore, it is a violation of the law to provide lodging to others, however temporarily, without first obtaining authorization.²²⁸

Under international law, a state must possess some territory.²²⁹ The size of the state, however, is not relevant to its claim to statehood.²³⁰ States which occupy a small area (often referred to as micro-states) are valid entities provided that they exercise independence over the terri-

220. See Cardinale, *supra* note 3, at 109; 2 Charles Rousseau, *Droit International Public* 376 (1974) (“Le traité de Latran a donc établi . . . une nationalité fonctionnelle, qui a pour caractère dominant de n’être . . . ni perpétuelle ni exclusive.”) (The Lateran Treaty thus established a functional citizenship whose overall character is neither perpetual nor exclusive. (unofficial translation)).

221. See 1 *Countries of the World*, *supra* note 203, at 645; Walsh, *supra* note 10, at xxii.

222. The Vatican City is one-third the size of the next smallest state, Monaco. See Bettwy & Sheehan, *supra* note 61, at 9.

223. See 5 *Worldmark Encyclopedia (Europe)*, *supra* note 57, at 469.

224. See Walsh, *supra* note 10, at xxii. The buildings include St. Peter’s Basilica, the papal palace, museums, library, archives, administrative buildings and apartments. See 1 *Countries of the World and Their Leaders*, *supra* note 203, at 645.

225. See Walsh, *supra* note 10, at xxii; 5 *Worldmark Encyclopedia (Europe)*, *supra* note 57, at 470.

226. See Cardinale, *supra* note 3, at 106.

227. See *id.*; Walsh, *supra* note 10, at xxiii.

228. See *Constitutional Laws of the City of the Vatican*, Law No. 3, ch. 2, art. 18, reprinted in 3 Peaslee, *supra* note 54, at 690 (“No person, even though authorized to stay, may give lodging, temporary or permanent, with or without payment, without authorization of the governor or of the office designated for this purpose.”).

229. See Crawford, *supra* note 3, at 36 (“It is evident that States are territorial entities.”); *supra* text accompanying note 191 (listing possession of territory as criterion for statehood).

230. See Oppenheim, *supra* note 3, at 121. Brownlie states: “[H]owever small geographically or modest in resources, an entity is a ‘state’ for general purposes of international law provided the criteria of statehood are satisfied.” Brownlie, *supra* note 3, at 88. Other diminutive states include Nauru (eight square miles), Liechtenstein (60 square miles), and Monaco (369.9 acres). See *id.*; Bettwy & Sheehan, *supra* note 61, at 9.

tory.²³¹ Although the size of a state has, in theory, no bearing on its claim to statehood, the Vatican City's miniscule size is a "peculiarity."²³²

3. *Government.* — The third requirement for statehood is the existence of a government.²³³ A government has been defined as "one or more persons who act for the people and govern according to the law of the land."²³⁴ It is important to note that the administration of the Vatican City and of the Catholic Church is performed by the same entity. The Pope is both the "absolute monarch"²³⁵ of the Vatican City and the supreme head of the Roman Catholic Church worldwide.²³⁶ As sovereign of the Vatican City, the Pope "has full legislative, executive, and judicial powers."²³⁷ As head of the Church, the Pope enjoys "supreme and full power of jurisdiction . . . in matters of faith and morals, and in everything pertaining to the government and discipline of the Church."²³⁸ Most of the daily administration of the Holy See and the Vatican is conducted by the cardinals,²³⁹ who collectively form the College of Cardinals and who serve as the Pope's principal advisors and assistants.²⁴⁰ Apart from electing the Pope, they head the departments of the Roman Curia.²⁴¹

231. See Crawford, *supra* note 3, at 36–40.

232. See *id.* at 154.

233. Crawford notes that there is "a strong case for regarding government as the most important single criterion of statehood, since all the others depend upon it." *Id.* at 42.

234. Oppenheim, *supra* note 3, at 122 (footnote omitted); see also Wallace-Bruce, *supra* note 203, at 54 (defining government as "a coherent system of authority structures regulating all aspects of life within the territory under that government's control").

235. Falco, *supra* note 161, at 38.

236. See Ireland, *supra* note 3, at 281; see also Jean Neuvcelle, *The Vatican: Its Organization, Customs, and Way of Life* 25 (George Libaire trans., 1955) ("The Pope, according to Catholic dogma, is God's representative upon earth.").

