

Copyright Geoffrey Robertson *The Case of the Pope*

The Statehood Test

The Pope! How many divisions has the Pope? Joseph Stalin, dismissing a French suggestion that the Vatican might be invited to post-war conferences

1113. Just four years after the Lateran Treaty, agreement was reached on the definition of a state in international law. It was enshrined 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 the other states.

1114. These four requirements are essential although not exhaustive – questions of the country’s independence and capacity will also be relevant. The importance of the Convention is that it provides an objective test that can be applied by a court, on the evidence, rather than relying on the politically influenced (often expedient) decisions by governments to open or close diplomatic relationships. The argument that ‘there are 170 states which have diplomatic relations with the Holy See, so it too must be a state’ reflects the outmoded ‘constitutive theory’, developed to deny the advantage of statehood to countries with a government that most other countries refused to recognize, often for partisan reasons – for example the pressure still imposed by China against recognition of the obvious statehood of Taiwan – or when the vast majority of states refused (out of misguided support for Indonesia) to recognize the democratic republic of East Timor (now Timor Leste). The better view is the ‘declaratory theory’ that diplomacy and realpolitik should not be allowed to intrude on an international law question that can be settled objectively by applying the Montevideo criteria to the facts of the particular case.¹

1115. You do not have to be a lawyer to apply the Montevideo Convention to Vatican City. The most dimwitted tourist in St Peter’s Square can recognize that before him stands not a state, but a palace with a basilica surrounded by museums and gardens. Its walls may be briskly circumnavigated in fifty minutes, entry requires no proof of identity but merely a bag search and, in the case of museums, a payment of €25 for a ticket – not a visa. The public rooms are for the most part repositories of religious art and artefacts (Nero’s bathtub strikes a secular note), and the main crowd-pleasers, the Sistine Chapel and the Pietà, are owed to the genius of Michelangelo, whose eye for the male limbs, torsos and buttocks is often said to stem from a disposition that Cardinal Ratzinger would denounce as ‘morally disordered’. Otherwise the opulent display is that of a wealthy church inviting contemplation of its promise of an afterlife: confession boxes offer absolution in different languages (although none in Latin, the official language of the Holy See), beside the mummified remains of several dead Popes. Gift shops beckon at regular intervals, offering Popemabilia – mainly mementoes of John Paul II (Benedict XVI, ‘the German shepherd’, does not sell as well), while post offices offer ‘special issues’ on religious themes. A request at the information office to be directed to various foreign embassies met with total incomprehension, but after lengthy inquiries produced some addresses that were all in Italy. The offices in the Vatican have to do with church matters, the Curia and its offices are also located in Italy, around St John Lateran, where the cardinals meet and talk in Italian except when electing a new Pope, when they vote in the Sistine Chapel and announce the result in Latin. Pope Benedict frequents Italy too, at his summer palace, Castel Gandolfo, guaranteed inviolable by the Lateran Treaty but excluded from Vatican sovereign territory. His appearance there for the midday Sunday angelus is both a tourist attraction and a religious celebration, but hardly a state occasion: he emerges from a high window to applause, renewals of which he invites from different sections of the crowd by saying a few sentences in their language, while national flags are waved along with the insignia of various Catholic orders. Small children are held aloft and strain towards him, arms outstretched, while like a seasoned actor he controls the crowd by his quavering fingers, alternately silencing them and blessing them. But there is no mistaking the fact that all its members – invariably with cameras – are tourists who have come to Rome and not to the Holy See, to be blessed by the Pope as head of the church and not as the head of a state.

a) A Permanent Population

1116. The Holy See has, by definition, no population at all and the Vatican has no ‘permanent population’ in any meaningful sense – it is a city without nationals or even residents. At one point it was said to have 416 ‘citizens’, including 46 Curial cardinals, 89 Swiss Guards, 201 bearers of diplomatic passports and the Pope himself.² Additionally it has Italian workers – gardeners, museum attendants, cleaners and the like who walk to work across the road from Italy – and several thousand Curia employees working in offices in Rome (i.e. Italy) who are mainly Italians and are subject to Italian laws. There are a few hundred people who actually live within Vatican City and can be granted ‘citizenship’ by the Pope under its law ‘because of their rank of service or employment’, but these are peripatetic church dignitaries, or church officials and staff, or diplomats. For them, ‘citizenship’ is merely a temporary authorization to remain until their status or employment ends: it does not mean permanent residence.³ There is a special provision for diplomats which extends citizenship to ‘the wife [the

