

2001

The Atypical International Status of the Holy See

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Matthew N. Bathon, *The Atypical International Status of the Holy See*, 34 *Vanderbilt Law Review* 597 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol34/iss3/3>

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NOTES

The Atypical International Status of the Holy See

ABSTRACT

The Holy See, as personified by the Pope of the Roman Catholic Church, has acquired significant international status over the centuries. In modern times it has not always been clear whether this status arises from the Holy See's status as head of the Church or as ruler of the tiny State of Vatican City. Some view the Holy See's unique international status as an exception to the general rule that only states participate in international affairs. The Holy See has acquired such recognition and authority primarily because of its long-standing involvement in world affairs over the last thousand years. Others disagree, however, and particularly object to the Holy See's status as Permanent Observer at the United Nations. They argue that the Holy See acts solely as a religious authority in the United Nations, a body where membership is supposed to be limited to independent states.

This Note discusses the possibility that another religion could form a new, independent, international state following the model of the Holy See and the Vatican City, thereby seeking to establish equivalent rights and authority in world affairs. The centuries-old influence of the Holy See in world affairs is an essential aspect of its unique status and continued authority. This Note first explores the historical background and current status of the Holy See, the State of Vatican City, and the Roman Catholic Church. The Montevideo Convention's definition of a "state" in international affairs is examined and applied to the Vatican City. Next, the considerations recently used by the international community when recognizing a new state are explored. The Note concludes that while the Vatican City is certainly an exception to the traditional requirements for statehood, no other religion could attempt to use the Holy See as a model for successfully gaining acceptance in international affairs.

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I. INTRODUCTION

The international status of the Holy See¹ has been continually defended and attacked for centuries. The Holy See, as personified by the Pope of the Roman Catholic Church, is thought by many to have international authority either as the head of the Church or as ruler of the State of Vatican City. Numerous authors have argued that the Holy See's special status in international relations is either appropriate or

1. The word "See" is derived from the Latin *sedes*, generally used to refer to the seat or residence of a Bishop. The Pope, as Bishop of Rome, is also known as the Holy See because of his preeminence and responsibility in the Catholic Church. See EDWARD J. GRATSCH, *THE HOLY SEE AND THE UNITED NATIONS 1945-1995* ix (1997). There are three different meanings for Holy See. It can be used to indicate the Pope, it can refer to the other departments of Church government, or it may describe the Pope as visible head of the Church. "Holy See" is also sometimes used to denote the spiritual organization of papal government. See HYGINUS EUGENE CARDINALE, *THE HOLY SEE AND THE INTERNATIONAL ORDER* 82 (1976).

improper.² While theoretical disputes continue as to the requirements for international personality and the definition of a "state" in international law, it is generally accepted that the Holy See does have, if atypical, a status in international relations.³ Thus, it is clear that the Holy See will continue to play a role in international relations.

Currently, the Holy See is considered to be the head of an independent state, the Vatican City, and as such enjoys Permanent Observer Status at the United Nations.⁴ This Note considers the possibility that another religion could form a new independent, international state, and thus seek to establish equivalent rights and authority in world affairs by following the paradigm established by the Holy See and Vatican City. The centuries-old influence of the Holy See in world affairs is an essential characteristic of its continued authority and unique status. No other religion possesses this characteristic, and any attempt by another religion to establish a similar state would not find the international acceptance and authority enjoyed by the Holy See.

Part II of this Note explores the historical background and current international status of the Holy See, the Vatican City, and the Roman Catholic Church. Part III looks at the Montevideo Convention's definition of a "state" in international relations and applies it to the Vatican City. Part IV discusses the requirements that the international community has recently considered essential for recognizing an entity as a state. This Note concludes that while the Vatican City is certainly an exception to the traditional requirements for statehood, no other religion could attempt to use the Vatican City as a model for gaining acceptance in international affairs.

II. THE INTERNATIONAL STATUS OF THE HOLY SEE

Before discussing the international status of the Holy See, it is essential to examine the historical background and development of the Holy See as a person under international law. The Holy See, Vatican City, and Roman Catholic Church are so interrelated that they must, at least in part, be defined in terms of each other. The Pope is simultaneously the head of the Holy See and the absolute leader of the

2. CARDINALE, *supra* note 1 (defending the unique status of the Holy See). For a critical view of this special status, see *infra* note 71.

3. Indeed, the relations between the Holy See and the Christian states formed the original international community. See Josef L. Kunz, *The Status of the Holy See in International Law*, 46 AM. J. INT'L L. 308, 309 (1952).

4. CARDINALE, *supra* note 1, at 264.

Church.⁵ The Pope is also the temporal⁶ ruler of the State of the Vatican City.⁷ When the Lateran Treaty established the State of Vatican City in 1929, it was intended to be clearly distinct from both the Holy See and the Roman Catholic Church.⁸ The Holy See acts as the supreme organ of government of the Church;⁹ the Holy See is to the Church what the government is to a state.¹⁰ As such, the Catholic Church and the Holy See are actually two entities that must not be confused.¹¹ In both the Church and the Vatican City State, the Pope is the absolute leader in religious, administrative, diplomatic, and political matters.¹² The Pope is the last *absolute* monarch, for he exercises unlimited power in all matters pertaining to both the Church and the Vatican City.¹³

A. *The Authority of the Holy See Prior to 1929*

The territorial aspects of the Holy See's power developed gradually over the last two millennia.¹⁴ Beginning with bequests of land, the recognition of the Church as a corporate body by the Roman Emperor Constantine in 395 AD served to increase the wealth of the Holy See.¹⁵ After crowning Charlemagne the Holy Roman Emperor, the Papal lands gained powerful protection.¹⁶ During the tenth and eleventh centuries, the Ottonians held practical control over the Pope's territory, even

5. According to the Code of Canon Law:

The bishop of the Church of Rome [the Pope], in whom resides the office given in a special way by the Lord to Peter, first of the apostles, and to be transmitted to his successors, is head of the college of bishops, the Vicar of Christ and Pastor of the universal Church on earth; therefore, in virtue of his office he enjoys supreme, full, immediate and ordinary power in the Church, which he can always freely exercise.

1983 CODE c.331.

6. "Temporality" refers to civil or political authority, as distinguished from spiritual or ecclesiastical power. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1214 (1988).

7. GRATSCH, *supra* note 1, at 99.

8. *Id.* "Vatican City and the Holy See are distinct entities, both recognized internationally as such and subjects of international law; they are united in an indissoluble manner in the person of the pope, who is at once ruler of Vatican City and head of the Roman Catholic church." See Gant, *infra* note 19, at 16.

9. CARDINALE, *supra* note 1, at 85.

10. *Id.*

11. *Id.* at 84.

12. AVRO MANHATTAN, *THE VATICAN IN WORLD POLITICS* 29 (1949).

13. *Id.* "[T]he Sovereign Pontiff, ruler of the Vatican City State, has full legislative, executive and judicial powers." JORRI C. DUURSMAN, *FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES: SELF-DETERMINATION AND STATEHOOD* 377 (1996).

14. *Id.* at 375.

15. *Id.*

16. *Id.*

though he remained theoretically supreme.¹⁷ After this period the Pope was periodically threatened with attack, but it was not until 1807 that Napoleon I of France invaded the Papal States.¹⁸ By this time the Papal States included a large part of central Italy, including the city of Rome.¹⁹ Napoleon annexed the entire Papal States in 1809.²⁰ A period of international uncertainty with regard to the Pope and his status as a temporal sovereign followed, until the Pope was returned to Rome in 1850, this time under the protection of Napoleon III of France.²¹ The French troops were withdrawn in 1870, however, and the territorial sovereignty of the Pope was once again threatened.²²

From the Eighth Century until 1870 the Pope had almost constant rights of temporal sovereignty²³ as a head of state.²⁴ In addition to the Pope's spiritual authority as the head of the Roman Catholic Church,²⁵ the Pope was also the monarch of the substantial territory of the Papal States.²⁶ On September 20, 1870, an Italian army occupied Rome, and Italy annexed the Papal States.²⁷ Since the Pope could no longer be considered a territorial sovereign, the status of the Pope became known as the "Roman question."²⁸

Italy, itself a predominantly Roman Catholic nation, was forced to create a position whereby the Pope could retain his importance as head of the Church.²⁹ The Law of Papal Guarantees, enacted by the Italian parliament on May 13, 1871, provided that the Pope could retain free use of the Vatican and the Lateran palaces.³⁰ The person of the Pope was sacred and inviolable, and any offense against the Pope would be treated

17. *Id.*

18. At that time the Papal States consisted of the present Italian regions of Romagna, Marche, Umbria, and the Patrimony of Saint Peter, including Rome. Several attacks, especially from French kings, occurred before Napoleon's successful invasion in 1807. *Id.*

19. See Richard W. Gant, *The Holy See in International Relations* 1 (1986) (Ph.D. dissertation, Pontificia Universitas Lateranensis). In 1859 the territory of the Papal State covered 17,218 square miles in central Italy and had a population of well over three million people. CARDINALE, *supra* note 1, at 99.

20. See DUURSMA, *supra* note 13, at 375.

21. The Pope fled to the Kingdom of Naples in 1848. *Id.*

22. *Id.*

23. "Sovereignty" is defined as "the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation." BLACK'S LAW DICTIONARY 1396 (6th ed. 1990).

24. See Gordon Ireland, *The State of the City of the Vatican*, 27 AM. J. INT'L L. 271, 271 (1933). "[R]elations between the Church and the various States have existed from time immemorial." CARDINALE, *supra* note 1, at 76.

25. *Id.*

26. See Gant, *supra* note 19, at 1.

27. *Id.* at 2.

28. *Id.*

29. *Id.*

30. See DUURSMA, *supra* note 13, at 375.

in the same manner as an attack on the King of Italy.³¹ The Holy See retained aspects of sovereignty, as the Pope's consent was required to enter the otherwise inviolable territory of the Vatican.³² In addition, the Pope retained freedom of communication and full authority to send and receive diplomatic missions in the name of the Holy See.³³ Pope Pius IX and subsequent Popes, however, were never satisfied with the Law of Guarantees. They protested by objecting to any Catholic sovereign who visited the King of Italy and remaining within the Vatican territory at all times, never stepping foot onto other Italian soil.³⁴ The Pope retained his spiritual authority as head of the Church, but his temporal sovereignty had been terminated.³⁵

The tension between the Holy See and Italy grew to be intolerable and was not resolved until the Lateran Treaty in 1929. The Holy See, however, held a special position in the international community long before the Lateran Treaty was signed.³⁶ Since the early Middle Ages, the Pope had taken part in the international community based upon his spiritual sovereignty as head of the Church, not necessarily tied to any notion of temporal sovereignty with respect to a specific territory.³⁷ The Holy See demonstrated this status by its existence and operation in international law as the personification of the Church, where it negotiated agreements and treaties with other international subjects.³⁸ The Holy See also continually exercised the right of legation, commissioning persons to exercise diplomatic functions with the governments of other states on behalf of the Holy See.³⁹

The 1815 Protocol of Vienna recognized papal diplomats as having the same rank as ambassadors from other states under general international law.⁴⁰ While the Papal State, as a party under general international law, came to an end when Italy annexed the territory, the Holy See retained its status under international law after 1870.⁴¹ Following the Italian annexation, the Holy See continued to conclude concordats and other diplomatic agreements, and a majority of states

31. See Gant, *supra* note 19, at 3.

32. *Id.*

33. *Id.*

34. Ireland, *supra* note 24, at 271-72. The Pope never ceased claim to his territorial rights in the former Papal States until the signing of the Lateran Treaty in 1929. CARDINALE, *supra* note 1, at 100.

35. In rejecting the Italian attempt to solve the "Roman question," the Pope "felt like a prisoner in the Vatican," even if that imprisonment was self-imposed. See DUURSMA, *supra* note 13, at 376.

36. CARDINALE, *supra* note 1, at 83.

37. *Id.*

38. *Id.*

39. *Id.*

40. Kunz, *supra* note 3, at 310.

41. *Id.* at 311.

respected the Holy See's authority to send and receive ambassadors.⁴² State representatives to the Holy See included not only the Catholic states, such as France and Spain, but also Protestant states such as Germany, Great Britain, and Switzerland, and Greek Orthodox states including Russia, Greece, and Yugoslavia.⁴³

The function of Foreign Minister for the Holy See is exercised by the Cardinal-Secretary of State.⁴⁴ In the late 1880s Pope Leo XIII acted as a mediator in a conflict between Germany and Spain, and the Holy See arbitrated a border conflict between Haiti and Santo Domingo in 1895.⁴⁵ Russia solicited the Holy See's support for a project in the Hague Peace Conference in 1898.⁴⁶ During World War I, a vessel flying the flag of the Holy See was declared to be a neutral state vessel.⁴⁷ Italy opposed admitting the Holy See as a Member to the League of Nations, but the 1919 German project expressly provided that the Holy See could be a Member.⁴⁸ The respect accorded the Holy See during the period which it possessed no temporal authority demonstrated that the Holy See remained a person under general international law.⁴⁹

Following the Italian annexation of the Papal States, the Pope was deprived of the territorial aspects of his sovereignty.⁵⁰ Yet the Holy See remained an international person as a representative of the Church, whose universal character transcended the territorial confines of any single state and was not dependent upon the nationality of the Church members.⁵¹ Even after the Italian annexation the Holy See continued to enjoy unchallenged authority with both Catholic and non-Catholic heads of state, as demonstrated by the acceptance of papal diplomats and continued calls for the Holy See to act as an arbiter or mediator to help settle international conflicts.⁵²

B. *The Holy See and the 1929 Lateran Treaty with Italy*

The Lateran Treaty signed on February 11, 1929, by Italian leader Benito Mussolini and the Holy See's Secretary of State, Cardinal Gaspari, defines the current status of the Holy See.⁵³ By ceding to the Pope a small amount of territory, Italy reestablished the Holy See as a

42. *Id.*

43. The British monarch Edward VII visited the Holy See in 1903, as did Woodrow Wilson, the President of the United States, in 1919. *Id.* at 312.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. See Gant, *supra* note 19, at 4.

temporal sovereign in the world.⁵⁴ The Lateran Treaty created the City of the Vatican, consisting of 106 acres over which the Holy See has full property rights and exclusive and sovereign jurisdiction, with Italy promising not to interfere in the affairs of the City.⁵⁵

The Holy See demonstrated its international capacity by negotiating and signing the Lateran Treaty that created the State of Vatican City.⁵⁶

The Treaty was founded upon the presumption that the Holy See possessed international personality.⁵⁷ In Article II of the Treaty, Italy expressly acknowledged this aspect of the Holy See's sovereignty as "an attribute inherent in its nature, in conformity with its tradition and with the requirements of its mission in the world."⁵⁸ It has been argued that the Lateran Treaty cannot truly be considered an international treaty because it was concluded by one sovereign state, Italy, and the Holy See, who became a subject of international law only by virtue of the agreement.⁵⁹ As discussed in the previous section, however, the Holy See retained its international personality even during the period from 1870-1929 when it possessed no territory. The Holy See and Italy, each international subjects, agreed to create the State of the Vatican City, with the Holy See immediately identifying itself with that new state.⁶⁰

The Holy See's diplomatic efforts in the international community are disproportionate to the size of its territory.⁶¹ By establishing a legal

54. See Ireland, *supra* note 24, at 273. This temporal power ensured the Holy See's independence from other states and facilitated the religious tasks of the Holy See in the international arena. See DUURSMA, *supra* note 13, at 376.

55. See C. G. Fenwick, *The New City of the Vatican*, 23 AM. J. INT'L L. 371, 373 (1929). Article II of the Lateran Treaty states: "[t]he sovereignty of the Holy See in the international field as an attribute inherent in its very nature, in conformity with its tradition and with the exigencies of its mission in the world . . ." Article III recognizes, "in the Holy See the full proprietorship and the exclusive and absolute power and sovereign jurisdiction over the Vatican, as at present constituted . . . creating for such purpose the Vatican City." Herbert Wright, *The Status of the Vatican City*, 38 AM. J. INT'L L. 452, 452 (1944).

56. *Id.*

57. See Kunz, *supra* note 3, at 312.

58. CARDINALE, *supra* note 1, app. 2 at 320.

59. Gant, *supra* note 19, at 23 (refuting this argument).

60. The Holy See was still in a position to enter into engagements in the name of the new state, because it was something more than an organ of the new state, it was the very person of the state, and at the moment when the Treaty was concluded, which was also the moment at which it came into force, the existing legal person—the Holy See—identified itself with the person of the new state, and in this capacity it was in a position to become party to the Treaty and to assume obligations and acquire rights of a state character.

Id. at 24-25 (quoting MARIO FALCO, *THE LEGAL POSITION OF THE HOLY SEE BEFORE AND AFTER THE LATERAN AGREEMENTS* 26-27 (1935)).

61. See DUURSMA, *supra* note 13, at 376. This is clearly demonstrated by the role the Holy See played in recent UN conferences. While the Vatican City's territory is only

order and treaty relations with a larger neighboring state, the Holy See possesses temporal authority within the Vatican City, in addition to its actions on the world stage.⁶² This once again demonstrates the unusual status of the Holy See, due in no small part to its unique historical background.

C. *The Holy See's Role in the United Nations*

The United Nations was founded in the wake of two World Wars to promote the peace and security of all nations, to secure the recognition of human rights, and to further social progress and higher standards of living.⁶³ The Holy See views the United Nations as a reflection of the unity and solidarity of the human race because the United Nations has admitted most nations to its membership.⁶⁴ The Holy See and the United Nations have maintained close and frequent contacts,⁶⁵ with the Holy See sending representatives to the United Nations at its headquarters in New York, as well as the headquarters of various UN agencies in Geneva, Rome, Paris, Vienna, and elsewhere.⁶⁶ During the early years of the United Nations, the Holy See was sometimes referred to as the Vatican City.⁶⁷ In a 1957 exchange of letters between the Secretary of State of the Holy See and the Secretary-General of the United Nations, it was determined that the Holy See, rather than the Vatican City, would maintain relations with the United Nations.⁶⁸ This designation gave the Holy See a much greater interest in the activities of the United Nations and its agencies.⁶⁹ The Holy See may take part in activities involving moral, humanitarian, or social issues, in addition to the temporal or territorial concerns tied more directly to the Vatican

about one hundred acres and its population is less than one thousand people, the Holy See greatly affected the conference results which have global effect. See *infra* Part II.C.

62. *Id.*

63. GRATSCH, *supra* note 1, at ix.

64. *Id.* at x. On July 11, 1963, Pope Paul VI gave a speech during an official visit by U Thant, Secretary General of the United Nations. During the speech the Pope compared the universality of the Catholic Church in the spiritual sphere to the universality of the United Nations in the temporal sphere. See CARDINALE, *supra* note 1, at 230.

65. Pope Pius XII was deeply interested in the United Nations at its creation in 1945. Unofficial contacts between the Holy See and the United Nations continued until official contact was established in 1964. *Id.* at 231-32.

66. *Id.* at 230.

67. DUURSMAN, *supra* note 13, at 405.

68. *Id.*

69. Papal representatives to the United Nations under the title of the State of the Vatican City would have unduly stressed the temporal aspect of the Pope's sovereignty, not reflecting his role as spiritual leader of the world-wide Catholic Church. CARDINALE, *supra* note 1, at 257.

City.⁷⁰ Unlike other states, the participation of the Holy See in the United Nations is of a fundamentally religious and spiritual nature.⁷¹

The Holy See is represented at the United Nations, but in what capacity? It is not clear whether the Holy See would be eligible for full membership in the United Nations due to the tiny size of the Vatican City.⁷² Membership in the United Nations is limited to states with certain capacities, and the Holy See has avoided asking for a UN acknowledgment that the Vatican City is such a state.⁷³ In addition to questions regarding statehood, there are several obstacles to full UN membership for the Holy See, given its special nature.⁷⁴ The Holy See leads the Catholic Church, which is well represented throughout the world population.⁷⁵ It would be difficult for the Holy See to adopt a position against any one state, yet this is exactly what UN Member States are compelled to do.⁷⁶ The Holy See would most likely be forced to abstain from voting on a frequent basis.⁷⁷ It has been argued that under Article XXIV of the Lateran Treaty, the Holy See would not be capable of endorsing sanctions imposed by the UN Security Council.⁷⁸

The Holy See established itself as a Permanent Observer to the United Nations on March 21, 1964.⁷⁹ In 1967 the Holy See established an Observer in Geneva for the UN High Commissioner on Refugees, the UN Conference on Trade and Development, the UN Industrial Development Organization, and the World International Labor Organization.⁸⁰ The Holy See's status as a Non-Member State Permanent Observer means that while the Holy See is not one of the Member States of the UN General Assembly, it is still considered a state.⁸¹ At UN-sponsored international conferences, the Holy See is

70. As the supreme authority of both the Church and the Vatican City, it is the Holy See's responsibility to determine whether its representatives act in the name of the Holy See, the Vatican City, or both. *Id.*

71. See Yasmin Abdullah, Note, *The Holy See at United Nations Conferences: State or Church?*, 96 COLUM. L. REV. 1835, 1843 (1996).

72. GRATSCH, *supra* note 1, at 11.

73. *Id.* "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and . . . are able and willing to carry out these obligations." U.N. CHARTER art. 4, para. 1.

74. See DUURSMA, *supra* note 13, at 406.

75. *Id.*

76. *Id.* UN membership would directly involve the Holy See in political, economic, and commercial conflicts arising between the states. See CARDINALE, *supra* note 1, at 259.

77. See DUURSMA, *supra* note 13, at 406.

78. *Id.* Article XXIV of the Lateran Treaty states, "[t]he Holy See, in relation to the sovereignty it possesses also in the international sphere, declares that it wishes to remain and will remain extraneous to all temporal disputes between States and to international congresses held for such object . . ." CARDINALE, *supra* note 1, at 326.

79. See Gant, *supra* note 19, at 87.

80. *Id.*

81. To a large degree a non-Member State participates in the work of the United Nations on the same level as other members. See Abdullah, *supra* note 71, at 1839.

given the same privileges as other Member nations.⁸² Non-Member State observers have no vote at the UN General Assembly or other UN committees, but these observers may attend and participate in these meetings just as others states' parties.⁸³

Even though the Holy See's status as a Non-Member Observer at the United Nations means it has no vote in the General Assembly, the Holy See has substantial power to affect the work that takes place during UN conventions.⁸⁴ UN conferences are high-profile events and establish the framework by which nations will work to meet global objectives.⁸⁵ At the recent International Conference on Population and Development held in Cairo in September 1994 the Holy See had great influence on the results reached by the convention. In the months leading up to the conference the Holy See sought to persuade heads of state to support its position on contraception and abortion.⁸⁶ The demands of the Holy See were persuasive, and a consensus could not be reached without its support.⁸⁷ Public statements by the Holy See that the "future of humanity" was at stake forced the Secretary General of the Cairo convention to make clear the convention was not seeking the legalization of abortion, but the prevention of illegal abortion.⁸⁸ At preparatory committee meetings before the convention began, the Holy See was one of a few objectors to the many sexual rights and reproductive health references in the draft document.⁸⁹ At the Holy See's insistence approximately ten percent of the draft document dealing with reproductive health and abortion remained in "square brackets" before the conference began.⁹⁰ During the conference itself, the Holy See continually objected to any language referring to safeguarding abortion rights.⁹¹ Since UN conferences prefer to operate by consensus, where all

82. Permanent Observer status provides the Holy See with certain privileges with the United Nations and its subsidiary organs. *Id.* at 1837.

83. Observers are nearly on the same "footing" with Members. *Id.* at 1839 (quoting R.G. SYBESMA-KNOL, *THE STATUS OF OBSERVERS IN THE UNITED NATIONS* 39 (1981)).

84. *Id.* at 1844.

85. At these conventions countries from around the world discuss global problems. *Id.* at 1844-45.

86. *Id.* at 1845.

87. The Holy See's participation on an equal basis with other states gave it the unilateral power to prevent consensus. *Id.*

88. In response to the Holy See's claim that there was an increasing international acceptance to abortion on demand, Nafis Sadik, the convention Secretary General stated, "[w]e are not recommending the legalization of abortion; in fact, we are trying to fight illegal abortion, to prevent it." *Id.* at 1846.

89. The Holy See objected to over 100 references to such rights for fear that the term implied abortion. *Id.* at 1848-49.

90. *Id.* at 1849. Material placed in "square brackets" is not included in the final draft of Convention documents.

91. To help reach a consensus the other 170 state participants at the convention agreed to include language desired by the Holy See: "[I]n no case should abortion be promoted as a method of family planning." *Id.* at 1850.

states agree to the final document,⁹² the other parties accepted many of the Holy See's demands.⁹³

The Holy See received great criticism for the harsh tactics that it employed during the Cairo conference.⁹⁴ Perhaps in response to this criticism, the Holy See sought to lower its profile during the Fourth World Conference on Women that took place in Beijing in 1995.⁹⁵ Nonetheless, the Holy See applied international pressure before the conference began, was actively involved in the preparatory meetings, and lobbied intensely during the conference itself.⁹⁶ Once again, the Holy See objected to language referring to matters of abortion, contraception, and other issues of reproductive health.⁹⁷

As a Non-Member Observer at the United Nations, the Holy See has considerable power to influence the work accomplished at UN conferences, despite having no vote in the General Assembly or other UN organizations.⁹⁸ In an effort to achieve consensus, the preferred method of operation at these conferences, other states were willing to accede to some of the Holy See's demands.⁹⁹ Thus, Observer status is not a token granted the Holy See; this designation yields actual power in world affairs.¹⁰⁰

III. THE MONTEVIDEO CONVENTION DEFINITION OF STATEHOOD

While an increasing number of non-state actors are changing the field of international relations, the state remains the critical player in international law and the international community.¹⁰¹ Many authors argue that the Holy See cannot be a state, and, therefore, its international status is improper.¹⁰² Given the importance of states in international relations it seems logical to assume that the state has been

92. *Id.* at 1851.

93. *Id.*

94. "The Roman Catholic Church, claiming the prerogatives of a secular state, is working to feverishly heap its anti-abortion doctrine upon a gathering of nations." *Id.* at 1850-51 (quoting DeWayne Wickham, *Why Let the Pope Dictate Population Policy?*, USA TODAY, Sept. 7, 1994, at 11A).

95. *Id.* at 1852.

96. *Id.* at 1852-53.

97. *Id.* at 1854.

98. *Id.*

99. At the Cairo and Beijing conferences, the Holy See was the only state objecting to the draft documents. *Id.*

100. *Id.*

101. See Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403, 403 (1999).

102. Kunz argues that the Holy See should not be a member of the United Nations, because it is not a state. See Kunz, *supra* note 3, at 313. Abdullah also finds that the Holy See does not meet the requirements for statehood. See Abdullah, *supra* note 71, at 1867.

clearly and completely defined. This is not the case, however.¹⁰³ Great volumes of academic and political effort have failed to generate a standard definition for the state that is universally accepted.¹⁰⁴

A commonly referenced statement of the requirements for statehood was set forth in the 1933 Montevideo Convention.¹⁰⁵ Those who argue the Holy See cannot be a state commonly refer to this definition.¹⁰⁶ One advantage to selecting this definition is that, at least on its face, it appears to provide a concise list of requirements that are easily ascertainable.¹⁰⁷ Since critics of the Holy See's statehood often use the Montevideo definition, it will be useful in examining the Holy See under its criteria.

The Montevideo requirements are: (1) a permanent population, (2) a clearly defined territory, (3) operation of an effective government over the extent of that territory, and (4) a displayed capacity to engage in international relations, including the ability to fulfill international treaty obligations.¹⁰⁸ These requirements are also used by the Restatement (Third) of the Foreign Relations Law of the United States as defining a "state" in international law.¹⁰⁹ If this is an accurate and complete definition of statehood, application of these requirements to the Holy See may be problematic.

A. *The Population of the Vatican City*

The Montevideo Convention requirement of a permanent population is problematic when applied to the Vatican City. According to Article IX of the Lateran Treaty, the Vatican City population is made up of those persons who have at least permanent legal residence in the City.¹¹⁰ Approximately 500 people reside in the Vatican City, of whom 165 have citizenship in the Vatican.¹¹¹ Under international law there is no set minimum number of inhabitants required to constitute a state.¹¹²

103. Numerous attempts at a formal definition for the "state" either unsatisfactorily define the concept or have otherwise failed to gain widespread acceptance. See Grant, *supra* note 101, at 403.

104. *Id.*

105. *Id.*

106. See *supra* note 102 and accompanying text.

107. See Grant, *supra* note 101, at 414.

108. *Id.*

109. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 (1986), in LOUIS HENKIN ET AL., INTERNATIONAL LAW CASES AND MATERIALS 242 (3d ed. 1993).

110. See CARDINALE, *supra* note 1, at 107. "The population of a State comprises all individuals who, in principle, inhabit the territory in a permanent way." DUURSMA, *supra* note 13, at 117.

111. *Id.* at 374.

112. *Id.* at 117. "No reservations have been made by the international community with respect to the limited number of nationals of Micro-States, even if the nationals were outnumbered by foreign residents." *Id.* at 118.

The population of the Vatican is different than the population of any other state.¹¹³ Traditional notions of nationality for a population are based upon either *jus soli* (bond of the soil) or *jus sanguinis* (bond of blood).¹¹⁴ Vatican law never speaks of nationality, however, only citizenship.¹¹⁵ Citizenship in the Vatican is based on *jus officii*, where that status arises from the person's office.¹¹⁶ The population of the Vatican City is made up almost entirely of persons who reside there because of their Church office, such as dignitaries, officials, and staff.¹¹⁷ Thus, the population of the Vatican City, who are citizens there only during the course of their employment within the Vatican walls, presupposes that very few people, if any, will be permanent Vatican citizens.¹¹⁸ This status does not foreclose the permanent establishment of a population in the Vatican, even though it does mean that a permanent succession of generations will not be established there.¹¹⁹ In addition, every resident, whether they are a citizen of the Vatican City or not, may be expelled from the Vatican territory at any time.¹²⁰ This power demonstrates that the Holy See does not see the population of the Vatican City as a fixed entity upon which the authority of the Holy See is based.¹²¹ The formation of the Vatican City sought to provide a fixed territory to assure some level of temporal sovereignty for the Holy See.¹²²

While Vatican citizenship is extended to the immediate family of citizens authorized to live with the citizen,¹²³ this provision simply does not apply to most residents in the Vatican.¹²⁴ The majority of Vatican citizens are Church officials who are celibate clergy or members of religious orders, residing in the Vatican only during their term of office.¹²⁵ The Vatican population is incapable of self-perpetuation,

113. See CARDINALE, *supra* note 1, at 107.

114. *Id.*

115. *Id.* at 108.

116. *Id.*

117. See Abdullah, *supra* note 71, at 1862. Vatican citizenship is related to the obligation determined by regular employment and permanent residence in the City. See CARDINALE, *supra* note 1, at 108.

118. See DUURSMA, *supra* note 13, at 412.

119. *Id.*

120. *Id.*

121. The Lateran Treaty implicitly recognized that there would be no fixed population in the Vatican City. The City was created for the special purpose of assuring the Holy See as an independent sovereign in the international community. Concerns regarding a fixed population were secondary to this over-arching goal. *Id.*

122. *Id.*

123. The spouse, children, parents, and siblings of a Vatican citizen are also citizens as long as they live with that citizen. The permission of the Holy See is required for each person desiring to reside in the Vatican City. See CARDINALE, *supra* note 1, at 108.

124. See Abdullah, *supra* note 71, at 1862.

125. *Id.*

making it "very different from that of other States."¹²⁶ Yabdullah argues against the statehood of the Holy See based in part on the Vatican's lack of a self-perpetuating, permanent population.¹²⁷ Perhaps the only true member of the Vatican's "permanent" population is the Pope himself.¹²⁸ The population of the Vatican City is engaged in the service of the Holy See and is incapable of maintaining and reproducing itself, but this does not mean that it is not a population.¹²⁹ The population of the Vatican may cause it to fail the "permanent" requirement of the Montevideo Convention, however, because it lacks a "human society stably united in its territory."¹³⁰

B. *The Territory of the Vatican City*

A defined territory is the second requirement for a state in the Montevideo definition.¹³¹ At just over 100 acres, the Vatican City is approximately one-fiftieth the size of Monaco, previously the smallest independent state.¹³² The boundaries of the Vatican City were precisely indicated in a plan annexed to the Lateran Treaty.¹³³ Italy recognized the full sovereignty of the Holy See of the Vatican City proper, as well as granting the Holy See full proprietorship in several church structures near the Vatican City so that there was sufficient physical space to fulfill the duties of governing the Catholic Church.¹³⁴ While geographically insignificant, the territory of the Vatican City is important from a religious, cultural, and historical point of view.¹³⁵

Italy and the Holy See recognized that territory was essential for political sovereignty because "the world . . . recognizes no form of sovereignty other than the territorial form."¹³⁶ Both Italy and the Holy

126. See CARDINALE, *supra* note 1, at 107.

127. See Abdullah, *supra* note 71, at 1862-63.

128. Every inhabitant of the Vatican City, whether a citizen there or not, can be expelled from the Vatican territory at any time at the Holy See's discretion. See DUURSMA, *supra* note 13, at 412. Even if the Vatican City had no other inhabitant than the Holy See, sitting as simultaneous head of the Church and government of the Vatican City, the State of the Vatican City would still be considered a state for special purposes under the Lateran Treaty. See *id.*

129. *Id.*

130. The Vatican population may not be "within the meaning of the criteria for statehood." *Id.*

131. Grant, *supra* note 101, at 414.

132. Ireland, *supra* note 24, at 273.

133. Wright, *supra* note 55, at 452.

134. Full proprietorship in the additional structures is not as extensive an authority as the "absolute power and sovereign jurisdiction" the Holy See possesses over the Vatican City proper. *Id.* at 453.

135. *Id.*

136. DUURSMA, *supra* note 13, at 411. Unlike most states, the territory of the Vatican City is more important than the population in meeting the elements required for statehood. See CARDINALE, *supra* note 1, at 106.

See agreed that even a minimal territory for the Holy See would provide an international basis for statehood,¹³⁷ and no other state “ha[d] ever made a reservation concerning the territorial element of the State of the Vatican City.”¹³⁸ Some scholars have argued that the Holy See is not eligible for Membership in the United Nations because its tiny size was incapable of obtaining statehood, and only states could be UN members.¹³⁹ It has never been shown, however, that the territorial requirement for statehood include some minimal amount of territory. Tiny size alone does not mean the Holy See cannot be a state.¹⁴⁰ The Holy See, through the Vatican City, clearly possesses a defined territory and satisfies this Montevideo requirement for statehood.

C. *The Government of the Vatican City*

The requirement of a government has been called the central criteria for statehood.¹⁴¹ When examining a government for purposes of determining statehood, the degree of effective control must be examined.¹⁴² General international practice looks to maintenance of law and order.¹⁴³ The Holy See is seen to be a true form of government over the Vatican City. Despite the lack of a permanent population in the Vatican City, the Holy See exercises effective temporal power over its inhabitants and employees.¹⁴⁴

Here, again, the Holy See as a governing entity is unique because it is both the absolute monarch of the Vatican City, as well as the supreme head of the Roman Catholic Church.¹⁴⁵ Article III of the Lateran Treaty recognized the full possession, exclusive and absolute power, and sovereign jurisdiction the Holy See has over the territory of

137. Cardinale finds this territory “morally necessary” to assure the Holy See’s freedom of action, unfettered from control by any national government. CARDINALE, *supra* note 1, at 105.

138. See DUURSMA, *supra* note 13, at 411.

139. The Holy See could not be admitted because of its “exiguity.” See Kunz, *supra* note 3, at 313.

140. It is essentially agreed that territory need not be extensive, and “there is no territorial minimum required of a state.” Grant, *supra* note 101, at 436.

141. Government is the essential requirement, “on which all other criteria depend.” DUURSMA, *supra* note 13, at 118.

142. *Id.*

143. New states seem to need more effective control over a territory than established states, unless the previous sovereign granted the right to govern, or the new government was established under principles of self-determination. *Id.*

144. “The governmental institutions of the Vatican City exercise effective authority, within their own legal framework.” *Id.* at 413.

145. See Abdullah, *supra* note 71, at 1864. The Holy See possesses supreme legislative, administrative, and judicial power over the Church, in addition to being the absolute head of the Vatican City government. See Ireland, *supra* note 24, at 281.

the Vatican City.¹⁴⁶ The Pope has delegated his authority to various organs to oversee the government of the Vatican City.¹⁴⁷ Executive powers within the territory are exercised by the Governor of the Vatican, who is directly and exclusively responsible to the Pope.¹⁴⁸ The Governor also plays a legislative role, with authority to publish rules and regulations for carrying out the laws of the state, as well as granting permission for residence in the state.¹⁴⁹ The Pontifical Commission for the Vatican City State conducts the technical affairs of the Vatican City, such as postal and medical services, the radio system, and central security.¹⁵⁰

The Roman Curia, with its numerous divisions and departments, is the central administration of the Roman Catholic Church.¹⁵¹ One definition of the "Holy See" denotes the Pope together with the Roman Curia.¹⁵² In addition to its authority over the spiritual affairs of the Church, the Curia also conducts foreign affairs and relations with international organizations on behalf of the Holy See.¹⁵³ It is perhaps surprising that the branches of the Vatican City government entrusted with temporal authority over the territory do not conduct the relations of the Vatican City with foreign states. Instead, the Holy See conducts these duties through the Roman Curia, the governing body of the Church. This intermingling of authority demonstrates that there is no clear distinction between the governments of the Vatican City and the Roman Catholic Church.¹⁵⁴ If the government of a state must be the body that conducts foreign affairs on behalf of the state, the government would be the Roman Curia, rather than the Pontifical Commission.¹⁵⁵ Yabdullah argues that the Holy See could not be considered a government because the Holy See directed a religion, rather than a nation, with a population capable of asserting statehood.¹⁵⁶ This distinction is not overly essential for a determination regarding

146. Article I of the Fundamental Law of the Vatican City grants the Holy See "full legislative, executive, and judicial powers." CARDINALE, *supra* note 1, at 110.

147. *Id.*

148. *Id.* at 111.

149. *Id.*

150. *See* Abdullah, *supra* note 71, at 1865. If the Governor is absent, the Commission may exercise its legislative authority. *See* CARDINALE, *supra* note 1, at 111.

151. *See* Abdullah, *supra* note 71, at 1865.

152. *See* CARDINALE, *supra* note 1, at 82. The Roman Curia, when included in the definition of the Holy See, includes the Secretariat of State, nine Congregations, three Secretariats, and three Tribunals. *Id.* at 133.

153. *See* Abdullah, *supra* note 71, at 1865.

154. *Id.* Duursma, however, draws a distinction between the Holy See and the Vatican City government. The Pontifical Commission is not included in the Roman Curia, and it cannot be considered part of the Holy See. If the State of the Vatican City were to cease, so would the Vatican City government, with the exception of the Pope and Secretary of State, who are part of the Holy See. *See* DUURSMA, *supra* note 13, at 387.

155. *See id.*

156. *See* Abdullah, *supra* note 71, at 1865-66.

statehood, however, because the Holy See exercises his absolute authority through the Roman Curia over spiritual matters and the Pontifical Commission over temporal matters of the Vatican City.¹⁵⁷ Here, again, the Holy See is the simultaneous leader of the worldwide Church and also the monarch of the Vatican City. In this dual role the Holy See constitutes a valid government over the territory of Vatican City.

D. Capacity to Engage in International Relations

Under the Montevideo Convention, the capacity to enter into relations with other states is a prerequisite to statehood.¹⁵⁸ This criterion has received great scrutiny, and several authors have argued that capacity is a *consequence* of statehood, rather than a *condition* of statehood.¹⁵⁹ Nevertheless, the Restatement (Third) still includes capacity as a requirement for statehood.¹⁶⁰ Analysis of the capacity requirement actually hinges upon a determination that a state is independent.¹⁶¹ The capacity of the Holy See, therefore, will be examined by its relations with other states, as well as its independence.

1. Relations with Other States

The Holy See has repeatedly demonstrated both the desire and capacity to enter into international relations. An important aspect of sovereignty is the power of legation; if the international community in general does not accept a state's diplomatic representatives, that state's capacity to enter into international relations must be questioned.¹⁶² The Holy See currently enjoys full diplomatic relations with over 150 nations.¹⁶³

Further evidence of the Holy See's desire and capacity to enter international relations is seen in the great number of agreements to which the Holy See is a signatory. The Holy See has entered into many agreements regulating various aspects of warfare, including becoming

157. See *id.*

158. See Grant, *supra* note 101, at 434.

159. This position has been advanced by James Crawford and Ingrid Detter. One treatise goes so far as to declare capacity "not generally accepted as necessary." *Id.*

160. "An entity is not a state unless it has competence, within its own constitutional system, to conduct international relations with other states, as well as the political, technical and financial capabilities to do so." HENKIN ET. AL, *supra* note 109, at 249 (quoting RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 cmt. e).

161. Crawford is quoted as saying "[i]ndependence is the central criterion of statehood." Abdullah, *supra* note 71, at 1866.

162. See CARDINALE, *supra* note 1, at 73.

163. See Abdullah, *supra* note 71, at 1866.

a party to the International Atomic Energy Agency.¹⁶⁴ The Holy See also signed numerous international agreements concerning intellectual property, diplomatic relations, and methods of international communication.¹⁶⁵

The Holy See is a Contracting Party to both the Convention relating to the Status of Refugees in 1951 and the Convention on the Rights of the Child of 1989.¹⁶⁶ The Holy See made Reservations to the Conventions that their requirements and protections would only apply as long as they were compatible with the special nature of the State of Vatican City.¹⁶⁷ No state objected to the Holy See's Reservations.¹⁶⁸ The Holy See's status as a Contracting Party, with full rights to enter the Conventions and attaching Reservations, indicates that the other Parties accorded the Holy See equal status with other states.

2. Independence

The capacity to enter into international relations for the purpose of determining statehood may also involve a determination of the independence of a potential state.¹⁶⁹ International relations might simply be an indicator of the independence of a state, making independence the essential requirement.¹⁷⁰ A state must be independent to prove that it can lead a separate existence.¹⁷¹ Independence in this context actually refers to an independent government,¹⁷² but how is this determined? One famous formulation is that an independent government possesses within its territory "the right to exercise therein, to the exclusion of any other State, the functions of a State."¹⁷³ Any substantial limitation of a government's sovereignty to a second state leads to a loss of independence and, therefore, statehood.¹⁷⁴

It has been argued that the Vatican City fails the independence requirement of statehood because it was established in the service of the

164. The Holy See is a party to the 1949 Geneva Conventions. See Gant, *supra* note 19, app. 1 at viii.

165. The Holy See is a signatory to the World Intellectual Property Organization, the Vienna Convention on Diplomatic Relations, and a member of the Universal Postal Union. *Id.*

166. See DUURSMA, *supra* note 13, at 383.

167. *Id.*

168. *Id.*

169. See Abdullah, *supra* note 71, at 1866.

170. *Id.*

171. A state should not merely be a "continuation of another state." See DUURSMA, *supra* note 13, at 120.

172. *Id.* at 120-21.

173. *Id.* (quoting Arbitrator Huber in the *Island of Palmas* case).

174. *Id.*

Holy See.¹⁷⁵ The independence requirement was meant to distinguish one territorial entity from another; this is not the concern with the Holy See.¹⁷⁶ The Holy See coincides in part with the temporal government of the Vatican City, but both reside in the territory.¹⁷⁷ The Holy See conducts foreign affairs on behalf of the Vatican City. There have been cases in the past where a state transfers control of its foreign relations to another state.¹⁷⁸ The tiny state of Liechtenstein transferred control of its foreign relations to Switzerland, but it was still deemed to meet the statehood requirement for admission to Statute of the International Court of Justice.¹⁷⁹ If Liechtenstein remained a state after transferring control of its foreign affairs to Switzerland, an internal influence upon the Vatican City such as the Holy See cannot diminish its independence for purposes of statehood.¹⁸⁰

The independence of the Vatican City may also be examined with regard to Italy, given that the Vatican City is entirely surrounded and greatly dependent upon Italy for numerous essential services. Under Article IV of the Lateran Treaty, Italy recognized that it could not interfere in any way in the Vatican City, and there is no authority within the Vatican City other than the Holy See.¹⁸¹ The piazza in front of St. Peter's Basilica, while within the territory of the Vatican City, is to remain open to the public and subject to Italian police jurisdiction.¹⁸² Italy pledged to demolish certain structures and not to permit new buildings to overlook the City.¹⁸³ The Vatican possesses its own currency, but Italy mints this currency for the Vatican.¹⁸⁴ Both states freely accept the currency of the other.¹⁸⁵ Italy agreed to provide punishment for those crimes committed in the Vatican City.¹⁸⁶ Italy also ensured that the Vatican City was adequately served by water, telephone, and postal services.¹⁸⁷ Given the total lack of any industrial

175. *Id.*

176. The Holy See is neither a state nor a territorial entity. *Id.*

177. *Id.*

178. See HENKIN ET AL., *supra* note 109, at 249 n.1.

179. Liechtenstein was a party to the International Court of Justice (ICJ) case known as *The Nottebohm Case* in 1955. *Id.* Article 34, § 1 of the ICJ statute states that "[o]nly states may be parties to cases before the court." LOUIS HENKIN ET AL., BASIC DOCUMENTS SUPPLEMENT TO INTERNATIONAL LAW, CASES AND MATERIALS, THIRD EDITION 127 (1993).

180. *Id.*

181. *Id.* at 414. Article IV states, "[t]he Sovereignty and exclusive jurisdiction which Italy recognizes to the Holy See implies that there cannot be any interference whatsoever on the part of the Italian government, and that within Vatican city there will be no other authority other than the Holy See." CARDINALE, *supra* note 1, at 320.

182. Ireland, *supra* note 24, at 273.

183. *Id.* at 274.

184. *Id.* at 277.

185. *Id.*

186. See CARDINALE, *supra* note 1, at 120.

187. *Id.* at 121.

activities within the Vatican City,¹⁸⁸ it is totally dependent upon Italy for all food and physical goods consumed by the City.¹⁸⁹

The Vatican City is closely tied to Italy by both necessity and consent. Although the size and actual purpose of the Vatican City mean that it can never be self-sufficient, it remains an independent state, even if that independence must be qualified.¹⁹⁰ The Lateran Treaty did not pretend to create a completely independent state within the city of Rome. Still, the Vatican City has demonstrated sufficient independence, especially when the international community acknowledges that the Holy See has the capacity to take part in international relations. While it is perhaps debatable, the Vatican City appears to meet the capacity requirement for statehood under the Montevideo Convention.

Analysis of the Holy See and the State of the Vatican City with respect to the Montevideo definition of statehood does not lead to one absolute conclusion. While it cannot be denied that the Vatican City possesses a population, it is debatable whether that population may be deemed "permanent," as required under the Montevideo Convention. At just over one hundred acres, the Vatican City is one of the smallest sovereign territories in the world, but that territory satisfies the second Montevideo requirement of statehood. The government of the Vatican City is certainly unique, but the Pope and the various agents to whom he delegates authority govern the territory in all temporal matters. The Vatican City is not subject to any undue influence from an external authority, therefore, it possesses a government meeting the third requirement of the Montevideo Convention. Finally, the capacity to engage in international relations has repeatedly been demonstrated by treaties entered into by the Holy See and the Holy See's presence at the United Nations as a Non-Member State Permanent Observer. The fourth Montevideo requirement for statehood is thus satisfied.

Given the unusual nature of the Vatican City's population, the statehood of the City cannot absolutely be determined under the Montevideo Convention's definition of a state. It can be argued that the Vatican City either meets or fails the population requirement of the Convention.

188. Commercial activities within the Vatican City are limited to "the sale of souvenirs and stamps and revenues from the Vatican museums." DUURSMA, *supra* note 13, at 375.

189. See Abdullah, *supra* note 71, at 1867.

190. In practice Italy does not exercise any substantial control over the Vatican City. See DUURSMA, *supra* note 13, at 415.

IV. IS THE MONTEVIDEO CONVENTION THE ESSENTIAL DEFINITION OF STATE?

Within the international community the state has long been considered the principal actor, despite the increasing importance of other actors such as liberation organizations, non-governmental authorities, and multinational corporations.¹⁹¹ A clear and wholly satisfying definition of a "state," however, does not exist.¹⁹² Perhaps the most widely-accepted definition is that embodied in the Montevideo Convention of 1933,¹⁹³ but there are other definitions and different methods of interpreting even Montevideo.¹⁹⁴ Given that the Holy See, as sovereign of the State of Vatican City, does not fit neatly into the Montevideo description of a state, could another entity likewise achieve acceptance as a state without meeting those requirements? Determining whether the Montevideo definition of state remains the modern view therefore requires consideration of the historical background leading up to the Montevideo Convention, as well as an analysis of recent trends in international law.

A. *Historical Requirements for Statehood*

The Montevideo Convention of 1933 section entitled *On the Rights and Duties of States* proposed four criteria for statehood.¹⁹⁵ As previously stated, the four criteria are a permanent population, clearly defined territory, effective government over that territory, and the capacity to engage in international relations.¹⁹⁶ The origins of these criteria, however, are found within the text of the Convention.¹⁹⁷ The content of the Montevideo definition is a restatement of the prevalent ideas at the time they were written.¹⁹⁸

In the Eighteenth Century it was believed that the existence of a state was founded on its internal sovereignty.¹⁹⁹ Thus, statehood did not

191. See Grant, *supra* note 101, at 403.

192. *Id.*

193. *Id.* In his book *The Creation of States in International Law*, James Crawford termed Article 1 of the Convention the "best known formulation of the basic criteria for statehood." JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 414 (1979).

194. See generally *id.* (discussing alternative views of statehood regarding territorial control and sovereignty).

195. *Id.* at 413-14.

196. *Id.* at 414.

197. *Id.* The academic literature of the 1930s and 1940s does not explain why the Montevideo draftsmen chose their particular phrasing. *Id.* at 416.

198. The criteria were so accepted at the time that few contemporary observers thought to inquire into their basis or origin. *Id.*

199. DUURSMA, *supra* note 13, at 110.

require recognition by other states.²⁰⁰ As this positivist theory based on the obligation to respect international law on the consent of individual states gained influence, statehood became increasingly dependent on international recognition.²⁰¹ By the turn of the Twentieth Century, this view of statehood developed into a constitutive theory wherein statehood acquired exclusively through recognition by other states.²⁰² This theory did not permit arbitrary or discretionary acts of recognition; therefore certain objective criteria were accepted as to how statehood should be examined.²⁰³ At this time, Franz von Liszt declared that independence and supremacy over a territory were indispensable requirements of statehood.²⁰⁴ Georg Jellinek, writing in the late Nineteenth Century, required a territory, a people, and a government for recognition as a state.²⁰⁵ Acceptance of these objective requirements for statehood indicated that the recognition of a state failing to meet these criteria would be invalid.²⁰⁶ If recognition could be invalid, then the constitutive theory failed to explain the true basis of statehood.²⁰⁷ The failure of the constitutive theory gave support to the more objective, declarative theory of statehood.²⁰⁸ The majority of scholars now accept the declarative theory of the state, under which the international personality of a state is only determined by objective criteria of international law.²⁰⁹

The declarative theory of recognition has found widespread support in state practice.²¹⁰ The four-part test set out in the Montevideo Convention, establishing objective criteria only, thus reflects the declarative theory of statehood.²¹¹ There is an advantage to such a succinct and seemingly simple definition of a state.²¹² Many sources, including the U.S. State Department, accept this formulation as accurate and determinative.²¹³ The declarative theory of statehood is also

200. *Id.*

201. A new state had to be recognized by other states because it created obligations for existing states. *Id.*

202. *Id.* By their recognition, other states "constitute," or create, the new state. See HENKIN ET AL., *supra* note 109, at 244.

203. See DUURSMA, *supra* note 13, at 111.

204. See Grant, *supra* note 101, at 409.

205. See DUURSMA, *supra* note 13, at 111. Jellinek's "doctrine of three elements" was to form the central core of the Montevideo criteria. See Grant, *supra* note 101, at 416.

206. See DUURSMA, *supra* note 13, at 111.

207. *Id.*

208. See *id.*

209. "Whether an entity is a State is a matter of fact, not of recognition." *Id.*

210. *Id.* at 112. The weight of authority and state practice support the declarative theory. See HENKIN ET AL., *supra* note 109, at 244.

211. See DUURSMA, *supra* note 13, at 112.

212. See Grant, *supra* note 101, at 414.

213. A 1976 U.S. State Department document stated, "[t]he United States has traditionally looked to the establishment of certain facts. These facts include effective control over a clearly defined territory and population; an organized governmental administration of that territory; and a capacity to act effectively to conduct foreign

reflected in the Restatement (Third) of Foreign Relations, which asserts that although a state is not required to grant formal recognition to any other state, it is required to treat as a state an entity that meets the requirements of statehood.²¹⁴

The distinction between the declarative and constitutive views of recognition should not be overemphasized, however. "The declaratory effect of recognition on the international personality of a state has a relative value."²¹⁵ If the international community refuses to recognize an entity even though it satisfies the objective criteria for statehood, the legal result for that entity is nearly the same.²¹⁶ State practice continually refuses to accept either a right of recognition or a duty to recognize.²¹⁷ Therefore, states have the discretion, for political or alleged legal reasons, to withhold recognition from an entity that otherwise would qualify as a state under international law.²¹⁸ This is a consequence of the declarative theory of statehood.²¹⁹ The practical effect is that otherwise legitimate but non-recognized states may have difficulty in gaining acceptance as a member of the international community.²²⁰ While objective standards such as those put forward by the Montevideo Convention are often cited as determinative of statehood, entry into the international community as a member state, to a large degree, still requires that other states choose to recognize an entity and allow it to take part in international relations.

B. *Recent State Practice*

Recent decades have seen substantial changes in international relations, leading to increased scrutiny of the objective criteria of statehood, such as those contained in the Montevideo Convention.²²¹ The most often studied requirement, the capacity to enter into international relations is no longer universally indicative of statehood.²²² Increasingly in modern times, actors other than states have been deemed to possess international legal status and be capable

relations and to fulfill international obligations." *Id.* at 415 (quoting U.S. Department of State Press Relations Office Notice, Nov. 1, 1976).

214. See HENKIN ET AL., *supra* note 109, at 244.

215. DUURSMA, *supra* note 13, at 115.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. The non-recognized states are restricted in their relations with the international community because they cannot enter into diplomatic relations. *Id.*

221. While some writers believe the Montevideo Convention's criteria are incomplete, others argue that they are over-inclusive by incorporating non-essential requirements. See Grant, *supra* note 101, at 434.

222. *Id.*

of entering into international agreements.²²³ The rise of organizations such as the United Nations, the North Atlantic Treaty Organization, and the European Union have produced a shift in the nature of international relations.²²⁴ The capacity to enter into international agreements, rather than indicative of statehood, may more accurately be described as a consequence of statehood.²²⁵ Since capacity is no longer in the exclusive domain of states,²²⁶ it is argued that it is not determinative of statehood.²²⁷

Similarly, the Montevideo element of territory has not always been required, at least after statehood has been established.²²⁸ States such as Poland, Yugoslavia, and Czechoslovakia, which were annexed during World War II, were still accepted as having international status by most of the rest of the world.²²⁹ The Allied Powers continued to recognize the governments of these states, even after they had lost all territorial authority.²³⁰ Statehood does not disappear if the territory is occupied and a government in exile is formed.²³¹ International personality is not changed even if a non-territorial entity acquires control over a territory.²³² The requirement of territory is not essential for maintaining statehood once it is established, but territory may still be a valid requirement for establishing a new state.

As with territory, the loss of a functioning government does not mean that a state ceases to exist. Cambodia remains a state, although it has lacked a functioning government in the traditional sense for some time.²³³ Similarly, Somalia continued to exist as a state, even though its government lost all control over its territory in 1992.²³⁴ As with territory, the Montevideo requirement of an effective government may not, in all cases, be essential for international acceptance as a

223. *Id.* at 405. Competence to make treaties is part of statehood, but it is not unique to states. *Id.* at 412.

224. What actually constitutes a person under international law has been reassessed, given the increased role in international society played by such non-state actors as corporations, political or religious parties or movements, organized interest groups, transnational ethnic communities, and other non-governmental organizations. *Id.* at 405-06.

225. *Id.* at 435.

226. Treaty-making competence is possessed by various entities besides states, particularly international organizations. *Id.*

227. *Id.* at 434.

228. *Id.* at 435.

229. *Id.*

230. *Id.*

231. See DUURSMA, *supra* note 13, at 117. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 201, cmt. b agrees that a state does not cease to be a state because it is occupied by a foreign power. The putative annexation of Kuwait by Iraq in 1990 did not mean that Kuwait was no longer a state. See HENKIN ET AL., *supra* note 109, at 247.

232. See DUURSMA, *supra* note 13, at 117.

233. See HENKIN ET AL., *supra* note 109, at 247 n.2.

234. *Id.*

state. Here again, the distinction must be drawn between an entity seeking to establish a new state, where the objective criteria might still be required, and an existing state which no longer meets these criteria yet maintains statehood. Some writers find fault with the Montevideo Convention based on its inclusion of elements not universally accepted as requirements for statehood.²³⁵

While some argue that the Montevideo elements are not clearly necessary for statehood, others claim that there are essential requirements not found in the Montevideo definition.²³⁶ "Independence" is often cited as a necessary element for statehood.²³⁷ Earlier in this Note independence was examined as the underlying determination of the capacity of a state to enter into international relations. Some authors argue that independence is the most important consideration for a determination of statehood.²³⁸ Some would define independence as the exclusion of others; the independence of a "state" might certainly be questioned if it were formed under belligerent occupation or were subject to substantial external control.²³⁹ Making independence an essential element of statehood, however, is problematic. Given the modern growth of international organizations that possess substantial authority, the absolute independence of member states may be questioned.²⁴⁰ Perhaps a distinction must be drawn between legal independence and military or political independence. Under this distinction, military and political alliances and organizations would not affect the legal independence of the states included.²⁴¹ Certainly, tiny states, the Vatican City included, are very dependent on neighboring states for certain necessities, yet are seen to be independent by the international community. Thus, the practical application of a requirement of independence may not be possible with regard to establishing statehood.

Another proposed requirement for statehood might be the absence of competing claims from a recognized "parent."²⁴² The states of federal unions (such as the individual states of the United States) are not considered to be international states because their central government claims them to be a part of the larger federation.²⁴³ The dissolution of the Soviet Union, with its member political units achieving independent

235. "A prevalent discontent over the Montevideo definition is that it includes elements that are not clearly necessary to statehood." See Grant, *supra* note 101, at 436.

236. *Id.* at 437.

237. *Id.*

238. The critical criterion for statehood is independence. *Id.*

239. *Id.*

240. States are increasingly becoming subordinate to international organizations. *Id.* at 438.

241. *Id.*

242. *Id.* at 439.

243. *Id.* at 440.

status, only occurred after the central government consented.²⁴⁴ It is not clear what would have resulted if the central government had not given its consent. Recognition of an entity as a state before the "parent" state relinquished its claim could be considered a violation of the territorial integrity of the parent.²⁴⁵ It is long recognized that such "premature" recognition would be an offense against the original state.²⁴⁶ State practice indicates that the absence of competing claims with regard to an entity may be a prerequisite to establishing a new state.²⁴⁷

A recent dispute over the status of Bosnia-Herzegovina raises the possibility that the international community might require a claim to statehood to arise through a popular process.²⁴⁸ The crisis in Bosnia was to be addressed by a special arbitration commission appointed by the European Union.²⁴⁹ While Bosnia met most of the requirements for statehood, recognition was refused for two reasons.²⁵⁰ The Bosnian Constitution required popular sovereignty to be exercised, yet this had not occurred, and the Serbs were given no part in the actions of the Government of Bosnia.²⁵¹ The declaration of independence by Bosnia was not recognized as forming a new state.²⁵² Along with Bosnia, it has been argued that referenda within the former Soviet republics were essential before the international community would recognize them as new states.²⁵³ Contemporary state practice may indicate that establishing statehood must now occur through an exercise of the popular will.²⁵⁴

A democratic government is also thought by some to be a requirement for any new state.²⁵⁵ The international community was reluctant to recognize Guinea-Bissau after it unilaterally declared its independence from Portugal due to great concern regarding the

244. Statehood of the union republics was only secure when the prior claimant to those territorial units relinquished its claim. *Id.* at 439-40.

245. *Id.* at 440.

246. *Id.*

247. The absence of competing claims is not an express factor in the Montevideo definition of state. *Id.*

248. *Id.*

249. The Badinter Commission issued its Opinions regarding Bosnia on January 11, 1992. *Id.*

250. The Bosnian declaration of independence was judged to be imperfect even though the arbitrators determined that Bosnia met most of the requirements of statehood, including supplemental conditions to the traditional criteria set by the European Union. *Id.*

251. *Id.*

252. The Commission's Opinion suggested that a referendum of all Bosnians be held under international supervision to determine whether it would be appropriate for Bosnia to be recognized as a state. *Id.* at 441.

253. *Id.*

254. *Id.*

255. *Id.* at 442.

governing regime's undemocratic character.²⁵⁶ Before recognizing the new republics of the former Soviet Union, the United States and the European Union insisted they commit to democratic forms of government.²⁵⁷ Democracy is also an often-cited concern regarding the status of the new states being carved out of Yugoslavia.²⁵⁸ Non-recognition of undemocratic regimes may indicate the emergence of democracy as an essential element of statehood.²⁵⁹ In 1991 the United States indicated that it would determine recognition based upon five new requirements in addition to the traditional criteria for statehood.²⁶⁰ These new criteria included a peaceful respect for all existing internal and external borders, support for democracy with emphasis on the role of elections in the democratic process, as well as full respect for the individual and the safeguarding of human rights.²⁶¹

Recent state practice appears to be expanding the requirements imposed upon an entity claiming to form a new state. Just as the Montevideo Convention once appeared to be a complete definition of statehood, some have argued for a single method of determining when statehood is achieved. In view of the near universality of membership in the United Nations, some have argued that this body has become the final decision-maker with regard to statehood.²⁶² Duursma, however, disagreed that UN membership is a criterion for statehood.²⁶³ Certain entities are undeniably states, yet they are not members of the United Nations.²⁶⁴ The entry of Taiwan (or the Republic of China) into the United Nations is blocked by a Chinese veto.²⁶⁵ The tiny state of Nauru has not applied for UN membership due to financial reasons.²⁶⁶ Both of these entities meet the objective criteria for statehood, yet they do not

256. *Id.*

257. *Id.*

258. *Id.* at 443. The guidelines imposed by the European Union regarding recognition of new states from the former territory of Yugoslavia go well beyond the traditional qualifications for statehood under international law. Recognition of statehood must be "earned" by meeting the standards articulated. See HENKIN ET AL., *supra* note 109, at 252.

259. See Grant, *supra* note 101, at 442-43.

260. The policy was announced by U.S. Secretary of State James Baker at the September 1991 meeting of the Conference on Security and Cooperation in Europe. See HENKIN ET AL., *supra* note 109, at 250.

261. *Id.*

262. The "United Nations has for practical purposes become the collective arbiter of statehood through the process of admission and non-recognition." DUURSMAN, *supra* note 13, at 111 (quoting J. DUGARD, RECOGNITION AND THE UNITED NATIONS 126 (1987)).

263. *Id.* at 111-12.

264. *Id.* at 112.

265. *Id.*

266. *Id.*

belong to the United Nations.²⁶⁷ UN membership alone, therefore, cannot be determinative of statehood.

While the Montevideo Convention requirements are commonly repeated, recent international practice indicates that the issue of statehood is certainly more complicated than it might appear at first glance. The Montevideo definition, while perhaps attractive for its concise statement of what the law apparently is, is just one formulation of the requirements of statehood. The emergence of non-state actors in the international community has greatly affected the way that international relations are conducted. In addition, state practice increasingly looks at such considerations as independence, lack of competing claims, use of the popular process, a democratic government, and UN membership when determining whether a new state will be recognized. This indicates that the Montevideo Convention is no longer a complete definition of the requirements for statehood.

Plausible arguments can be made that the Holy See, through the Vatican City, satisfies the objective Montevideo requirements for statehood. The Holy See has also demonstrated its independence from any other state. In contrast, however, the Holy See certainly does not possess other characteristics such as the popular process, a democratic government, or Membership in the United Nations. These non-objective criteria appear to be gaining importance in the international community, perhaps even rising to the level of requirements. The four criteria put forward under the Montevideo Convention can be considered a starting point for a determination of statehood, but state practice seems to indicate that they are no longer absolutely determinative. The Holy See has been considered an actor under international law for many centuries, even though its sovereignty was very unlike any other state.

V. MAY OTHER RELIGIONS FOLLOW THE PARADIGM OF THE HOLY SEE AND THE VATICAN CITY TO ESTABLISH INTERNATIONAL STATUS?

The Holy See's authority on the international stage has always been controversial. In the era of strictly state-to-state relations, a state that was firmly opposed to interacting with the Holy See could choose to do so with minimal consequences. In recent decades, however, the United Nations has become increasingly influential in the development of international law, which is applicable to every state.²⁶⁸ UN conferences

267. The reasons for not entering the United Nations are not related to the absence of statehood. *Id.*

268. "The development of public international law can no longer be separated from the United Nations. The Organization has become the most important world-wide law-

provide an important forum for developing and articulating global goals and norms.²⁶⁹ The Holy See continues to play an active role in the development of international law at recent UN conferences, where it participates in its status as a Non-Member Permanent Observer.²⁷⁰ As the United Nations continues to gain influence and authority, it is logical to assume that a voice in UN decisions and activities will be increasingly desirable. This presents the question whether another religion could seek to gain equivalent influence in the United Nations and world affairs as that enjoyed by the Holy See.

It has been argued that the status of the Holy See implies that another religion would be entitled to privileges at the United Nations merely by asserting control over a small amount of territory.²⁷¹ Abdullah suggested that if an Islamic state entered into an agreement with a religious leader, following the model of the Lateran Treaty between Italy and the Holy See, that religious leader could be granted sovereignty over a designated territory, such as an area of a city.²⁷² This new "state-religion" could seek to establish a population, effect a government in the territory, and then attempt to enter into international relations. The "state-religion" would not need to seek Membership at the United Nations, as it could take part in UN proceedings with the status of a Permanent Observer.²⁷³ By establishing itself as a Non-Member Permanent Observer, the new entity would possess the same authority as that of the Holy See.²⁷⁴ Abdullah argued that the example of the Holy See would make it difficult to deny the same privileges to another religion following this pattern.²⁷⁵

If the Montevideo Convention's definition of statehood was conclusive and the only authority for the Holy See to act in international relations was as the government of the State of the Vatican City, this theoretical experiment might succeed. An attempt to establish such a "state-religion" would not find acceptance among the community of nations, however, and it would not be permitted to take part in international relations. An over-emphasized reliance on the Montevideo

creating body." Abdullah, *supra* note 71, at 1841 (quoting 5 ENCYCLOPEDIA OF PUBLIC INT'L LAW 280 (1983)).

269. The importance of the agreements formulated at UN conferences should not be underestimated. The most important forum for international lawmaking is the UN conference. *Id.*

270. See *supra* notes 84-100 and accompanying text.

271. See Abdullah, *supra* note 71, at 1875.

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.* Based on this concern, Abdullah suggested that the Holy See no longer be considered a Non-Member Permanent Observer at the United Nations. Instead, it should be treated as a UN Article 71 Non-Governmental Organization (NGO). NGOs possess the ability to lobby, but they have no negotiating role at UN conferences and lack the power to block consensus votes. *Id.* at 1872.

Convention's definition of statehood does not adequately explain why the Holy See enjoys the international status that it currently possesses. It is not merely as the government of the Vatican City that the Holy See takes part in international relations.²⁷⁶ In 1957 there was some confusion as to whether the Pope was to be represented at the United Nations as the Holy See, the spiritual leader of the Catholic Church, or as the State of the Vatican City, a temporal sovereign.²⁷⁷ The question was answered by correspondence between the Secretary-General of the United Nations and the Holy See.²⁷⁸ Dag Hammarskjöld, the Secretary-General, indicated that the papacy should be represented by the Holy See, because, "When I request an audience from the Vatican, I do not go to see the King of Vatican City, but the head of the Catholic Church."²⁷⁹ The Holy See's representation at the United Nations is granted based on the religious and historical character of the Holy See. The Holy See also has temporal authority as monarch of the Vatican City. The Holy See has demonstrated for centuries that it possesses both religious and temporal capacities.

It is not necessary to change the Holy See's position in international relations, however, out of concern that another religion would achieve similar status. Once an entity has been recognized as a state, the rights achieved by that statehood cannot easily be revoked.²⁸⁰ Therefore, there would be significant difficulties in changing the status of the Holy See.²⁸¹ The United Nations has treated the Holy See as a state since 1964 and the Holy See would undoubtedly object to removing its privileges of statehood.²⁸² Recognition by other states is of considerable importance, especially in borderline cases.²⁸³ The Holy See currently maintains diplomatic relations with over 150 nations.²⁸⁴ Participation by the Holy See in world affairs does not mean that another religion would find similar acceptance.

The Holy See does not take part in international relations merely because it has nominally satisfied the objective criteria put forward by the Montevideo Convention. The unique status of the Holy See developed over many centuries, where it was accepted by other states as possessing international authority. The international personality of the Holy See was not established by the Lateran Treaty, which merely

276. The Holy See was recognized to have international personality long before the Lateran Treaty created the State of the Vatican City in 1929. See CARDINALE, *supra* note 1, at 83. For an analysis of the pre-Lateran status of the Holy See, see *supra* notes 14-52 and accompanying text.

277. See GRATSCH, *supra* note 1, at 10.

278. *Id.*

279. *Id.*

280. *Id.* at 245.

281. See Abdullah, *supra* note 71, at 1874.

282. *Id.*

283. *Id.*

284. *Id.*

created the State of the Vatican City.²⁸⁵ The Holy See bases its international status on its religious and spiritual authority and not the territory of the Vatican City.²⁸⁶ The United Nations and other organizations have taken no position on this issue, even though their relations take place in the name of the Holy See rather than State of the Vatican City.²⁸⁷ The problem has been avoided, because the Holy See possesses the objective characteristics of a state.²⁸⁸ States do not wish to acknowledge that the Holy See's status is based on religious authority for fear that other religions would make similar claims.²⁸⁹

The Catholic Church developed over the centuries as a highly organized institution, hierarchically structured, with one supreme leader, the Pope, to whom all other members of the Church owe obedience.²⁹⁰ No other religion can make this statement as persuasively as the Catholic Church.²⁹¹ For example, the Orthodox Churches are subdivided into various national groups, subordinate in some ways to territorial sovereignty, and lack an effective centralized government and organization.²⁹² The same barriers to international personality apply to the Anglican and Protestant Churches and would appear to prevent these churches from founding a recognized "state-religion" based on the model of the Holy See.²⁹³

A. *Judaism and Israel*

The historical and hierarchical underpinnings that led to the widespread recognition of the Holy See as a member of the international community are not so clearly absent from other world religions, however.

With the founding of the State of Israel by UN declarations in 1947-1948, a secular, yet strongly "Jewish" state entered the community of nations.²⁹⁴ This new nation consists of a politically sovereign people living within a specific territory that takes part in international relations.²⁹⁵ Israel is Jewish because of its cultural and strong national identity, not through the secular source of its laws.²⁹⁶ For this reason,

285. See *supra* note 59 and accompanying text.

286. See HENKIN ET AL., *supra* note 109, at 300.

287. *Id.*

288. *Id.*

289. States would "not be inclined to welcome" such claims by other religions. *Id.*

290. See CARDINALE, *supra* note 1, at 91.

291. *Id.*

292. *Id.*

293. *Id.*

294. See JOHN CORRIGAN ET AL., *JEWS, CHRISTIANS, MUSLIMS: A COMPARATIVE INTRODUCTION TO MONOTHEISTIC RELIGIONS* 434 (1998).

295. *Id.*

296. *Id.* at 436. While Judaism receives a special role as the ancestral faith, Jewish rights, as well as those of other religious minorities within Israel are protected under Israeli secular law. *Id.* at 435-36.

Israel has been described as a "unique historical experiment" in determining the boundary between religious and state law within a secular, yet very Jewish, democracy.²⁹⁷ Given Israel's strong association with Judaism, notwithstanding the fact that it is actually a secular democracy, the possibility that a new Judaic State could be established and recognized by the world community is rather slim.²⁹⁸

Israel lacks a written constitution to explicitly separate church from state; relations between the state and Judaism have been described in terms of four components: (1) the Jewish Sabbath and Festivals are public holidays, (2) *Kosher* food is served in public institutions, (3) the law of personal status, such as marriage, divorce, and inheritance is governed by religious institutions, rather than the secular courts, and (4) state schools are of either separate secular or religious "streams."²⁹⁹ The interests of Judaism are often aligned with the interests of Israel, and Jewish religious leadership now enjoys a recognized voice in national and international problems, such as relations in peace and war, the environment, religious tolerance, and treatment of minorities.³⁰⁰ While Israel is actually distinct from Judaism, in the eyes of many, the two are not so easily separable. Accordingly, an attempt to form a new Judaic State following the model of the Lateran Treaty and the Holy See would not likely gain international acceptance. It may be argued that Israel has fulfilled the role of a Jewish voice in international affairs. Absent a strong historical basis for an official Jewish state, the formation of a new Jewish nation that met the four objective criteria of the Montevideo Convention would not be guaranteed recognition as a state by the international community.

The world religion with the largest number of followers, Islam, generally possesses a nationalistic character, in contrast to the international status of Catholicism.³⁰¹ Due to the importance of national rather than international Islamic leaders, and lacking the centralized, hierarchical structure present in the Catholic Church, it does not seem likely that the formation of an independent Islamic State based on the Lateran model of the Holy See would achieve widespread international acceptance. One fairly recent offshoot of Islam, the Bahá'í Faith, however, may one day be able to make a plausible argument for recognition of a new religious state on par with the Holy See.

297. *Id.* at 435.

298. While some Jews view Judaism as a religion, others see Jews as constituting a nation like other nations, meaning that religion is not the real meaning of being a Jew. See EUGENE B. BOROWITZ, UNDERSTANDING JUDAISM 99 (1979).

299. See NORMAN SOLOMON, JUDAISM AND WORLD RELIGION 119 (1991).

300. *Id.* at 121.

301. See CARDINALE, *supra* note 1, at 91.

B. *The Bahá'í Faith*

The Bahá'í Faith is among the youngest of the world's distinct religions.³⁰² The Faith is based entirely upon the teachings of its founder, Bahá'u'lláh, and arose in Iran during the mid-Nineteenth Century.³⁰³ The Bahá'í Faith has now spread to almost every part of the world, has administrative institutions in over two hundred independent states, and has believers from every cultural, racial, social, and religious background.³⁰⁴ At the center of the Bahá'í Faith is an emphasis of the oneness of humankind, and the emergence of a global civilization.³⁰⁵

What makes the Bahá'í Faith unique, apart from its rapid international growth, is its level of international organization.³⁰⁶ The Universal House of Justice has legislative and executive authority to make international decisions on behalf of the Faith.³⁰⁷ The membership of the Universal House is elected by the members of national spiritual assemblies of the Bahá'í Faith during an international convention held at the World Centre of the Bahá'í Faith in Haifa, Israel.³⁰⁸ The Universal House demonstrates its sole legislative authority over the Faith by guiding the development of the global Bahá'í community through propagation of global teaching plans in which other Bahá'í agencies have carried out the roles assigned to them by the House.³⁰⁹

Recognition of the Bahá'í Faith as an established, independent religion is demonstrated by the status accorded to it as a consulting member of various non-governmental councils within the United Nations.³¹⁰ By actively participating in the United Nations the Faith has gained a forum for its universal ideals, as well as an opportunity for the Bahá'í community to participate in the formation of international law.³¹¹ Seeking to ensure that it is not perceived as a political threat, the Bahá'í community has avoided being identified with the diplomatic

302. See WILLIAM S. HATCHER & J. DOUGLAS MARTIN, *THE BAHÁ'Í FAITH: THE EMERGING GLOBAL RELIGION* xiii (1985). The Bahá'í Faith arose as a result of tensions within Islam; the Faith is now entirely independent of its parent religion. *Id.* at 1.

303. *Id.* at xiii.

304. *Id.* There are over three million Bahá'ís around the world, nearly half of whom live in India or Iran. There are, however, over 100,000 centers around the world where Bahá'ís or Bahá'í groups reside. *Id.* at 167-68.

305. "Bahá'u'lláh's central message is that the day has come for the unification of humanity into one global family." *Id.* at xiii.

306. *Id.* at 144.

307. *Id.*

308. *Id.* at 147.

309. *Id.* at 191.

310. During the period 1974-1979 the Bahá'í International Community participated in thirty-five UN conferences, in seventy-two regular sessions of the Economic and Social Council, and in the General Assembly special session on the study of disarmament. *Id.* at 169 n.3.

311. *Id.* at 169.

policies of any nation or group of nations, preferring to focus on working through the United Nations.³¹²

The Bahá'í Faith is presently recognized as an independent religion by the international community, as demonstrated by its participation at certain UN functions. It is not clear, however, that an attempt to establish an independent Bahá'í State following the Lateran model of the Holy See would presently find international acceptance. While the Bahá'í Faith does have an established international structure much like the Catholic Church, the Faith has existed for less than two hundred years, and its membership, though widespread, is still only a few million strong.³¹³ In contrast, the Roman Catholic Church numbers approximately one billion adherents.³¹⁴ The Bahá'í Faith lacks the long history of international status enjoyed by the Holy See, as well. For centuries, the Holy See has been recognized as having international authority and has entered binding international agreements, as well as helping to settle international disputes. This history has led to a general acknowledgment that the Holy See enjoys a unique position in world affairs. It is doubtful that the world would be receptive to a new state created by another religion, lacking the strong historical evidence of organized international status. While the Bahá'í Faith cannot presently demonstrate a long history of involvement in the international community, continued participation in such bodies as the United Nations may one day lead to a time when a Bahá'í State, created following the Lateran model of the Holy See, would find acceptance as a member state of the community of nations.

VI. CONCLUSION

The Montevideo Convention is a reflection of the declarative theory of statehood, whereby a state is created by satisfying certain objective criteria. If the international community decides not to recognize an entity as a state, even if it meets those objective criteria, however, that entity will not be permitted to act in the United Nations or elsewhere on the international stage. Recent state practice indicates that more will be required of new states than simply meeting the minimum Montevideo requirements. An agreement between a state and a religious leader attempting to form a new state in a Vatican City format would not arise from a popular process or contain a democratic government, which is increasingly important to the international community. A treaty modeled after the Lateran Treaty would be seeking to establish a new

312. *Id.* at 199-200.

313. Three million believers is not overly large when compared with other religious movements that are roughly contemporaneous with the Bahá'í Faith. *Id.* at 167-68.

314. See CORRIGAN ET AL., *supra* note 294, at 464.

state, and this state would be subject to the additional, non-objective requirements that have been recently applied to new entities seeking to establish statehood. These criteria would not permit a new "state-religion" to gain statehood. Absent the long tradition of recognition such as that possessed by the Holy See, another religion would not be recognized by the international community as a state.

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