The Holy See's Worldwide Role and International Human Rights: Solely Symbolic?

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“THE HOLY SEE’S WORLDWIDE ROLE AND INTERNATIONAL HUMAN RIGHTS: SOLELY SYMBOLIC?”

I. INTRODUCTION

“It is on this path, taken by my Venerable Predecessors, that I also intend to set out ..... with the sole concern of proclaiming the living presence of Christ to the whole world.”¹ With these words spoken just three years ago after his election as the Roman Pontiff, Pope Benedict XVI reaffirmed the universal nature of Catholicism and his traditional role as a spokesperson for the Holy See in the international arena. From Saint Peter to the current pontificate of Benedict XVI, the Holy See has contributed its voice for the promotion of the “integral good of every human being” through its involvement in international policymaking and the United Nations.²

In his historic 1995 address to the General Assembly of the United Nations, Pope John Paul II noted that the Holy See has a “specifically spiritual mission” and that the Holy See and the United Nations found cooperation on the basis of a “common concern for the human family.”³ Because of the spiritual mission of the Holy See, yet recognition of the distinct international juridical personality of the Vatican City-State through the Lateran Treaty of 1929, the issue of the definitive legal personality of the Holy See is still


³ Id.
yet unsettled.\textsuperscript{4} Legal doctrine today tends to recognize the Vatican City-State and the Holy See as two distinct legal persons.\textsuperscript{5} Professor Hans Kelsen aptly notes, “The Head of the Church is at the same time the Head of the State of the Vatican City. … But the State of the Vatican City, limited to a certain territory, must not be identified with the Church, which is tied to no limited territory. That means the territorial sphere of validity of the State of the Vatican City is limited, as every state territory is, whereas the territorial sphere of validity of the Roman Catholic Church is not limited.”\textsuperscript{6}

While the specific contours of the juridical status of the Holy See are debatable among scholars of international law, it is certain that the territorial sphere of validity of the Roman Catholic Church in discussions over international human rights and treaties today is largely unbounded. Today, the role of the Holy See in the formation of international human rights instruments and in international relations is seen by many as “symbolic,” based largely on the theological concerns of its spiritual mission.\textsuperscript{7}

In this note, I contend that while there is a significant “symbolic” dimension to its role (even the Permanent Observer Mission of the Holy See to the United Nations has

\textsuperscript{4} CARDINALE, THE HOLY SEE AND THE INTERNATIONAL ORDER 319-340 (1976). Following the unification of Italy in 1871 and the collapsing of the Papal States, the Italian Parliament passed a “Law of Guarantees” which enabled the Roman Pontiff to exercise the spiritual mission of the Holy See. However, the Roman Pontiff did not formally recognize the Law of Guarantees; therefore, from 1871 until the Treaty of the Lateran in 1929, the “Roman Question” remained unresolved. With the Treaty of the Lateran, the Vatican City-State was created and the international sovereignty of the Holy See was formally recognized by Italy.

\textsuperscript{5} L.F. DAMROSCH, L. HENKIN, R.C. PUGH, O. SCHACTER and H. SMIT, EDS., INTERNATIONAL LAW: CASES AND MATERIALS 291 (4\textsuperscript{th} ed. 2001).

\textsuperscript{6} H. KELSEN, PRINCIPLES OF INTERNATIONAL LAW 252 (2\textsuperscript{nd} ed. 1966).

\textsuperscript{7} Doug Bandow, One Vatican Promise to Keep, Cato Institute, April 22, 2005, available at http://www.cato.org/pub_display.php?pub_id=3743.
utilized this term), the diplomacy of the Holy See is based more on pragmatic and realist considerations of promoting its conception of the universal common good and the fundamental right to life than just only offering a symbolic voice of a moral witness to the international community. The first part of this note examines several of the most critical thinkers and moments in the Catholic international relations tradition which serves as a fundamental background to the current involvement of the Holy See in international politics. The second part of the note summarizes the fundamental priorities of the Holy See in contemporary international discussions, especially the great papal encyclical *Pacem in Terris* (Peace on Earth), in which Pope John XXII outlined specific roles of the Roman Catholic Church in international affairs. Third, the note then takes a look at the beginnings of the pragmatic approach by the Holy See in international discussions by summarizing its current diplomatic structure and involvement in two United Nations conferences: the 1994 International Conference on Population and Development in Cairo in 1994 (“Cairo Conference”) and the Fourth World Conference on Women in Beijing in 1995 (“Beijing Conference”).

The fourth part of the note then observes how the diplomacy of the Holy See today is based on pragmatism and moral realism through an examination of two contemporary case studies with the Holy See’s involvement in international human rights.

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10 By “moral realism,” I am referring to the “realist” tradition of thought in international relations, not to the philosophical theory of “moral realism.” See J. HASLAM, NO VIRTUE LIKE NECESSITY: REALIST THOUGH IN INTERNATIONAL REALTIONS SINCE MACHIAVELLI 12 (2002).
instrument negotiations. In the first case, the Holy See indicated approval of the Rome
Statute of the International Criminal Court by offering a contribution to the Trust Fund
established by United Nations Secretary-General Kofi Annan to support the Court. In
the other case, the Holy See declined to sign the International Convention on the
Protection and Promotion of the Rights and Dignity of Persons with Disabilities in
December 2006 because of concerns that interpretations of the convention might be “used
to deny the very basic right to life of disabled unborn persons.” These two cases
combined show that the diplomacy of the Holy See is much more intricate, pragmatic,
and based upon moral realism than commonly perceived, and also hold wider
implications for the Holy See’s role in future international negotiations.

II. HISTORY OF THE CATHOLIC INTERNATIONAL RELATIONS TRADITION

From its very beginnings, the Roman Catholic Church has been actively involved
in international affairs. During the birth of Jesus Christ in Bethlehem, the Christian
tradition holds that three Magi (“Three Wise Men,” “The Three Kings,”), international
representatives of humanity (Caspar, Melchior, and Balthasar), presented themselves to

11 Zenit News Service, Vatican Contributes to International Criminal Court, July 3, 2002,


13 “Pragmatic” is defined in Merriam-Webster’s Online Dictionary as “practical as opposed to idealistic.” Merriam-Webster’s Online Dictionary, http://www.m-w.com/dictionary/Pragmatic
By utilizing this term, I am not intending to assert the Holy See pursues a “pragmatic” policy as opposed to an “idealistic” one – rather, the Holy See’s diplomacy is grounded more in pragmatic considerations of “binding” and “nonbinding” legal obligations and involvement in compromises in international negotiations than just merely its traditional role as a symbolic “universal moral witness” to humanity.
the baby Jesus with gifts of gold, frankincense, and myrrh.\textsuperscript{14} The persecution of Christians followed throughout the Roman Empire for two centuries after the death of Jesus of Nazareth.\textsuperscript{15} In 313 A.D., the Roman Emperor Constantine issued the Edict of Milan, which officially ended state persecution of Christianity and granted toleration to its practice and the practice of other religions in the empire.\textsuperscript{16} The Church under Constantine soon found itself in the Emperor’s favor throughout the Roman Empire.\textsuperscript{17} However, this newfound political, temporal significance of the Church was in tension with its theological, spiritual mission. The issue of how the spiritual endeavors of Christianity could be reconciled with involvement in the temporal, political order was complicated with the fundamental teaching of Jesus Christ to “Repay to Caesar what belongs to Caesar and to God what belongs to God.”\textsuperscript{18}

One of Emperor Constantine’s close friends, the early Christian philosopher Eusebius of Caesarea (ca. 260 A.D.-ca. 339 A.D.), directly addressed the tension between

\textsuperscript{14} \textit{Matthew} 2: 7-12 (New American). “Then Herod called the magi secretly and ascertained from them the time of the star’s appearance. He sent them to Bethlehem and said, “Go and search diligently for the child. When you have found him, bring me word, that I too may go and do him homage.” After their audience with the kings they set out. And behold, the star that they had seen at its rising preceded them, until it came and stopped over the place where the child was. They were overjoyed at seeing the star, and on entering the house they saw the child with Mary his mother. They prostrated themselves and did him homage. Then they opened their treasures and offered him gifts of gold, frankincense, and myrrh. And having been warned in a dream not to return to Herod, they departed for their country by another way.”

\textsuperscript{15} See D. CHIDESTER, CHRISTIANITY: A GLOBAL HISTORY 75-90 (2000), describing the rise of martyrdom in the Roman Empire after the earliest mass persecution of Christians in Rome by the Emperor Nero in 64 A.D.


\textsuperscript{17} CHIDESTER, supra note 15 at 91-108, discussing the rise of Christianity in the Roman Empire. Chidester notes following the Edict of Milan in 313 A.D., the Roman Emperor Constantine provided support for Christianity by recognizing the authority of bishops and financing the construction of churches and other holy sites. By these actions in promoting Christianity throughout the Roman Empire, Chidester states the Empire became a “Christian empire.”

\textsuperscript{18} \textit{Mark} 12:17
the spiritual mission of the Church and its involvement in the temporal affairs of politics. Eusebius argued that four points of comparison between the “Word of God” and “Friend of God” allowed Christian involvement in the political order in establishing God’s kingdom on earth.¹⁹ David Chidester explains that, “In the name of Christ, therefore, the Christian emperor ruled on earth (Friend of God) as a divine king just as the Word of God ruled over the heavenly realm.”²⁰ Eusebius contended that both the “Word of God” and “Friend of God” displayed the power of sacred kingship, maintained the divine order of the universe, protected the divine order against the dangerous forces of evil, and that both provided humans with an imparting of divine knowledge necessary for salvation.²¹

The role of the Church in international affairs continued to grow following the Edict of Milan. Vicarius Apostolicae Sedis, papal representatives, began traveling to remote Christian provinces as early as 380 A.D. to help “preserve the unity of all Christians under the spiritual sovereignty of the papacy.”²² Other papal envoys, known as legati, reported directly to Rome and were given the function to deal with local civil authorities in the regions where they were assigned.²³ Robert John Araujo, S.J., notes that as the Medieval Era began the continent of Europe “essentially functioned as a Christian realm united in faith under the Papal tiara.”²⁴ Araujo writes that during the Medieval Era

¹⁹ CHIDESTER, supra note 15, at 95.
²⁰ Id.
²¹ Id. at 95-96.
²² CARDINALE, supra note 4, at 63.
²³ Id. at 65. Cardinale notes that the sending of legations was characteristic of the Holy See from the end of the IXth century to the XVIth century.
the Holy See began to establish a “moral voice in the realm of international relations.”

During this period, the Holy See was also active in mediating conflicts among rival powers and resolving disputes.

While the practical currents of the Medieval Era saw the Holy See heavily active in international relations, Catholic intellectual currents also favored this movement. Saint Thomas Aquinas, a Doctor of the Church, contended in *De Regimine Principum* (“On Kingship” or “The Governance of Rulers”) that “the final end of a multitude united in society is through “virtuous living to attain to the enjoyment of the divine” and began establishing a strong intellectual foundation for the Holy See’s later efforts to promote peace and justice. In supplementing the similarities Eusebius drew centuries earlier in connecting temporal and divine rule, Aquinas asserted that it was the duty of public officials to direct temporal rule toward God in the heavenly kingdom. Aquinas wrote:

“Government is of a higher order according to the finality of the end to which it is directed. For we find that it is always the one who has responsibility for the final end who directs those who carry out the tasks leading to the final end. For example, the captain whose responsibility it is to direct the navigation of the ship commands him who constructs the ship to make the kind of ship most suitable for his purposes; ad the citizen who makes use of arms gives orders to the blacksmith as to what kind of arms he is to forge. But because the enjoyment of Divinity is an end which a man cannot attain through human virtue alone, but only through Divine virtue, according to the Apostle at Romans 6:23: ‘The grace of God is eternal life’, it is not human but Divine rule that will lead us to this end. And government of this kind belongs only to that King Who is not only man, but also God: that is, to our Lord Jesus Christ, Who by making men sons of God, has led them to the glory of heaven.”

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25 *Id.* at 298-299. Araujo cites the example of Pope Gregory X in 1272 who urged the rights of self-determination and existence of the Jewish people. He called on “faithful Christians” to protect Jews from persecution and forced conversion.

26 *Id.* at 299. Araujo notes that Pope Alexander VI established the Line of Demarcation in 1493 which divided the zones of colonial exploration between Portugal and Spain.


28 *Id.* at 41.
Aquinas placed emphasis on the efforts that a ruler can take to foster direction toward the goal of true peace in international relations and the “virtuous living.” 29 Aquinas argued that a king must do three essential things to ensure the good of the community: “first, he must establish the good of the community subject to him; second, he must preserve it once it is established; third, having preserved it, he must strive to improve it.” 30 In his scholastic view of the human person, Aquinas contended that the “good life” of each person required two necessary components: most importantly, to engage in activity according to “virtue” and, secondarily, that each person obtain a “sufficiency of bodily goods,” which is a requisite precondition for engaging in virtuous activity. 31 In Aquinas’ view, the king had a crucial role in achieving the “good life” of the social group or community. 32 To reach this goal, the ruler must foster a society united in peace, a society directed toward the bond of peace to “act well,” and work in the direction of seeing that “there be a plentiful supply of those things necessary to living well.” 33

By the Age of the Enlightenment, the intellectual groundwork for the Holy See’s involvement in international and temporal affairs was well-established. During the Enlightenment, the rise of the nation-state as a political unit in international relations brought many changes within the Roman Curia as Popes began to establish and expand

29 Id.
30 Id. at 43
31 Id.
32 Id.
33 Id. at 43-44.
permanent diplomatic offices. In 1692, Pope Innocent XII in the Papal Bull *Romanum decret Pontificem* established the office of the Secretary of State, who has “supreme direction” in papal diplomacy.

However, following the Peace of Westphalia in 1648, the brilliant epoch of papal diplomacy began to decline. Europe was no longer unified by ties to the Holy See. In 1870, with the unification of Italy, the Holy See lost its territorial sovereignty, but not its international personality. In 1929, the Treaty of the Lateran entered into between Italy and the Vatican City-State formally recognized the sovereignty and juridic personality of the Holy See. To this current day, the Holy See actively utilizes its sovereignty and international juridic personality, in the words of Pope John Paul II, as a witness: “a witness to human dignity, a witness to hope, a witness to the conviction that the destiny of all nations lies in the hands of a merciful Providence.”

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34 CARDINALE, supra note 4, at 68-70, discussing the rise of the office of apostolic nuncio (ambassador) and permanent diplomatic missions of the Holy See during the 1500s. Cardinale notes that the early nunciatures concerned themselves mostly with the spiritual interests of the Church, proving to be “valuable interests” in the carrying out of reforms implemented by the Council of Trent (1545-1563).

35 Id. at 134. Cardinale explains that the Secretary of State holds functions similar to those of a Minister of Foreign Affairs. The Secretary of State also holds exclusive power, save that of the Roman Pontiff, even in non-religious affairs. The Secretary of State is the “Pope’s closest collaborator.”

36 Id. at 70.

37 Araujo, supra note 24, at 301.

38 Id. at 302-303. Araujo writes that even though the Holy See lost its territorial sovereignty with the unification of Italy, the number of states with which it exchanged legations actually increased, and it also maintained involvement in international mediation and arbitration (for example, the Holy See assisted the United States in settling disputes over ecclesiastical property in the Philippine Islands following the Spanish-American War.

39 See Treaty of the Lateran (February 11, 1929) reprinted in CARDINALE, supra note 4 at 319-340. As Article II states, “Italy recognises the sovereignty of the Holy See in the international field as an inherent attribute of its nature, in conformity with its tradition and the exigencies of its mission in the world.”

40 His Holiness Pope John Paul II, supra note 2.
In a 2004 article, George Weigel outlined the tradition of “Catholic International Relations Theory” and noted the Catholic tradition offers three key insights as a tradition of moral realism to the realm of international politics.\(^{41}\) The three insights on moral responsibility, an understanding of power and the ideal of the universal common good, and peace currently animate the Holy See’s involvement in international affairs. First, the Catholic tradition insists that “politics is an arena of rationality and moral responsibility.”\(^{42}\) Within this insight, every human activity, which includes foreign affairs and politics, takes place within the horizon of moral judgment because politics is a human activity and moral judgment is a defining characteristic of the human person.\(^{43}\)

Weigel contends the Catholic tradition also offers the insight of a classic understanding of power, a power to achieve the universal common good of peace.\(^{44}\) As he states, “Political communities exist to achieve common purposes – that is, to exercise power. Thus the Catholic question was never, should power be exercised? Rather, the Catholic question was how is power to be exercised? To what ends, by what authority, through what means? Power, in this understanding, is not the antimony of peace ….. rightly understood, [it] is a means to the achievement of the good of peace.”\(^{45}\)


\(^{42}\) *Id.*

\(^{43}\) *Id.*

\(^{44}\) *Id.* at 32.

\(^{45}\) *Id.*
Third, the Catholic tradition offers a distinct understanding of peace. This peace is not an interior, individualized peace, nor a peace of a conflict-free world, which Catholic moral realism deems a utopian fantasy.\textsuperscript{46} Rather, the peace that could be built was the “peace of political community, in which order, law, freedom, and just structures of governance advance the common good in ways that lead communities toward that \textit{caritas} (love) that is their most proper and noble end.”\textsuperscript{47}

Pope John XXIII’s encyclical \textit{Pacem in Terris} (“Peace on Earth”) outlined specific roles of the Holy See in international affairs and marked the “high point” of the Holy See’s emphasis on international legal and political institutions as a response to the international conditions of the mid-twentieth century and also as a “natural evolution of human political development.”\textsuperscript{48} Pope John XXIII wrote that a critical requirement for a well-ordered society was respect for the fundamental dignity of the human person, reaffirming Aquinas’ scholastic view of the human being who is “endowed with intelligence and free will” and holds “rights and obligations flowing directly and simultaneously from his very nature.”\textsuperscript{49} He also noted that the human person is entitled to “juridic protection” of his or her rights and that the protection “should be efficacious, impartial and inspired by the true norms of justice.”\textsuperscript{50} However, duties also are placed on

\begin{enumerate}
\item \textit{Id.}\textsuperscript{46}
\item \textit{Id.}\textsuperscript{47}
\item \textit{Id.}\textsuperscript{48}
\item \textit{Id.}\textsuperscript{49} His Holiness Pope John XXIII, \textit{supra} note 9 at 228.
\item \textit{Id.} at 231.
\end{enumerate}
the natural rights bestowed on human persons. Pope John XXIII stated that the right to
life that every human being possesses is correlative with a duty to preserve it.

The fundamental belief in the dignity of the human person in the Catholic
tradition and potential of international law to safeguard the natural rights of persons
guided Pope John XXIII to pronounce a larger role of the Holy See in international
affairs in the post-World War II world during the rise of the movement to codify human
rights through binding international agreements. The United Nations Declaration of
Human Rights, approved by the United Nations General Assembly on December 10,
1948, was described as “an act of highest importance” in the pursuit of human rights."

Pacem in Terris also recognized that the authority of nations is built on the moral
order, the foremost rule governing the relationships between States is truth, and that all
persons and all States enjoy an equal natural dignity. Pope John XXIII also articulated
the belief that the moral order required a legitimate worldwide authority to pursue the
universal common good. In the wake of the establishment of the United Nations, the
United Nations was declared to be the international organization to be most suitable for

51 Id.
52 Id.
53 S.J. ANAYA, H. HANNU, R.B. LILICH, and D.L. SHELTON, EDS., INTERNATIONAL HUMAN
RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE 56 (4th ed. 2006), noting that “it was the
cataclysm of World War II that finally demonstrated to a large community of persons inside and outside
government the need to undertake more general international efforts to promote and protect human rights.”
54 His Holiness Pope John XXIII, supra note 9 at 253.
55 Id. at 243.
56 Id. at 253.
achieving the goals of peace and safeguard of human rights.\textsuperscript{57} As Weigel notes, the emphasis of a legitimate worldwide authority in \textit{Pacem in Terris} has been given “concrete diplomatic effect” by the diplomacy of the Holy See.\textsuperscript{58}

In the modern era, much of the diplomacy of the Holy See is focused on protection and promotion of the “greatness and inestimable value of human life” in a time in which there is an “extraordinary increase and gravity of threats to the life of individuals and peoples, especially where life is weak and defenceless.”\textsuperscript{59} In 1968, Pope Paul VI reaffirmed the Holy See’s historical tradition of upholding the fundamental right to life in his influential encyclical \textit{Humanae Vitae} by stating that “direct abortion” is “absolutely excluded as lawful means [in the Church] of regulating the number of children.”\textsuperscript{60}

Pope John Paul II in his 1995 encyclical \textit{Evangelium Vitae} also emphasized the fundamental message of promoting respect for the dignity of the human person.\textsuperscript{61} He

\textsuperscript{57} \textit{Id.} at 253. Pope John XXIII wrote, “It is therefore our ardent desire that the United Nations organization – in its structure and in its means – may become ever more equal to the magnitude and nobility of its tasks, and may the time come as quickly as possible when every human being will find therein an effective safeguard for the rights which derive directly from his dignity as a person, and which are therefore universal, inviolable and inalienable rights. This is all the more to be hope for since all human beings, as they take an ever more active part in the public life of their own country, are showing an increasing interest in the affairs of all peoples, and are becoming more consciously aware that they are living members of the whole human family.”

\textsuperscript{58} Weigel, \textit{supra} note 41, at 32.

\textsuperscript{59} His Holiness Pope John Paul II, \textit{Evangelium Vitae: To the Bishops, Priests and Deacons, Men and Women religious, lay Faithful, and all People of Good Will on the Value and Inviolability of Human Life}, March 25, 1995, \textit{available at} \url{http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html}.

\textsuperscript{60} His Holiness Pope Paul VI, \textit{Humanae Vitae: Encyclical of Pope Paul VI on the Regulation of Birth}, July 25, 1968, \textit{available at} \url{http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html}.

\textsuperscript{61} His Holiness Pope John Paul II, \textit{supra} note 59, stating: “Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or wilful self-destruction, whatever violates the integrity of the human person, such as mutilation, tortments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation,
noted that civil leaders have an affirmative duty to support life.\textsuperscript{62} Political leaders not only have duties to remove “unjust laws,” but also to promote affirmative steps eliminate the “underlying causes of attacks on life.”\textsuperscript{63} Pope John Paul II also called for efforts to be taken by leaders at the international level to mount an “effective legal defence of life” despite the presence of differing cultural outlooks.\textsuperscript{64} As he noted in a 2003 address to the Holy See’s Diplomatic Corps, Pope John Paul II stated that the right to life is certainly the “most fundamental of human rights” and this takes precedence in the Holy See’s diplomacy today.\textsuperscript{65}

\textbf{IV. THE PRAGMATIC APPROACH OF THE HOLY SEE IN INTERNATIONAL AFFAIRS}

The realist tradition is commonly viewed as an alternative in opposition to universal, utopian conceptions of international relations.\textsuperscript{66} Jonathan Haslam defines that to the “realist,” the focus on international affairs “is on the behaviour of the state, its

\begin{footnotesize}

\textsuperscript{62} \textit{Id.}, stating “Called to serve the people and the common good, they have a duty to make courageous choices in support of life, especially through legislative measures.”

\textsuperscript{63} \textit{Id.}

\textsuperscript{64} \textit{Id.}


\textsuperscript{66} HASLAM, \textit{supra} note 10, at 6.
\end{footnotesize}
security and interests being the highest priority of political life.” The realist also often takes a pessimistic view of human nature and the behavior of states, and believes that states are “rational” and “unitary” agents pursuing fixed, identifiable interests. While the Holy See has never explicitly taken a rigid realist view of international affairs, its diplomacy can be labeled as influenced by “moral realism” and pragmatism in the sense that while recognizing the independence, sovereignty, and security interests of states, it calls for the universal common good, a universalist ideal. However, this emphasis is not solely universalist and utopian and the Catholic tradition assumes that politics is an arena of rationality and moral responsibility, a pragmatic approach. In addition, the Holy See’s diplomacy is more pragmatic because it does not perceive international relations in purely symbolic terms as a moral witness detached from political negotiations, but instead makes distinctions between binding and nonbinding legal obligations and has entered into compromises with other nations to achieve its goals.

First, the inherent nature of the Holy See’s diplomacy is grounded in pragmatism, especially considering that diplomats receive formal diplomatic training at the Pontifical

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67 Id. at 12.

68 Id.


70 His Holiness Pope John XXIII, supra note 9, at 229, stating that for the universal common good to be determined, the public and universal authority “must have as its fundamental objective the recognition, respect, safeguarding and promotion of the rights of the human person.”

71 Weigel, supra note 41, at 32.
Ecclesiastical Academy.\textsuperscript{72} The Roman Pontiff exercises the active right of legation, accorded by the Treaty of the Lateran, to assign pontifical representatives to diplomatic missions to bind the ties between the Apostolic See and local Churches, and also “interpreting the solicitude of the Roman Pontiff for the good of the country to which the papal envoy is sent.”\textsuperscript{73} In addition, the Holy See also exercises passive legation, where the Holy See receives diplomatic representatives sent by other nations on special and temporary or ordinary and permanent missions.\textsuperscript{74} In 1964, Pope Paul VI formally established the presence of the Holy See as a permanent observer mission at the United Nations in New York.\textsuperscript{75} The Holy See has full diplomatic relations with 175 states from throughout the world.\textsuperscript{76} With its Non-Member State Permanent Observer status at the United Nations, the Holy See also has the ability to enter into and sign international treaties and conventions and generally holds the rights which a full member would have, except for being unable to vote at the General Assembly.\textsuperscript{77}

In addition to its international involvement in negotiations over treaties and conventions, the Holy See is able to participate at United Nations Conferences and is

\textsuperscript{72} See Pontifical Ecclesiastical Academy, (available at http://www.vatican.va/roman_curia/pontifical_academies/acdeccles/index.htm).

\textsuperscript{73} CARDINALE, supra note 4, at 38. Cardinale notes that diplomatic representatives of the Holy See who are heads of ordinary Missions today are apostolic nuncios, pro-nuncios, internuncios, regents and chargés d’affaires.

\textsuperscript{74} Id. at 179.

\textsuperscript{75} Id. at 232.

\textsuperscript{76} Holy See Press Office, Bilateral and Multilateral Relations of the Holy See (available at: http://www.vatican.va/news_services/press/documentazione/documents/corpo-diplomatico_index_en.html). In addition to having full diplomatic relations with 175 states, the Holy See also has diplomatic relations with the European Union and Sovereign Military Order of Malta, and relations of a special nature with the Russian Federation and Palestine Liberation Organization.

considered a “state” for the purposes of the conference and holds full voting rights.\textsuperscript{78} The 1994 Cairo Conference and 1995 Beijing Conference demonstrated the beginnings of the pragmatic approach by the Holy See in international negotiations. As Yasmin Abdullah notes, during international conferences the United Nations operates by consensus in adopting Programs of Action – therefore, any state essentially holds a “quasi-veto” at conferences.\textsuperscript{79} The draft Programme of Action at the Cairo Conference called for a comprehensive approach to limit population growth, but also referred to the right of “reproductive health care” and included language recognizing unsafe abortion as a major health problem affecting women.\textsuperscript{80}

In response to the draft Programme of Action at the Cairo Conference, the Holy See began to engage in an “aggressive lobbying” campaign.\textsuperscript{81} In a pragmatic move, Pope John Paul II sought to forge an alliance between the Holy See and Islamic states, such as Iran and Libya, in response to the language on “reproductive health.”\textsuperscript{82} In a compromise, nearly every state at the conference agreed on a compromise clause which stated “in no case should abortion be promoted as a method of family planning.”\textsuperscript{83} The Holy See’s traditional Latin American, African, and Muslim allies agreed to the language, but the Holy See objected alone.\textsuperscript{84} As Abdullah notes, the Holy See did not want to agree to

\textsuperscript{78} Id. at 1844.

\textsuperscript{79} Id. at 1845.

\textsuperscript{80} Id. at 1849.


\textsuperscript{82} Abdullah, supra note 77, at 1847.

\textsuperscript{83} Id. at 1850.

\textsuperscript{84} Id.
anything in the final document which would implicate “that abortion is legitimate,” even
in countries where it is legal. However, the Holy See joined the consensus in a “partial
manner,” but did not join the consensus on the operative chapters of the document or in
the two chapters which concerned reproductive health and also expressed reservations to
terms such as “reproductive health” which potentially concern abortion rights.

The Holy See also took a pragmatic diplomatic approach during the 1995 Beijing
Conference and was willing to ally itself with other nations to pursue protection of the
fundamental right to life. Just as in the Cairo Conference, it formed an alliance between
conservative Latin American nations and fundamentalist Islamic nations to object to
reproductive rights implicitly included in the document. The draft document at the
Beijing Conference included terms such as “unsafe abortion,” “unwanted pregnancy,”
“contraception,” “sex education,” and “reproductive health” which the Holy See raised
objections to. