

Committee: Legal Committee (GA6)

Issue: The legal question of the Sui Generis status of the Holy See

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Position: Co-Chair

PERSONAL INTRODUCTION

Dear delegates,

My name is Celia Kalogeropoulou, I am a student at Pierce - The American College of Greece in 11th grade and it is my utmost honor to serve as a Co-Chair of the Legal Committee (GA6) in the 6th ACGMUN.

Having been an active member in MUN conferences, I can undoubtedly say that they provide an amazing opportunity for all participants to become familiar with ongoing issues of the modern world, as well as meet new people and form long-lasting relationships.

This year's agenda includes two important and heated topics that the world has to tackle that strive to "break barriers", which is this conference's theme. The topic that this study guide will be covering is "The legal question of the Sui Generis status of the Holy See", which is an important one and affects policies worldwide.

This study guide aims to facilitate your research by making you aware of the key terms, background information, and foundations of this topic. Nevertheless, you should not only rely on this guide but also do your own research, in order to be able to defend your country's policy sufficiently and participate actively in the process. It is of paramount importance that you use reliable sources for your preparation since you are presented with a challenging topic that requires thorough research. I genuinely anticipate hearing your views and further discussions on the matter!

Should you have any questions, or concerns or need any kind of further clarification, do not hesitate to contact me at: Vasiliki.Kalogeropoulou@acg.edu

I am truly looking forward to meeting you all!

Kind regards,

Celia Kalogeropoulou.

TOPIC INTRODUCTION

Over the past few decades, topics of international law beyond the conventional notion of global personality have emerged. International personality is not a static concept anymore. For instance, non-State international personalities are enjoyed by regional conventions of States like the European Union, nationwide liberation movements, and even institutions like the United Nations.

In the status quo, the Holy See, which is the Roman Catholic Church's government led by the Pope as the bishop of Rome, has an entitlement under international law that only a few, if any, non-State actors (excluding human rights bodies) have. More specifically, it has joined various intergovernmental entities, is a party to a significant number of both bilateral and multilateral treaties, transmits diplomatic officials, is said to have protection from jurisdiction, and has been given permanent observer status by the United Nations. Nevertheless, unlike the Vatican City State, the Holy See does not qualify as a state because it has a global spiritual mandate and can act worldwide without a regional base. It is instead a sui generis non-State international legal person whose personality stems from its 'spiritual sovereignty' as the center of the Catholic Church.

It is generally accepted that the Holy See's global personality eventuates from its religious, and spiritual power and quest in the world. However, in the last years the matter of the immunity and privileges that the Holy See enjoys due to its sui generis-state, combined with the lack of accountability on state responsibility and the

existence of unregulated treaties called "concordats", has sparked a big debate amongst nations around the power it should have on an international level and how that power can be regulated.



Figure 1¹: Map depicting the area of the Holy See

¹ ""World Atlas." *GeographyIQ - World Atlas*, www.geographyiq.com/countries/vt/Holy_See_Vatican_City_map_flag_geography.htm.

DEFINITION OF KEY TERMS

Concordats²

"A concordat is a particular bilateral agreement made between the Holy See and a State that governs the Catholic Church's religious affairs and actions there."

Immunity³

"The immunity of the state can be invoked only in relation to sovereign acts, or *acta jure imperii*, and not in relation to private acts."

Non state personality⁴

"A non-sovereign entity that exercises significant political power and territorial control while being outside the control of a sovereign government."

Prima facie⁵

The adjective *prima facie* means sufficient to prove a claim or raise a supposition unless invalidated or overturned.

Sovereignty⁶

"Sovereignty, in political theory, is the ultimate overseer, or authority, in the decision-making process of the state and in the maintenance of order."

Sui generis⁷

Sui generis is a Latin phrase meaning "of its own kind." It corresponds to anything unique to itself; of its own kind or category. *Sui generis* as a legal term refers to a distinct legal categorization.

² *GoJIL - Goettingen Journal of International Law*, www.gojil.eu/issues/33/33_article_ryngaert.pdf.

³ "The Holy See As Seen from Strasbourg: Immune Like a State but Exempt from Rules on State Responsibility." *SIDIBlog*, 20 Oct. 2022, www.sidiblog.org/2021/12/16/the-holy-see-as-seen-from-strasbourg-immune-like-a-state-but-exempt-from-rules-on-state-responsibility/.

⁴ "Non-state Actor." *LII / Legal Information Institute*, www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=22-USC-1357447846-657893730&term_occur=999&term_src=title:22:chapter:73:section:6402.

⁵ "Prima Facie." *LII / Legal Information Institute*, www.law.cornell.edu/wex/prima_facie.

⁶ "Sovereignty." *Encyclopedia Britannica*, www.britannica.com/topic/sovereignty.

⁷ "Sui Generis." *LII / Legal Information Institute*, www.law.cornell.edu/wex/sui_generis#:~:text=Sui%20generis%20is%20a%20Latin,denotes%20an%20independent%20legal%20classification.

BACKGROUND INFORMATION

Difference between Vatican City and the Holy See

After exercising temporal authority in the Pontifical States since the eighth century, the Holy See lost its lands to the Italian State in 1870. The Holy See is the Roman Catholic Church's government, which is led by the Pope as the bishop of Rome. The term see is derived from the Latin *sedes*, which means "seat," and refers to the apostolic seat represented by a bishop as well as the area over which he has influence. Holy See forms the church's political system and determines matters of faith and ethics for the world's 1.3 billion Catholics.

Only in 1929, by virtue of the Lateran Treaties, did the Italian State return a quarter of this region to the Holy See, which formed the Vatican City. Thus, the Vatican City was established by the Lateran Treaty in 1929 to put in place a regional premise for the Holy See, which predates the Vatican City by many centuries. Its main goal is to ensure its independence, as well as to permit the Pope to exert his universal influence.

The Vatican City State qualifies as a state because it meets the 3 Montevideo requirements for statehood: land, demography, and government.

The Vatican acts on a global scale on more technical issues that are directly connected to the immediate needs of the Vatican City State. In opposition, the Holy See has global qualifications in other matters such as civil rights, peace and stability.

The Holy See has been engaged in diplomatic activity for many centuries before the Vatican. In actuality, the Pontiff's legations were some of the world's first foreign embassies. In terms of importance, the Holy See is more significant in maintaining diplomatic ties. In accordance with the general principles of international law, Italy recognizes the Holy See's right to passive and active legation, as stated in Article 12 of the 1929 Conciliation Treaty.

The fact that the Holy See continued to send diplomatic representatives to a number of States during the territorial interregnum (1870–1929) and that States proceeded to be represented at the Holy See further demonstrates the autonomy of the Holy See's international activities (passive legation). The Holy See's diplomatic representatives currently represent both the Holy See and the Vatican City State, but they formally uphold diplomatic ties in the name of the Holy See rather than the Vatican State, which highlights the Holy See's superior position in world affairs as compared to the Vatican. This is important since it allows the Holy See to exercise the rights and powers of a legitimate sovereign entity, particularly diplomatic ones, and leads to more and more states being accredited to the pope.



Figure 2:⁸ Image depicting the signature of the Lateran Treaties in 1929

International relations and UN involvement

The Holy See is acknowledged by international law as an independent sovereign and preserves diplomatic ties with other sovereign countries. Its lasting jurisdiction is independent of the involvement of a seated pope and extends beyond the physical boundaries of the Vatican City state. As a result, there is a significant distinction of its sovereign rights when compared to traditional governments worldwide. Notably, the Holy See has treaty-making authority, as evidenced by its practice of signing 'concordats' with numerous states.

In addition, the Holy See has been a permanent observer at the United Nations since 1964, participating in many of its relevant agencies and local international bodies. Nevertheless, it has never decided to seek full membership in the UN (neither has the Vatican, although being a State).

Usually, the Holy See uses its UN participation privileges to advance a moral agenda complying with the beliefs of the Catholic Church. For example, the Holy See played a crucial role in the 2005 UN Declaration prohibiting all forms of human cloning and in blocking the adoption of a proposed resolution on sexual orientation and gender identity.

⁸ "How the Lateran Treaty Made the Catholic Church into a State | Concordat Watch - Italy." *Concordat Watch*, www.concordatwatch.eu/how-the-lateran-treaty-made-the-catholic-church-into-a-state--t841.



Figure 3:⁹ Image depicting “Pope Francis addressing a plenary meeting of the United Nations Sustainable Development Summit 2015 at United Nations headquarters in Manhattan, New York, Sept. 25”

International dispute-settlement

Regulation of international law is a concern in international dispute settlement. Therefore, an important characteristic or indication of an entity's international legal personality is its role in international dispute-settlement. The Holy See is no longer anticipated to get involved in conflicts with or between States since the loss of the Papal States on 20 September 1870 and particularly since the Lateran Conciliation Treaty in 1929. But the Conciliation Agreement of 1984 allows the Holy See to carry on with its historical function as a significant, impartial arbiter of interstate disputes.

Concordats

The Holy See's has the ability to participate in important multilateral agreements, as well as sign "concordats" with various States. Through them, it typically regulates people's freedom to practice their faith in a Catholic manner, as well as financial and property aspects, catholic teaching, the civil impacts of canonical marriages, State funding for the Church, and the Pontiff's authority to appoint bishops.

⁹ "Full Text of Pope Francis' Speech to United Nations." *PBS NewsHour*, 25 Sept. 2015, www.pbs.org/newshour/world/full-text-pope-francis-speech-united-nations.