237. *Constitutional Laws of the City of the Vatican*, Law No. 1, art. 1, reprinted in 3 Peaslee, *supra* note 54, at 677. See also Ireland, *supra* note 3, at 281 (stating the Pope "is the absolute head of the [Vatican], with the right to make and presumably freely to revoke such delegation of powers and functions of government as may from time to time seem to him suitable").

238. Cardinale, *supra* note 3, at 32. Under Catholic doctrine, the Pope is considered to be infallible with regard to faith or morals. See Murphy, *supra* note 170, at 384–85. The Pope holds the following titles: Incumbent of the Holy [Apostolic] See, Bishop of Rome, Vicar of Jesus Christ, Successor of the Prince of the Apostles, Supreme Pontiff of the Universal Church, Patriarch of the West, Primate of Italy, Archbishop and Metropolitan of the Province of Rome, Sovereign of the State of the Vatican City, and Servant of the Servants of God. See Williams, *supra* note 166, at 480.

239. The role of the cardinals is to advise the Pope; they may not impose their decisions upon him. See Peter Nichols, *The Politics of the Vatican* 134 (1968). For a more detailed description of the daily workings of the Roman Catholic administration, see Paul Hoffman, *O Vatican! A Slightly Wicked View of the Holy See* (1984); Neuvcelle, *supra* note 236; Corrado Pallenberg, *Inside the Vatican* (1960); George Seldes, *The Vatican: Yesterday—Today—Tomorrow* (6th ed. 1934); Bernard Wall, *The Vatican Story* (1956).

240. See 1996 *Catholic Almanac* 150 (Felician A. Foy & Rose M. Avato eds., 1996) [hereinafter *Catholic Almanac*].

241. See *id.* at 151.

The central administration of the Roman Catholic Church is conducted by the Curia, which is divided into nine Congregations (or ministries), three Tribunals,²⁴² and twelve Pontifical Councils, and Commissions.²⁴³ At the head of the Roman Curia is the Secretariat of State which is responsible for, among other things, relations with international organizations.²⁴⁴ The Secretariat of State consists of the Section for General Affairs, which conducts the daily business of the Holy See, and the Section for Relations with States, which handles foreign affairs.²⁴⁵ The Congregations are concerned with overseeing church doctrine, appointing bishops, overseeing missionary work and other matters affecting Roman Catholicism.²⁴⁶ The affairs of the Vatican City, on the other hand, are regulated by the Pontifical Commission for the Vatican City State.²⁴⁷ The Pontifical Commission has jurisdiction over technical services, postal and telegraph services, museums, personnel matters, medical services, central security, services for tourists, the radio system, the Vatican Observatory, and the papal villas.²⁴⁸

There is no clear delineation between the government of the Roman Catholic Church and the government of the Vatican City. For example, foreign affairs and relations with international organizations fall within the jurisdiction of the Roman Curia—the governing body of the Roman Catholic Church—and not with the Pontifical Commission for the Vatican City.²⁴⁹ Thus the “government” for international purposes, the Holy See, has as its primary task the administration of the Roman Catholic Church. The Pontifical Commission is not, strictly speaking, the “government” of the Vatican City, since it is mainly responsible for technical and other services, and does not maintain relations with foreign states or the United Nations.²⁵⁰ Not only is the “government” (i.e., the Holy See) charged with overseeing a religion, rather than a nation, there is also no “people” within the Vatican City over which such government has jurisdiction. All the citizens and inhabitants of the Vatican City form the government of the Roman Catholic Church.²⁵¹ The Holy See, which is

242. The three Tribunals—the Apostolic Penitentiary, the Roman Rota and the Supreme Tribunal of the Apostolic Signature—decide religious cases. Criminal cases generally are tried in Italy. See 5 *Worldmark Encyclopedia (Europe)*, supra note 57, at 471.

243. See 1 *Countries of the World*, supra note 203, at 646; Walsh, supra note 10, at xxvi–xxxiii.

244. See Walsh, supra note 10, at xxvi.

245. See *Catholic Almanac*, supra note 240, at 144.

246. See 1 *Countries of the World*, supra note 203, at 647. For a brief description of the functions of each department, see Walsh, supra note 10, at xxvi–xxxiii.

247. See Walsh, supra note 10, at xxiii. For a list of the various administrative departments of the Vatican City, see *id.* at xxiii–xxv.

248. See *id.*

249. See supra text accompanying notes 245–248.

250. See supra text accompanying notes 247–248.

251. See supra notes 208–210 and accompanying text.

no more than the administrative body of the Roman Catholic Church, does not constitute a "government" in the traditional sense.

4. *Relations with Other States and Independence.* — The fourth criterion of statehood, according to the Montevideo Convention, is the capacity to enter into relations with other states.²⁵² Although it is usually states which exercise this capacity, it is not seen as their exclusive prerogative.²⁵³ Relations with other states is a consequence, but not a criterion, of statehood.²⁵⁴ The real inquiry posed by the fourth criterion of the Montevideo Convention is whether the putative state is independent.²⁵⁵ As Crawford states, "[i]ndependence is the central criterion of statehood."²⁵⁶

In the Lateran Treaty of 1929, Italy recognized the full sovereignty of the Holy See in the international realm.²⁵⁷ The Holy See has full diplomatic relations with 157 countries.²⁵⁸ It cannot be denied that both the Holy See and the Vatican City have been party to numerous multilateral and bilateral treaties.²⁵⁹ Further evidence cited to support the Vatican's self-sufficiency is the existence of its military force (the Swiss Guard), its post office, bank, railway, publishing house, radio station, newspaper, the existence of Vatican coins and stamps, and Vatican passports.²⁶⁰ These characteristics constitute evidence of the Holy See's and the Vatican's independence.

The survival of the Holy See, however, is very dependent on Italy, which surrounds it completely. Italian police patrol St. Peter's Square.²⁶¹ The Vatican is dependent on Italy for all its essential services such as water, railroad services, telephone, radio, postal and telegraphic connections (at Italy's own expense).²⁶² Although the Vatican has its own coinage, Italian money is legal tender in the Vatican.²⁶³ The Italian Royal Mint is at the disposal of the Vatican for the production of Vatican coin-

252. See *supra* text accompanying note 191.

253. See Crawford, *supra* note 3, at 47.

254. See *id.* The requirement to have relations with other states is a proxy for determining whether a state is independent. Generally, a state that has the ability to engage in foreign relations is assumed to be independent. Other organizations may enter into relationships with states, but this fact alone does not make them independent states. See *id.*

255. See Brownlie, *supra* note 3, at 76.

256. Crawford, *supra* note 3, at 48; Wallace-Bruce, *supra* note 203, at 57; see also Brownlie, *supra* note 3, at 76 ("Independence has been stressed by many jurists as the decisive criterion of statehood." (footnote omitted)).

257. See Lateran Treaty art. 2, *supra* note 54, at 668.

258. See Catholic Almanac, *supra* note 240, at 47. For a detailed description of the Holy See's diplomatic corps, see Cardinale, *supra* note 3, at 140-177.

259. See Crawford, *supra* note 3, at 155. For a list of treaties, see Bettwy & Sheehan, *supra* note 61, at 21-31.

260. See 1 *Countries of the World*, *supra* note 203, at 645.

261. See Sereni, *supra* note 164, at 294.

262. See Lateran Treaty art. 6, *supra* note 54, at 669.

263. See Wall, *supra* note 239, at 127.

age.²⁶⁴ The Vatican lacks an economy²⁶⁵ and has no domestic or foreign trade.²⁶⁶ It is completely dependent on Italy for food and all other commodities.²⁶⁷ Italy also administers criminal prosecutions for the Holy See.²⁶⁸ In the Lateran Treaty, Italy guaranteed that envoys of foreign governments may cross Italian territory to reach the Vatican.²⁶⁹ The Vatican City is thus a tiny polity, incapable of policing itself or providing for its inhabitants, entirely contained within and dependent upon another state. Its very survival depends on Italy, and to this extent, the Holy See's independence is qualified.

5. *Summary.* — The application of the formal criteria of statehood to the Holy See shows that the Holy See falls short of the mark in many respects. The Holy See/Vatican City lacks a fundamental attribute of every other state in the world, namely, a permanent population.²⁷⁰ Furthermore, the government of the Vatican City is the central administration of the Roman Catholic Church.²⁷¹ Finally, the Holy See's dependence on Italy undermines its sovereignty.²⁷² The recognition accorded the Holy See by other states is said to outweigh its inability to meet the formal requirements of statehood.²⁷³ It must be remembered, however, that engaging in relations with other states is not the exclusive prerogative of states²⁷⁴ and that "recognition is not strictly a condition for statehood in international law."²⁷⁵

The next section of this Note demonstrates that the Vatican City is not a secular state separate from the Roman Catholic Church. It also

264. See Cardinale, *supra* note 3, at 121; Ireland, *supra* note 3, at 277.

265. The Vatican receives its financial support from charitable contributions, fees charged for various services, interest on investments, the sale of stamps, religious literature, other mementos, and museum admissions. The Vatican bank, The Institute for Religious Works, is believed to hold \$3 to \$4 billion in assets. See 5 *Worldmark Encyclopedia (Europe)*, *supra* note 57, at 471-72.