sexist presumption is that diplomats will be male], children, parents, brothers and sisters', but his sons must leave when they are 25 and his daughters when they marry (another sexist provision). As the leading textbook by a Vatican diplomat concludes, 'the population is very different from other states' because of the absence of any form of national community – citizenship is 'relative to a specific function which is wholly intended to serve the spiritual interests of the Catholic Church'.⁴ Other than diplomats, the residents are Catholic officials – cardinals and bishops, priests and nuns, all of them celibate and hence debarred by that status from propagating citizens. The Vatican is a place where no Vaticanian is ever born, other than by accident – 'citizenship' of the Holy See cannot be acquired by birth. Its population is not 'permanent' in the sense that it can be self-perpetuated or entitled to remain for generations. Nationality is non-existent, since this is not a nation state – or any other kind of state.

117. The Vatican, whether it stands alone or is used to prop up the claim to statehood of the Holy See, cannot satisfy the requirement of a 'permanent population'. This demands, at the very least, an identifiable and stable community. The people of the Vatican are not a 'people' in any meaningful sense, but rather a transient Catholic bureaucracy, with visiting dignitaries and diplomats and servants, in a palace from which any of these 'citizens' may be expelled by the Pope at any time.⁵ The Holy See, in short, lacks a stable human society – the only 'permanent' member of Vatican village is the Pontiff himself – and it appears from a recent television series that he often Pope-copters of an evening to his Italian residence, Castel Gandolfo (30 miles from Rome), where he dines from the produce of his organic papal farm whose Italian chef boasts of the taste of his 'lambs of God'.⁶ He has no 'people' to enter in the Olympics or to play in the World Cup or to serve in any international peace-keeping mission (even the papal guards are Swiss). The national anthem of Vatican City, appropriately enough, is 'The Bishop of Rome' – the capital of Italy.

b) A Defined Territory

118. 'Vatican City' cannot properly be regarded as a 'territory' at all. In truth, it is a large palace built on top of land that was once Caligula's private circus where Christians were thrown to the lions. It has a few attached buildings, but gardens take up two thirds of its 108.7 acres. The Palace – the basilica opens on to St Peter's Square – has buildings to the side that house a radio station, a bank and the official newspaper (*L'Osservatore Romano*) and various museums, whilst its secret archives (which may contain the CDF files relating to sex abuse) are flush against the Sistine Chapel. This territory is 'defined' only in the sense that a survey plan is attached to the Lateran Treaty, which comports with the reality that it conveys the ownership of property, despite the fact that it purports to be granting 'sovereignty' over a 'territory'. As a matter of simple English, and indeed of simple Italian, the Vatican is not even a city, let alone a city state: it is a palace entirely within an Italian city (Rome) which city is itself within a state, i.e. Italy. The alternative – that it is a state within a city – would be bizarre. 119. There is nothing 'territorial' about the Vatican: the palace and grounds have one proprietor, the Pope for the time being, and third parties are expressly forbidden from owning any of its real estate or lodging there without papal permission. There are in the world unusual 'microstates' which do have international sovereignty – Nauru with a population of 12,000 on ten square miles of bird droppings, and sinking Tuvalu, whose 11,000 people may eventually have to be evacuated to New Zealand (under a 'Toodle-oo Tuvalu' programme). But these are territories with territorians sharing a nationality and for whom they provide civic services. Vatican Palace has no nationals, and its basic services such as electricity and gas and water and sewerage are provided by Italy and by Italians. 120. Crucially, any state must be able to police its 'territory', but demonstrators, pickpockets and would-be assassins in the Piazza San Pietro are arrested by the carabinieri (the Italian police) and are placed in Italian gaols and tried in Italian courts. It makes no sense to have a state which is 'sovereign' over a territory yet cannot – or does not – exercise jurisdiction in respect of crimes committed on it. Even micro Euro-states like Monaco and Liechtenstein have police forces to arrest offenders (unless they are tax evaders). The Pope is indeed keeper of the keys to unlock his palace, but not to enter his territory, which has no customs or immigration barriers. The 'defined territory' requirement is generally taken to mean that 'there must be a reasonably stable political community and this must be in control of a certain area'⁷ – a description that would exclude atolls, lakes, rocks, ice flows, battleships, volcanoes, Olympic stadia, cloud-capped towers and garden-surrounded palaces. The Vatican City has been declared a World Heritage Area and has obvious cultural and historical importance, but these factors do not satisfy this second statehood requirement. c) Government 121. If it makes sense to speak of a palace being 'governed' then the Vatican has government: a proprietor (the Pontiff) and a governing council (the Curia). These personages are collectively called the Holy See and it is at this point that one cause of confusion should be cleared up: which one of them is the state? It cannot be the Holy See because it has no 'territory' and it cannot be Vatican City, a palace with no permanent population and no diplomats and which has, as its 'government', the same body that rules the world-wide Catholic Church. Vatican City exists not to support and protect nationals but to provide business premises for administering the Roman Catholic Church – a church that is not itself a state. The papal claim that the Holy See became a state once more in 1929 because it then acquired the Vatican City as its 'territory' is really a fudge, because the Holy See does not 'govern' a palace (which virtually runs itself as a tourist centre, with help from municipal authorities in Rome) but exists to govern the world-wide church. The Pope is not Mayor of Vatican City, he is head of the church and as such enjoys 'supreme and full power of jurisdiction ... in matters of faith and morals (where he is infallible) and to everything pertaining to the government and discipline of the church'.⁸ The Vatican is really an appendage of the church – its international headquarters, run by a pontifical commission which organizes employment contracts for servants, arranges the upkeep of the museum and deals with personnel matters and the Vatican observatory. The income of the Vatican derives