The precise legal classification of concordats has been the subject of a long-running doctrinal debate since concordats are an exception to the rule in which some treaties, specifically the "technical" treaties discussing matters of distribution of power and control, may be signed by the Holy See on behalf of the Vatican.

In the event that the Vatican ceased to be the Holy See's territorial base, all concordats made on its behalf would also cease to be binding between the Holy See and States. As a result, the Vienna Convention on the Law of Treaties (VCLT) provisions cannot be applied as-is to these treaties. The Holy See has approved the VCLT, but because it lacks statehood, it has managed to remain unregulated in that sector. Despite this, concordats may be subject to the VCLT's provisions to the degree that they represent traditional international laws.

State-like immunity, but exempt from rules on state responsibility

Being a state entails accepting responsibility for transnational crimes that the state has committed or can be held accountable for. The Vatican has effectively been given the freedom to choose which statehood-related privileges it wants to take advantage of (such as those that grant powers, influence, and immunities) without also having to accept the responsibilities that come with being a state. As a result, when it is acknowledged that a certain threshold has been reached by the Holy See and the Vatican compound or construct, providing the foundation for global immunities, international commitments are also triggered.

Along with the benefits of statehood come obligations, in this case, the obligation to hold individuals and other legal entities closely associated with such a state-like entity, accountable for extraterritorial violations of human rights standards.

Article 11 of the Lateran Conciliation Treaty (1929) however, which states that all crucial bodies of the Catholic Church shall be excluded from any intervention on the part of the Italian State, ostensibly governs the immunity of the Holy See in Italy. This clause has historically been interpreted broadly by Italian courts.

Any "normal" criminal investigation is hampered to the extent that Vatican City or the Holy See has either globally acknowledged being a state or a status that even remotely resembles statehood, in order to maintain the appropriate privileges. Current leaders of the nation and other senior state officials are generally entitled to protections under customary international law. Questions of state sovereignty may also arise if a papal official is detained near or in the Vatican. The current Pope's citizenship, makes him, at least initially, *prima facie*.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

United States of America

The Holy See and the United States had diplomatic relations up until 1870. Following that, the United States sent a "legal representative of the President" to the Holy See during World War II. After the Lateran Treaty went into effect, attempts to reestablish diplomatic ties were met with resistance within the United States. Some of this opposition claimed that if diplomatic relations were to be reestablished, the First Amendment's Establishment Clause, that forbids "establishing" a religion by the government, would be broken.

The Holy See and the Vatican have generally been treated as one legal entity by U.S. courts, who even count both of them as "States" for the uses of the U.S. Foreign Sovereign Immunities Act (FSIA).

United Kingdom

The Holy See and England have a long tradition of diplomatic contact. The formation of the Church of England resulted in the withdrawal of diplomatic ties at certain points in its history, but diplomatic exchanges in between the two sovereign governments have been documented from the 11th century to today.

These two sovereigns felt compelled to engage with one another to discuss matters of mutual concern, particularly during times of war, even without the exchange of first category legations.

France

France and the Holy See have a protracted diplomatic relationship. However, when France broke off relations between the two sovereigns, there were two significant stormy periods in their diplomatic ties. During those times, the Pope was abducted, and the Papal States were taken by Napoleon after the French Revolution and his ascent to power.

The Holy See nevertheless made an effort to maintain diplomatic relations during this time, until France passed legislation in 1905 that essentially limited the Holy See. As a result, their diplomatic ties were momentarily severed. In 1921, these ties were finally repaired. Since the socialist government of François Hollande approved same-sex marriage in 2013, relations between the socialist government and the Vatican have been tense. In the status quo, Rome is home to France's embassy to the Holy See.

Central and South America

Despite the fact that many of the countries in Central and South America follow the Catholic tradition, their historical diplomatic ties with the Holy See have been marked by periods of interactions followed by the termination of those relations by the temporal sovereign. The Holy See's support for the Peruvian government during the rebel takeover of the Japanese embassy in 1997 served as an example of the restoration of more fruitful and significant ties with many states. Another significant example from Latin America concerns Chile's and Argentina's tense border dispute in the 1980s, in which Chile participated as a mediator and Argentina signed the agreement as a signatory.

Israel and Palestinian Liberation Organization (PLO)

The Holy See has dealt with Israel and the Palestinian Liberation Organization (PLO) in two significant diplomatic encounters. The Basic Agreement with the PLO and the 1993 consensus and international recognition with Israel show a modern renewal of the Holy See's long-standing interest in this part of the world. These agreements are significant because they represent the Holy See's formal recognition of both Israel as a State and the PLO as the official representative of the Palestinian People. In the latter instance, on October 26, 1994, the Holy See and the PLO established "official relations."

The formal agreements show that the Holy See and these two organizations understand the value of formal relations when it comes to debating on religious freedom, protecting sacred sites that are important to the three major monotheistic religions of the world, and advancing other human rights.