266. See *id.* at 472.

267. See *id.* The Vatican City has no shops, not even a corner grocery store. See *id.* Apart from a printing plant and a mosaic work studio, industry does not exist within the Vatican. See *id.*

268. Upon the request of the Holy See, Italy will prosecute crimes committed in the Vatican City. The Holy See will return to the Italian state any person seeking refuge in the Vatican who has been accused of a crime recognized by the laws of both states. See Lateran Treaty art. 22, *supra* note 54, at 673.

269. Article 12 of the Lateran Treaty provides that "[e]nvoys of foreign governments to the Holy See will continue to enjoy in the Kingdom all the prerogatives and immunities belonging to diplomatic agents according to international law." Lateran Treaty art. 12, *supra* note 54, at 671.

270. See *supra* Part II.B.1.

271. See *supra* Part II.B.3.

272. See *supra* notes 261-269 and accompanying text.

273. See Crawford, *supra* note 3, at 154 ("[R]ecognition by other States is of considerable importance especially in marginal or borderline cases."); Brownlie, *supra* note 3, at 67 ("[Holy See's] personality seems to rest partly on its approximation to a state in function, . . . and partly on acquiescence and recognition by existing legal persons.").

274. See *supra* notes 252-256 and accompanying text.

275. Crawford, *supra* note 3, at 74.

shows that the Holy See does not act as a state at the United Nations and its conferences, but acts instead as a religion.

C. *The Roman Catholic Church at United Nations Conferences*

The Roman Catholic Church has a unique position at the United Nations as the only religion accorded statehood status.²⁷⁶ Although it is not denied that the Holy See, as the supreme organ of government of the Roman Catholic Church,²⁷⁷ is a religious entity, it often is contended that the Holy See is the secular ruler of the Vatican City.²⁷⁸ The argument continues that as the secular ruler of the Vatican City, the Holy See does not act as a religious entity, but as a political state. This section argues that the Vatican City is not a secular state and cannot be conceived of as an entity separate from the Roman Catholic Church. Furthermore, even assuming that the Vatican City is secular in nature, the Holy See does not represent the interests of this secular state at the United Nations and its conferences. Rather, the Holy See represents and promotes the interests of the Roman Catholic Church.

The Lateran Treaty explicitly states that the "purpose" of the Vatican City is to assure "the Holy See . . . a situation of fact and of law that would guarantee to it absolute independence for the accomplishment of its high mission in the world."²⁷⁹ There is no dispute that "the Vatican City State was not established with an autonomous purpose but as a means to support a religious body."²⁸⁰ One scholar emphasizes that the Vatican City exists "*only* for the realization of the aims of the Catholic Church."²⁸¹ It is recognized in international law treatises that "unlike other States the Vatican City exists not to support its inhabitants but to provide a base for the central administration of a non-State entity, the Catholic Church."²⁸² Furthermore, the field of the Vatican's activities is "purely 'spiritual' " in

276. See *supra* notes 3–8 and accompanying text.

277. See *Cardinale*, *supra* note 3, at 85; James A. Coriden, *Diplomatic Relations Between the United States and the Holy See*, 19 *Case W. Res. J. Int'l L.* 361, 361 (1987) (calling Holy See, "the highest level of governance of the Roman Catholic Church" (footnote omitted)).

278. See *Bettwy & Sheehan*, *supra* note 61, at 13; *Hekker*, *supra* note 171, at 102.

279. *Lateran Treaty* preamble, *supra* note 54, at 668. In the same vein, *Cardinale* asserts that the Vatican City "was set up . . . for the purpose of assuring to the Holy See absolute and visible independence." *Cardinale*, *supra* note 3, at 99.

280. *Cardinale*, *supra* note 3, at 101.

281. *Sereni*, *supra* note 164, at 293 (emphasis added); see also *Bettwy*, *supra* note 172, at 234 (describing Vatican City as "means" to spiritual end).