from tourism – it has no income tax or property tax (there is no privately owned real estate) but does a brisk trade in papal blessings (for €96, heavily discounted for nuns). Its treasury is that of the church, which is swollen by tithes from adherents around the world and specifically from the annual collection of ‘St Peter’s Pence’. But all governmental, as distinct from administrative, functions devolve on the Curia which decides them as the government of the church based in Rome, outside Vatican City, rather than as the government of Vatican Palace. As one scholar points out: 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 ... The Holy See, which is no more than the administrative body of the Roman Catholic Church does not constitute a ‘government’ in the traditional sense.⁹

122. Nor in any other sense contemplated by the Montevideo Convention, which requires a state to have at least some degree of independence in the conduct of international affairs. The actual government of Vatican City, namely the Pontifical Commission, does not conduct international affairs at all: this is done from Rome by the Curia as the governing body of the world wide church. Other key government functions – defence, for example, and policing, not to mention hospitals and transport in Rome – are organized by the government of Italy, whilst the only law in the area is Canon Law – but that is silent as to commerce and tort and contract and crime, issues which must be decided in Italian courts. For example, Vatican Radio broadcasts to the world, but not from the Vatican: its transmitter is in Italy, and has recently been found to emit powerful electro-magnetic rays that pollute the atmosphere and have caused cancer and leukaemia in children living nearby. Its director, Cardinal Tucci, was initially treated as immune from prosecution, although this decision was sensibly reversed on appeal and he has now been given a suspended gaol sentence by an Italian court. The Holy See cannot even punish crimes against its own head, as the world witnessed in 1981 when Pope John-Paul II was shot in St Peter’s Square by Mehmet Agca. The would-be assassin was arrested by Italian police, held in Italian prison and tried in Italian courts, where his plea that he had been unlawfully extradited from a foreign state was rejected.¹⁰ d) Capacity to Enter into Relations with Other States

123. Both the Holy See and the Vatican have the capacity to make agreements with other states and frequently do so, by way of Concordats, or by joining agreements which are relevant or necessary to their operation (the Vatican City signed up immediately to the Universal Postal Union and the International Telecommunications Union). But this is not enough to satisfy the fourth qualification of statehood: many other entities, including wealthy individuals, have the capacity to deal with states by dealing with their governments. What criterion d) should focus upon is the question of what kind of relationships are formed with states: are they merely ceremonial or concerned with the Catholic religion, or do they approximate to ordinary diplomatic relations?

124. The establishment of diplomatic relations between states necessarily implies the establishment of consular relations, which are otiose for the Vatican. For example, under the 1963 Vienna Convention on Consular Relations,¹¹ consular functions include the issue of visas, but no visas are required for entry to Vatican land (the closest equivalent on the Vatican website is the opportunity to book ahead for guided tours and museum tickets: ‘enjoy the visit without queuing – discover the Vatican secrets!’ etc). Consuls for a state are mainly concerned with safeguarding the interest of its nationals when they are injured abroad or visiting them when they are imprisoned abroad, but as the Vatican has no nationals, such consular duties are redundant. And any national of another state who is hit by falling masonry in a Vatican museum or pickpocketed in St Peters will not be helped by his state’s embassy to the Vatican – these diplomats do not offer consular services, or any other normal embassy services. As for Vatican diplomats, they claim under the 1961 Vienna Convention to enjoy immunities, including inviolability of their person and their embassy and their diplomatic baggage. This exempts them from national laws, and makes it impossible for police to search nunciatures for evidence of harbouring or trafficking in paedophile priests.