TIMELINE OF EVENTS

Date	Description of event
1870	The Holy See lost its lands to the Italian State
1929	The Vatican City was established by the Lateran Treaty
1870-1929	Holy See continued to send diplomatic representatives to a number of States during the territorial interregnum
1929	Italy recognizes the Holy See's right to passive and active legation, as stated in Article 12 of the 1929 Conciliation Treaty
October 26, 1994	Holy See and the PLO established "official relations"

2004	The UN General Assembly's Resolution 58/314 strengthened the privileges that stream from Holy See's sui generis condition
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RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS

The UN General Assembly's Resolution 58/314 ¹⁰

The UN General Assembly's Resolution 58/314 strengthened the privileges that stream from that condition (2004). As stated in this resolution, "the Holy See shall be accorded the rights and responsibilities of participation in the General Assembly sessions and the international conferences organized under the supervision of the Assembly and other bodies of the United Nations, as well as in United Nations discussions as set out in an annex." It is notable that the UN General Assembly refers to the Holy See as an observer State rather than a non-State actor.

Lateran Treaty in 1929¹¹

It could be argued that Italy granted the Holy See its global personality when they signed the Lateran Treaty in 1929. Nevertheless, the Holy See has been covered by international law since the fifth century. As a result, the Holy See already possessed an unbroken personality under international law. The Lateran Treaty of 1929, states that Italy acknowledges the independence of the Holy See in the international scene as a fundamental characteristic of its nature, in compliance with its culture and the mandates of its mission in the world.

POSSIBLE SOLUTIONS

Transparency of legal documents and imposition of basic principles

A key step to enhance the regulation imposed on the concordats signed by the Holy See and other States could be ensuring that appropriate governmental and supervising authorities can obtain or access adequate data on agreements, and treaties, both before and after they are officially signed. This way, the Holy See will have to comply with international legislation that ensures basic principles, even in the case of the traditional international law it promotes. Those may include the fact that a treaty must be interpreted in good faith, in full compliance with the usual meaning

¹⁰ *Catholic University of America Law Scholarship Repository*, scholarship.law.edu/cgi/viewcontent.cgi?article=1369&context=lawreview.

¹¹ *Catholic University of America Law Scholarship Repository*, scholarship.law.edu/cgi/viewcontent.cgi?article=1369&context=lawreview.

that should be given to its terms in light of both its object and purpose. In addition, it is important that all the signatory states have a clear understanding that a treaty can be modified only if both parties agree to it. Moreover, another fundamental principle in treaty-making that ensures the protection of all member states that sign it is the dictation that if a state was persuaded to sign a treaty through the dishonest actions of another negotiating state, the first state may claim that the fraud renders its contract to be bound by the treaty invalid. It is thus important that such regulations exist in order to aid tackle the possible corruption of a state representative towards a certain political stance, as well as the unrestricted power that the Holy See is exercising in the status quo. Such principles can be imposed by using the provisions of the current Vienna Convention of Law Treaties since it can challenge the legality of a treaty or a state's consent to be bound by one.

Accountability according to privileges

In order to tackle the lack of clarity on the role, responsibility, authority and independence of the Holy See in the status quo, it is important to make sure that the Holy See is treated by other Member States as a state when it comes to the international legislation with which it should comply, when it enjoys similar privileges. This is possible since, according to the United Nations, the Holy See is a permanent observer state, and not a non-state.

Enhancement of accountability mechanisms

A possible solution would include regular requests for briefings from exploratory and transparency mechanisms, as well as relevant civil society organizations in this field, along with the possibility of the further consideration on how, while respecting the full scope of its authority and legal standing, we can support adequate justice and accountability mechanisms in a consistent and systematic manner.

It should be noted that all investigatory and responsibility mechanisms mandated by the UN's multilateral organs must be provided with adequate and sustainable funding, as well as the technical capabilities required to carry out their mandates successfully. As an additional step, all States could ratify the Rome Statute of the International Criminal Court as well as other pertinent treaties that provide a legal foundation for accountability, along with the establishment of truth commissions and reparations programs, which are official bodies created to look into a chain of serious abuses, such as war crimes or human rights violations. Truth commissions investigate the causes and consequences of potential indiscretions carried out by violent groups or oppressive governments. An essential component of transitional justice is the requirement to address hidden patterns and underlying causes of violations, such as the legal transgressions committed by the Holy See.

Compliance with international legislation

Lastly, an effective measure would include the increase of surveillance in the Holy See, while respecting its sovereignty. It is essential to make sure that the Holy See will face increased pressure to comply with international standards and regulations. Governments must be held accountable for their actions and comply with any agreed upon international laws and regulations. This can include but is not limited to developing and monitoring compliance programs, providing training and education to relevant authorities, and setting up systems for reporting violations and taking corrective action.

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