282. *Crawford*, *supra* note 3, at 154. *Brownlie* writes that the Vatican City's "sole purpose is to support the Holy See as a religious entity." *Brownlie*, *supra* note 3, at 67. According to *Bettwy* and *Sheehan*, "[i]f not for the Catholic Church, there would be no Vatican City." *Bettwy & Sheehan*, *supra* note 61, at 10; see also *Avro Manhattan*, *The Vatican in World Politics* 29 (1949) (asserting that Vatican is merely seat of "central machinery" of Roman Catholic Church); *Walsh*, *supra* note 10, at xxi (stating that purpose of Vatican City is to "provide the papacy and the Roman Curia with a geographic base from which to exercise authority over the whole Roman Catholic Church"); *Bettwy*, *supra* note

nature and confined to the religious interests of the Roman Catholic Church.²⁸³ As such, the activity and authority of the Vatican City “are completely different from those existing in sovereign national states. Vatican City functions only for the aims of the Catholic Church.”²⁸⁴ As noted by one scholar, the “Vatican’s main purpose is to spread Christianity throughout the world.”²⁸⁵

Because the Vatican City was set up to further the ends of the Holy See, it “cannot be conceived separately from the visible Head of the Church, the Holy See and the Church herself.”²⁸⁶ More importantly, the two entities do not *operate* independently of each other.²⁸⁷ The government of the Roman Catholic Church and of the Vatican City are inextricably entwined. Indeed, as seen above, relations with other states are conducted by the Holy See and not by the Vatican City.²⁸⁸ Thus the Pope conducts relations with the United Nations as the head of the Holy See, a religious organization, and not as head of the Vatican City.²⁸⁹ In the same way that the purpose of the Vatican City is to support the Roman Catholic Church, the “population” of the Vatican City performs a specific function “which is wholly intended to serve the spiritual interests of the Catholic Church.”²⁹⁰ Furthermore, the territory of the Vatican City does not support a nation, but merely provides 100 acres of office space for the bureaucracy of the Roman Catholic Church.²⁹¹ The Vatican City cannot be conceived of separately from the Roman Catholic Church.

At UN conferences, the Holy See represents the Roman Catholic Church. The officials of the Holy See offer the clearest evidence that it participates in the United Nations as a religious organization. In a report issued by the Holy See in anticipation of the Beijing conference, the Holy See described itself as the supreme organ of government of the Catholic Church.²⁹² Furthermore, the report asserted that the specific mission of the Catholic Church is to proclaim the Christian faith to all humankind.²⁹³ The Vatican City is not mentioned in the report. Similarly, an

172, at 231–32 (“Vatican City does provide the Pope, as head of the Church, with an independent territorial base from which he can administer the Church.”).

283. Fenwick, *supra* note 3, at 373.

284. Van Der Molen, *supra* note 169, at 204.

285. Bettwy, *supra* note 172, at 257. Bettwy emphasizes that the “Vatican’s main purpose is to promote the teachings of the Roman Catholic Church.” *Id.* at 236.

286. Cardinale, *supra* note 3, at 99.

287. See Bettwy, *supra* note 172, at 233; see also Bettwy & Sheehan, *supra* note 61, at 20 (“Although Vatican City and the Catholic Church can be defined as separate, . . . in political reality they are inseparable.”).

288. See *supra* text accompanying notes 242–245.

289. See Van Der Molen, *supra* note 169, at 217.

290. Cardinale, *supra* note 3, at 109.

291. See Williams, *supra* note 166, at 483 (describing Holy See as “a global celibate bureaucracy”).

292. See Report of the Holy See in Preparation for the Fourth World Conference on Women 1 (on file with the Columbia Law Review).

293. See *id.*

apostolic attaché remarked that the Holy See's purpose at the United Nations is "to bring to the attention of the world the teaching of the Church."²⁹⁴ The Holy See acts at the United Nations "not as a West European power, but as a 'universal church' The whole force of the Holy See, starting from the Pope, is not military or economic. It is just moral force."²⁹⁵

Addressing the United Nations in 1979, Pope John Paul II affirmed the Catholic Church's distinctive spiritual mission in the United Nations. The Pope stated that "the nature and aims of the spiritual mission of the [Holy] See and the Church make their participation in the tasks and activities of the United Nations very different from that of the States, which are communities in the political and temporal sense."²⁹⁶ He affirmed that the Holy See, unlike other states which are "linked with territory and people," is the "representative of . . . the Catholic Church."²⁹⁷ The Holy See's Permanent Observer Mission at the UN wrote that "[a]s a full member of the international community, the Holy See finds itself in a very particular situation because it is spiritual in nature. Its authority . . . is *religious not political* The real and only realm of the Holy See is the realm of the *conscience*."²⁹⁸

According to Holy See officials, the Permanent Observer Mission of the Holy See at the United Nations engages in the spiritual mission of advancing the goals of the Roman Catholic Church. Thus, the Holy See, as the government of the Church, participates in the United Nations not as a state, but as a religion. The Roman Catholic Church, however, is not considered to be a state in international law,²⁹⁹ as it does not meet the formal requirements of statehood.³⁰⁰ Indeed, no religion can be said to be a state.³⁰¹ The Holy See's state status at the United Nations is problematic because the Holy See (a non-state entity) represents the Roman Catholic Church (a non-state entity).

One might argue that there are many states which are "religious" in nature, such as Iran or England. The Holy See cannot properly be compared to these states. The Queen of England is the titular head of both

294. Holy See Aims for Role as U.N.'s Conscience, N.Y. Times, Dec. 21, 1989, at A15.

295. *Id.*

296. Pope John Paul II, Address to the General Assembly, 1979 U.N.Y.B. 442 U.N. Sales No. E.80.1.8.

297. *Id.* at 443. The Pope went on to state that his invitation to speak at the UN "shows that *the United Nations accepts and respects* the religious and moral dimension of those human problems that the Church attends to, in view of the message of truth and love that it is her duty to bring to the world." *Id.*

298. Permanent Observer Mission of the Holy See, *The Holy See and the United Nations* 3 (1995) (emphasis added).

299. See Falco, *supra* note 161, at 15 ("[I]t is impossible to attribute legal personality to the universal Church."); Bettwy, *supra* note 172, at 225 ("[T]he Church is not a state, nor does it claim to be one."); Cumbo, *supra* note 3, at 605 ("That the Catholic Church . . . has no international personality is a real fact.").

300. See *supra* Part II.B.

301. See Cumbo, *supra* note 3, at 603.

the government and the Anglican Church.³⁰² If the Anglican Church were disestablished, the secular government in England would continue to exist, as would England's ties to the United Nations. Furthermore, the representatives of the United Kingdom do not represent the Anglican Church at the United Nations; they instead protect and advance the interests of their citizens. In contrast, the true nature of the Holy See is that of a spiritual sovereignty that maintains diplomatic relations with states regardless of its secular authority over the Vatican City.³⁰³ The Pope engages in diplomatic relations with government leaders in his capacity as head of the Holy See rather than as ruler of the Vatican City.³⁰⁴ The Holy See's participation at the United Nations is, by its own admission, purely spiritual in nature.³⁰⁵

Iran has been an Islamic Republic since 1979.³⁰⁶ Its current Constitution provides for an Islamic theocracy.³⁰⁷ Guidance of the country is entrusted to the spiritual leader, the *faqih*, who is the ultimate decisionmaker.³⁰⁸ Although Iran is guided by religious leaders and religious precepts, a distinction exists between it and the Holy See. If the Catholic Church were disestablished, the Holy See would cease to exist. The same would not be true for Iran. If Islam ceased to be the religion of Iran, the country would continue to exist, just as the nation existed before it became an Islamic Republic. Countries which are "religious" in nature are nonetheless primarily political entities. The Holy See, however, as confirmed by senior Church officials, is exclusively a spiritual entity.

As discussed above in this Part, the Holy See does not meet the formal requirements of statehood. As a non-state entity, the Holy See should not enjoy statehood status at UN conferences.

III. A NEW ROLE FOR THE HOLY SEE AT UNITED NATIONS CONFERENCES

The Holy See's role at the United Nations should be adjusted to reflect its nature as a religious entity. This Note proposes that the Holy See cease to enjoy its statehood status at UN conferences,³⁰⁹ and be treated instead as an Article 71 NGO.³¹⁰ For future UN conferences, this change in status would confine the Holy See's participation to the NGO Forum held simultaneously with the main conference and also would limit its

302. See 5 Worldmark Encyclopedia (Europe), *supra* note 57, at 454.

303. See Van Der Molen, *supra* note 169, at 217.

304. See *id.*

305. See *supra* text accompanying notes 292–295.

306. See Federal Research Div., Library of Congress, *Iran: A Country Study* xviii (Helen C. Metz ed., 4th ed. 1989) [hereinafter *Iran: A Country Study*].

307. See 4 Worldmark Encyclopedia of the Nations (Asia & Oceania) 124 (7th ed. 1988).

308. See *Iran: A Country Study*, *supra* note 306, at 195.

309. Although UN conferences are governed by their own rules, a change in the Holy See's status at the conferences probably would imply a change in its status in the UN proper. This Note will focus on the conferences.

310. See *supra* text accompanying notes 36–40.

influence at the PrepCom stage.³¹¹ The Holy See would enjoy the same privileges as other NGOs, such as the ability to lobby.³¹² The Holy See would not have, however, any negotiating role in the conference, or, concomitantly, any power to block consensus among nations.³¹³

Despite the fact that the Holy See currently enjoys powers in excess of most international NGOs, it resembles them more closely than it does states. For UN purposes, an international NGO is "[a]ny international organization which is not established by intergovernmental agreement."³¹⁴ An NGO is considered "international" when it has affiliates in three countries.³¹⁵ International NGOs are by nature private associations, and as such, generally receive only a portion, if any, of their funds from governments.³¹⁶ They are concerned primarily with international matters and exist in all fields of human concern, ranging from religion to science.³¹⁷ One of the primary objectives of international NGOs is to influence the decisionmaking of intergovernmental organizations, such as the United Nations.³¹⁸

The Holy See fits the definition of an international NGO quite closely: it is an international organization; it is private because it does not receive its funding from governments; and its primary objective is to advance Catholicism.³¹⁹ Indeed, many church organizations are important NGOs.³²⁰ A primary difference between the typical international NGO and the Holy See is that the Holy See can and does enter into relations with other states. In this regard, the Holy See possesses a certain degree of international personality.³²¹ International persons are "[s]ubjects of international law . . . capable of possessing international rights and duties under international law and endowed with the capacity to take certain types of action on the international plane."³²² In classical international law, only sovereign states were considered international persons.³²³ This view has shifted, however, with the result that "many different kinds of

311. See *supra* Part I.C.1.b.

312. See *supra* notes 52-53 and accompanying text.

313. See *supra* Part I.C.1.c.

314. Sybesma-Knol, *supra* note 23, at 297.

315. See Werner J. Feld et al., *International Organizations: A Comparative Approach* 22 (3d ed. 1994); Sybesma-Knol, *supra* note 23, at 297.

316. See Sybesma-Knol, *supra* note 23, at 297.

317. See Ettinger, *supra* note 39, at 99.

318. See Feld et al., *supra* note 315, at 218.

319. The Holy See's involvement with the United Nations is only one way to advance the interests of the Roman Catholic Church; clearly, the Church advances the interests of Catholicism in numerous ways.

320. See Feld et al., *supra* note 315, at 219.

321. See Brownlie, *supra* note 3, at 67 ("Some jurists regard the Vatican City as a state, although its special functions make this doubtful. However, it is widely recognized as a legal person with treaty-making capacity.").

322. Henkin et al., *supra* note 3, at 241.

323. See *id.* at 241.

entities have been considered as capable of having international rights and duties."³²⁴

The fact that the Holy See possesses a degree of international personality does not automatically make it a state, nor does it disqualify it from being an international NGO. Some scholarship suggests that the Roman Catholic Church is no different from other international NGOs.³²⁵ In a major study of international NGOs, Lador-Lederer characterizes the Roman Catholic Church as the "oldest non-state international organization."³²⁶ He describes the Church as the "main religious NGO"³²⁷ and the "oldest and greatest ideological NGO."³²⁸ Lador-Lederer acknowledges that the Church is capable of "having international interests" and competing with states in the international arena,³²⁹ but suggests that religious organizations can be included in the category of NGOs "even if they have attained a status of sovereignty."³³⁰

Classification of the Holy See as an NGO would have significant implications for its participation in the United Nations and its conferences. The United Nations' relations with NGOs are codified in Article 71 of the Charter, which authorizes the Economic and Social Council to develop a consultative relationship with certain NGOs.³³¹ NGOs in consultative status with the Economic and Social Council, of which there are over 800,³³² are divided into three categories. Category I consists of organizations that are "concerned with most of the activities of the Council . . . and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of population in a large number of countries."³³³ In Category II are organizations that have a special competence in a certain area.³³⁴ Category III, the Roster, is composed of NGOs which can make occasional contributions to the Council.³³⁵ It is clear that the Holy See, as a result of its longstanding contribution to social and economic concerns around the world, meets the requirements of Category I.