125. Most importantly, Article 41(1) of the 1961 Vienna Convention provides that: (1) Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state. They also have a duty not to interfere in the internal affairs of that state.

126. The Holy See, by operating a secret Canon Law process to deal with clerical child molesters, has done exactly that – interfering with the internal criminal law by not handing over those it knows to be guilty of crime; claiming entitlement to remove its guilty employees from the jurisdiction of national law and interfering with local justice systems by operating a Canon Law alternative. This amounts to a clear breach of Article 41, a breach which in most countries has continued for many years. Further breaches can be found in the ‘spiritual blackmail’ threats from the Vatican to have Catholic politicians excommunicated or denied access to churches or to communion if they vote to decriminalize abortion or in favour of laws stopping discrimination against homosexuals (see earlier para 150). The role of its nuncio includes gathering information on such politicians and reporting back to Rome so that the Vatican can consider whether to threaten them with excommunication or a ban from mass. The reality is that the Holy See has, by exerting its Canon Law jurisdiction over crime, and by making spiritual threats to democratically elected politicians, fundamentally ignored the Convention obligations of a state under Article 41 of the Vienna Convention, and should no longer be treated as if it is one.

127. Whilst diplomats are formally accredited to the Holy See, their role is unlike that at any other embassy or High Commission. Consular services for visiting tourists are provided by the ambassadors to Italy, with their residences and

embassies in Rome, and most countries with ‘diplomatic relations’ with the Holy See actually have their missions outside the Vatican (i.e. in Italy).¹² It would save money to house them within the premises of their embassies to Italy, but this prospect enrages Cardinal Sodano, who has been prepared to make an exception only in the case of Israel, for security reasons (see paras 111–12). It is a frequent practice for governments to reward Catholic allies or dispose of Catholic enemies by appointing politicians, rather than career diplomats, to the Holy See ambassadorship, a sinecure congenial to their faith. Thus in 2010 the UK government offered the post to Catholic ex-minister Ann Widdecombe, and the Australian government, not for the first time, used it to lure a Catholic opposition leader from opposition.¹³

128. An example of how the Vatican has been allowed to insinuate its diplomats into the highest levels of the international legal order through the oversight or inertia of other states is provided by the widespread practice of making the papal ‘plenipotentiary’ (i.e. the local nuncio) the senior in order of precedence among the diplomatic community in national capitals, a role which should logically go to the longest-serving ambassador. This practice grew up in certain obsessively Catholic countries as a mark of religious respect, and at their insistence the 1961 Vienna Convention provided that its rules on diplomatic relations should be ‘without prejudice to any practice accepted by the receiving state regarding the precedence of the representative of the Holy See’ (see Article 16(3)). This was merely a saving clause, but has been cleverly ‘spun’ as if it were a universal endorsement of this utterly unmerited practice, and many non-Catholic states such as Germany and Switzerland and some in central Europe have fallen for it and made the papal nuncio the Dean of the Diplomatic Corps (who in New Zealand, for example, takes precedence on formal occasions over the Chief Justice and the Deputy Prime Minister). The man from the Vatican in those countries comes to represent the whole of the Diplomatic Corps, and so obtains special access to high levels of government – a diplomatic coup which has gone largely unnoticed.

129. Diplomatic exchanges between state representatives and the Holy See are generally secret, but the few which have been revealed show that it is not treated as a normal state, but rather as the Italian headquarters of the Catholic religion – which indeed it is. Pius XI spoke eloquently of ‘our own dear native land, the country where the hand of God, who guides the course of history, has set down the chair of his Vicar on earth, in this city of Rome, being the capital of the wonderful Roman Empire, made by Him the capital of the whole world ... guarantees for the liberty of the Roman pontiff [are] of incalculable benefit to Italy’, as indeed they are, in tourist dollars and supportive diplomacy. Vatican politics remain Italy-centric, Italians take a significant proportion of Curia offices, and a recent analysis of the 100 papal nuncios revealed that fifty-one of them were Italian.¹⁴

130. Much of the ‘diplomatic’ traffic is to arrange papal visits and audiences with the Pope that are highly sought by political leaders and their families, whether Catholic (crypto-Catholic in the case of Tony Blair, who had four such ‘audiences’) or not (Mr Putin, for example, has also had four audiences with the Pope, and George W. Bush visited twice during his first year in office). The ‘business’ will generally concern the Catholic religion. For example, Australia’s ambassador said in 2010 that a good deal of his time was being taken up with arrangements for canonizing the country’s first saint: other diplomatic postings do not require a belief in miracles. He did not mention whether he was making any representations about the plague of paedophile priests (Australia has had more of them so far than most other countries) or disputing the Pope’s views on family planning and condoms. These do not appear to be the subject of the ineffably polite exchanges between diplomats. There is no sign of any state protesting about the Pope’s condemnation of their law-abiding gay population as ‘evil’ and ‘disordered’. It is a telling fact that the US State Department, which is required to issue an annual report on the human rights record of every state, never comments on the Holy See, and the UK Foreign Office similarly, in its annual report on human rights around the world, never notices the Vatican – not because it is above reproach, but because it is recognized as a ‘santa clause state’ (see para 12). The European Union has shown no interest in having the Holy See as a European state and Jacques Delors, on behalf of the European Commission, has told the European Parliament that it is highly unlikely that the Vatican would ever be admitted to membership.¹⁵ So, if the Holy See is not a state in Europe where it is situated, why should it be a state anywhere?

131. Most jurists treat criterion (d) – capacity to enter into relations with other states – as requiring independence, evidenced, for example, by a nationality law of its own and freedom from foreign control. This test has invited some tricky distinctions: during the Cold War most of the puppet states of Eastern Europe were recognized because of distinctive and historical nationalities and borders, even though their foreign policy was controlled by the Soviet Union through the Warsaw Pact. The puppet homelands (‘bantustans’) during apartheid went unrecognized, because although tribally distinct they were a product of apartheid, and their government was tightly controlled by South Africa (they had an ‘Embassy Row’ in their capitals, but it boasted only the South African embassy). It is otiose to regard the Vatican City as independent in this sense: it has no nationals and all services essential for its survival – from policing and electricity to supply of food and all other commodities – depend on Italy. It is in reality no more than a palace, entirely contained within and dependent upon Italy for its very survival. The Holy See, as government of a church, is free to choose its theology and morality, although the 800 million members of its congregations cannot be independent because they owe their allegiance to their various nations. No one can possess dual citizenship of a state and of a religion, and although the Vatican issues ‘diplomatic passports’ to its representatives they should be no more honoured than passports from Bophotswanaland or indeed from Disneyland (which is larger than the Vatican, has a larger population and dresses them in even more colourful costumes).

132. It might be expected that an issue of such obvious legal importance as whether the Holy See (or alternatively or additionally, Vatican City) is a state, would by now be soluble simply by consulting international law textbooks. This is a mistake. The starting point – *The Creation of States in International Law* – began in 1976 as a doctoral thesis by James Crawford: his second edition remarks (understatedly) that ‘the legal status of the Vatican City and the Holy See has been the subject of much study and some controversy’. He still inclines to his earlier view that the Vatican City is a state but admits that some experts have denied this and that ‘the position of the Vatican City is peculiar and the criterion for statehood in its case only marginally (if at all) complied with’.¹⁶ Professor Gillian Triggs, correctly in my view, concludes that ‘The Vatican City does not meet the criteria for statehood’¹⁷ – it has no accredited diplomats, for a start, and serves as a territorial prop for the Holy See which ratifies most of the treaties. Crawford considers that the relationship between City and See is ‘a matter for some perplexity’ and cites ‘the best modern study’ of the issue which concludes (correctly in my view) that ‘the Holy See is not a state in international law, but has an international legal personality of its own which permits it to take international actions such as the conclusion of treaties and the maintenance of diplomatic relations’.¹⁸ Another leading textbook, *International Law*, sets out reasons to question ‘the reality of the Vatican statehood’,¹⁹ whilst the late Professor Ian Brownlie’s standard student textbook opines that the Vatican City claim is doubtful and that the personality of the Holy See, as a politico-religious hybrid, is ‘even more difficult to solve’ and can only be characterized by the way in which individual states relate to it.²⁰ Many textbook writers compare it to another pumped-up Catholic entity, the ‘Sovereign Military Order of St John of Jerusalem, of Rhodes and of Malta’, which has had inter-state relations since the beginning of the Crusades. It too issues diplomatic passports and postage stamps, has diplomatic relations with over 100 countries and has buildings in Rome almost the size of the Vatican, but nobody classes it as a state, and in this respect (aside from the Lateran Treaty) it is indistinguishable from the Holy See. It is given merely ‘observer’ status at the UN, like other NGOs. There are law journal articles of considerable scholarship which relate to the question of Vatican statehood: the weight of more recent opinion appears to favour the negative view.²¹

133. Confusion over the ‘statehood’ status of the Holy See and Vatican City has been most confounded in respect of the Vatican Bank, which bears the Monty-Pythesque name ‘The Institute for Religious Works’. Under the incompetent and probably corrupt Archbishop Marcinkus (whose motto was ‘You can’t run a church on Hail Marys’), it became deeply embroiled with the mafia (Michelle Sidona) and with crooked Italian financiers (Roberto Calvi and Licio Gelli) and their right-wing freemasonries operating criminally through Gelli’s P2 lodges. When the Bank of Ambrosiano collapsed in 1982, the Milan prosecutors accused Marcinkus of giving ‘systematic support to Calvi in many of his illicit operations’ and sought his arrest, so the Archbishop hurriedly moved from his luxury apartment in Rome to lodge within the Vatican, which claimed that there, under the Lateran Treaty, he was immune from arrest. The ensuing jurisdictional dispute was settled through political channels – the prosecutors lost interest in Marcinkus after the Vatican paid \$250 million to local creditors and the Pope declared 1983 a ‘Holy Year’ in order to help the Italian economy by bringing vast numbers of indulgence-seeking pilgrims, with foreign currency, into the country.²²

134. The Vatican has its statehood partly to blame for the sinister power attributed to it by *The Da Vinci Code*. An earlier (but more factual) bestseller, *In God’s Name*, by experienced journalist David Yallop, explored the mysterious demise in 1978 of John Paul I, found dead in his bed with anguish written on his features after only thirty-three days as the Vicar of Christ.²³ In that time he had determined to sack Marcinkus and rid the Vatican bank of its connections with Gelli, and Calvi and their proto-Fascist P2 lodges which (despite the Canon Law ban on freemasons) had attracted some senior Curia figures as members. John Paul I was a stripling, as holy fathers go, aged only 65 and in robust health: Vaticanologists began to whisper about the possibility of suicide, and even murder by poison. These rumours might have been quashed had he died in Italy, where the law requires an immediate autopsy. But Canon Law (unsurprisingly, given its obsolescence) says nothing about autopsies or inquests when death occurs suddenly or suspiciously. So Cardinal Villot (allegedly a P2 member) destroyed telltale documents and pill bottles he found by the side of the papal death bed, arranged for a Vatican doctor to take one quick look at the corpse to diagnose a heart attack, after which the embalmers arrived (summoned, so it is alleged, before the body had even been discovered) to transform the Holy Father’s agonised features into a beatific smile for his lying-in-state in St Peter’s, outside the jurisdiction of the Italian courts. According to Yallop, he was probably poisoned by the P2 lodge to stop him from sacking Marcinkus and cleaning the corrupt freemasons out of the Vatican bank. The bank’s complicity in Gelli and Sidona’s financial crimes only became public after the collapse of the Ambrosiana bank and Calvi’s likely execution (he was found hanging upside down under Blackfriars Bridge). High-ranking Catholics today concede that John Paul I’s death was ‘mysterious’ and that ‘rumours abound about the circumstances of his untimely demise’ but ‘nothing credible has ever been established’²⁴ – they do not explain that this is because his body lies in the depths of the Holy See, outside the jurisdiction of Italian coronial law and cannot be examined for traces of the poison (digitalis) that Yallop suggests was used to kill him. In 1983, five years after his death, Canon Law received its update under the imprimatur of John Paul II, but it still contained no provision for an autopsy or an inquest: the most significant change was to end the centuries-old ban on Catholics becoming freemasons.