324. *Id.*

325. See J.J. Lador-Lederer, *International Non-Governmental Organizations and Economic Entities* 30 (1963); Chiang Pei-heng, *Non-Governmental Organizations at the United Nations: Identity, Role, and Function* 61 (1981).

326. Lador-Lederer, *supra* note 325, at 29.

327. *Id.* at 66.

328. *Id.* at 185.

329. *Id.* at 29.

330. *Id.* at 60.

331. See U.N. Charter art. 71, para. 2. Article 71, para. 2 provides in part: "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence."

332. See Ettinger, *supra* note 39, at 102.

333. Feld et al., *supra* note 315, at 222.

334. See *id.*

335. See *id.* at 222-23.

As a Category I NGO, the Holy See would be entitled to participate in hearings before the Council and would be allowed to propose agenda items, attend meetings and submit written statements.³³⁶ The Secretary General may invite NGOs in Categories I and II to attend sessions of the General Assembly.³³⁷ Specialized agencies of the UN, such as UNICEF, also grant consultative status to NGOs.³³⁸ NGOs also play an increasingly important role at UN conferences by ensuring that central issues are not ignored. They influence the outcome of the conferences through written statements and publications, and by lobbying government representatives.³³⁹

Despite the appropriateness of treating the Holy See as an NGO, significant obstacles exist to changing the status of the Holy See at the United Nations. It has been treated as a state since 1964 and no doubt would object to the removal of the privileges of statehood. Furthermore, the Holy See maintains diplomatic relations with 157 states.³⁴⁰ As Crawford notes, "recognition by other states is of considerable importance especially in marginal or borderline cases."³⁴¹ The Holy See is party to numerous bilateral and multilateral treaties³⁴² and is a member of international organizations such as the Organization of American States and the Food and Agricultural Organization.³⁴³

Although it would be difficult to overturn thirty years of accepted practice, the United Nations should consider the precedent it has set by granting a religion the privileges of statehood. As Professor Henkin writes:

It has been the position of the Holy See that its international personality is based on its religious and spiritual authority and not its territorial enclave in Rome. . . . To acknowledge that international personality rested on the Holy See's religious authority might give rise to similar claims by the other religions, an issue that governments are not inclined to welcome. The problem has been avoided because of the ambiguity created by the fact that there is a territory, however small, and with a population of less than 1,200, which has been recognized by Italy as constituting the State of the Vatican City under the sovereignty of the Holy See.³⁴⁴

336. See *id.* at 223.

337. See Sybesma-Knol, *supra* note 23, at 302.

338. See *id.* at 313.

339. See Feld, *supra* note 315, at 235.

340. See Catholic Almanac, *supra* note 240, at 47.

341. Crawford, *supra* note 3, at 154.

342. See Bettwy & Sheehan, *supra* note 61, at 21-31 (listing treaties, conventions, agreements, notes and protocols to which either the Holy See or the Vatican City has become a signatory since 1929).

343. See *id.* at 21.

344. Henkin et al., *supra* note 3, at 300.

The status of the Holy See as a state implies that any other religion would be entitled to state privileges at the United Nations were it to have control over a few acres of land. An Islamic state, for example, may enter into an agreement with a religious leader, as did Italy with the Holy See, and proclaim the religious leader to be the sovereign of a designated area within the capital city. This new state/religion would not even have to enjoy recognition as a state by every member of the United Nations, provided it did not apply for membership at the United Nations and contented itself instead with permanent observer status.³⁴⁵ As a Non-Member state, it would merely have to notify the Secretary General of its intention to establish a permanent observer office. This status would provide the Muslim leader with the same access to UN conferences and the same negotiating power enjoyed by the Pope.³⁴⁶ Because the Holy See currently enjoys these privileges at the United Nations, it would be difficult to deny them to another religion which exercises jurisdiction over a tiny area.

CONCLUSION

This Note has shown that the Holy See enjoys the privileges of a state at United Nations conferences, but does not meet the accepted definition of a state under international law. This Note proposes that the Holy See is ultimately not a state but a religion, and thus should be treated as an NGO at future UN conferences. It is undesirable to open the gates of the United Nations to religions acting under the guise of states. The United Nations would be prudent to reconsider the Permanent Observer Non-Member State status currently enjoyed by the Holy See.

345. It would appear from past practice that permanent observer status would be granted to those states which are recognized by a majority of UN member states. See *supra* notes 29–30 and accompanying text.

346. See *supra* Part I.C.