135. The issue of Vatican Bank immunity continues: its operations and finances are cloaked in total secrecy, and US Justice Department investigators have been turned away, powerless in a ‘foreign state’ and unable to use their extradition arrangements with Italy. The bank has claimed state immunity in the US in long-running legal actions over its holdings of Nazi gold and its involvement in the massive Frankel insurance fraud. In the former action, brought by victims of the

Ustasha holocaust in war-time Croatia, the Holy See sent a formal protest to the US government, demanding that it intervene to stop the disrespect to its sovereignty involved in allowing a case to proceed which accused the bank of stealing the property of 700,000 victims of fascism. On this occasion the White House refused and the Court described the bank's dealings as 'murky' and 'opaque'.²⁵ Because the Holy See is not recognized as a European state, the bank is not bound by European anti-money-laundering rules and controls. It is free from International Monetary Fund supervision and examination (doubtless the reason why the Holy See, so eager to join most international organizations, has declined to join the IMF). Unlike real states, the Holy See has no border checks and no exchange controls and no customs posts – which make its bank a useful vehicle for financial crimes and tax evasion.²⁶

136. But for all the force of legal, logical and moral objections to the statehood of the Vatican, the fact remains that most states recognize it as sovereign, and state practice, however politically skewed, is a powerful formative influence on international law. Nonetheless, this branch of law only progresses by attention to principle, and it is altogether possible that a principled court – the International Court of Justice or the European Court of Human Rights or a court in a country where the government did not interfere with an immunity certificate would find the Vatican's claim unsustainable. That would mean that the Holy See, and Vatican City too, would have international legal personality and be capable of signing treaties and dealing with governments as they have in the past, but they would not have the awesome diplomatic privileges that come with statehood, notably immunity for papal actions which cause damage or are of dubious legality. There is a strong moral case for the movement of international law from a set of rules for diplomatic expediency to a system of global justice based on norms that are not only objectively defined but also objectively determined, free from political pressure. That movement has been most noticeable with international criminal justice, which now indicts heads of state and in many cases (like that of Charles Taylor), rejects sovereign immunity, and it is a movement that demands objective judgements on questions of statehood. That is the challenge for international lawyers in the case of the Pope.

137. However the argument is finessed, neither Vatican City nor the Holy See satisfy the objective Montevideo criteria for statehood, whether considered separately or together. Even the head of the Holy See's permanent division at the UN admits as much: 'it struggles to be counted as a "real" state. Since 1870, it has had almost no real territory to defend. It has no economic or industrial interests in the usual sense of the term. It has almost no population ... It has the Swiss Guards but no strategic defence to speak of ...'²⁷ Looked at from any direction, the edifice seen is a church – the Roman Catholic Church – with palatial headquarters and a supreme leader, his hands raised to give a blessing not a salute. It is, with 800 million nominal members, the world's largest NGO. It is a tribute to the adroitness of Vatican diplomats (and to the desire of political leaders to be blessed by the spiritual head of many of their subjects) that the church has maintained for so long its camouflage as a state on the world stage, and has achieved an influence in world affairs that is denied to all other churches and NGOs. That influence has come through its privileged position in the UN, as the only 'non-member state', with every entitlement of a member except the right to vote at the General Assembly and be elected to the Security Council.

Quote from Chapter 6: 6. The Holy See and the United Nations

Jesus said, 'my kingdom is not of this world. If it were, my servants would fight to prevent my arrest by the Jews. But now my kingdom is from another place.' John 18: 36 (New International version 1984)

138. The story of how one religion came to infiltrate the United Nations, to such an extent that its diplomatic tentacles can reach out to affect the agendas of the most important international conferences, still has elements of mystery. When Vatican diplomats first canvassed its case for admission, back in 1944, US Secretary of State Cordell Hull told them 'as a diminutive state the Vatican would not be capable of fulfilling all of the responsibilities of membership in an organization whose primary purpose is the maintenance of peace and security'. He pointed out that in any event membership would be inconsistent with Article 24 of the Lateran Treaty, which guaranteed neutrality in return for the Pope's abandonment of temporal power...

My comment: perhaps the real reason the Holy See has this undeserved state status is because it has fooled lazy governments into thinking it can do their duty for them. Ireland instead of setting up schools let the Church do it and for money and power the Church took it on for free. But there is nothing free about any of it. The indirect wealth and power the Church got through conditioning schoolchildren reaped huge rewards for the Church. The praise the Church gets for its good works is disproportionate for it is only a minority of Catholics do them and there is an ulterior motive. And the Church is not morally exclusive but doctrinally exclusive. You can be considered to be no longer a Catholic for disparaging its religious claims but not its social and moral mores. Divorcees are barred from communion not for sin for that is between them and God but for being a counter-example to the Church's strict doctrine of marital love.

The statehood treatment needs to be stopped. The Church should ask for it to be stopped instead of sending the pope even to poor nations which feel compelled to fund the visit of this imposter head of an imposter state.

NOTES FOR THE STATEHOOD TEST

1. The 'declaratory theory' of recognition of states whereby statehood depends on satisfying formal criteria has

- replaced the constitutive theory. See, for example, James Crawford, *The Creation of States in International Law* (2nd edn, OUP, Oxford, 2006); Ian Brownlie, *Principles of Public International Law* (6th edn, OUP, Oxford, 2003), 86–8; Gillian Triggs, *International Law: Contemporary Principles and Practices* (Butterworths/Lexis Nexis, Sydney, 2005), 93.
2. Bart McDowell, *Inside the Vatican* (National Geographic Society, Washington, DC, 2008), 15. Recent FCO travel advice (April 2010) counts the Vatican population as numbering 466, with 333 diplomats working abroad.
 3. See Yasmin Abdullah, 'The Holy See at United Nations Conferences: Church or State?', (1996), 96(7) *Columbia Law Review*, 1835.
 4. See Hyginus E. Cardinale, *The Holy See and the International Order* (Smythe, Bucks, 1976).
 5. See Herb Wright, 'The Status of Vatican City' (1944), 38 *American Journal of International Law*, 452.
 6. *Inside the Vatican*, produced by Gruppe S Filmproduktion for ZDF, Episode I, 'An Easter Lamb'.
 7. Ian Brownlie, *Principles of Public International Law* (6th edn, OUP, Oxford, 2003), 71.
 8. Cardinale, *The Holy See and the International Order*, 32.
 9. Abdullah, 'The Holy See at United Nations Conferences', 1865.
 10. See Stephen E. Young and Alison Shea, 'Separating Law from Church: A Research Guide to the Vatican City State' (2007), 99 *Law Library Journal*, 589, 595.
 11. Vienna Convention on Consular Relations (1963), Article 5, 'Consular Functions'.
 12. See Young and Shea, 'Separating Law from Church', note 10 above, 595.
 13. The most cynical of such appointments come from Australia, where Labour governments have exploited the attraction of the post (until 2009, coupled with Ireland), for Catholic politicians: hence the appointment of Vince Gair (an opposition senator whose seat was coveted), Brian Burke (a reward for a corrupt crony) and Tim Fischer (leader of an opposition party).
 14. Sandro Magistere, 'Mission Impossible: Eject the Holy See from the UN', 21 August 2008, available at <http://chiesa.espresso.repubblica.it/articolo/162301?eng=y> (last accessed 22 July 2010).
 15. See Young and Shea, 'Separating Law from Church', 605–6.
 16. Crawford, *The Creation of States in International Law*, 221–5.
 17. Triggs, *International Law*, 188
 18. Crawford, citing Jorri Duursma, *Fragmentation and the International Relations of Micro-states: Self-determination and Statehood* (Cambridge Studies in Comparative and International Law, Cambridge, 1996), 386–7.
 19. D. P. O'Connell, *International Law* (Stevens, London, 1970), 290.
 20. Brownlie, *Principles of Public International Law*, 64.
 21. The best treatment is Abdullah, 'The Holy See at United Nations Conferences'. Satow's *Diplomatic Practice*, which recognizes the Holy See as a state.
 22. Rupert Cornwell, *God's Banker: The Life and Death of Roberto Calvi* (Unwin, London, 1984). The Vatican refused to take delivery of Italian court summonses on Marcinkus on the ground that since it was a sovereign state they had to be presented through the Italian Foreign Ministry and the Italian Embassy to the Holy See: see 225.
 23. David Yallop, *In God's Name* (Corgi, 1985).
 24. Rev. John Trigilio Jnr and Rev. Kenneth Brighenti, *Catholicism for Dummies* (Wiley, London, 2003), 384.
 25. See *Alperin v Vatican Bank* (2005) 410 F. 3d 532; R. Behar, 'Washing Money in the Holy See', *Fortune*, 16 August 1999, 128–37; and E. Pollack, *The Pretender: How Martin Frankel Fooled the World* (Free Press, New York, 2002).
 26. Young and Shea, 'Separating Law from Church', 599.
 27. Msgr Leo Cushley, 'A Light to the Nations: Vatican Diplomacy and Global Politics', 2007 Habigen Lecture, available at <http://www.stthomas.edu/cathstudies/programs/habiger/default.html> (last accessed 20 July 2010), 7–8.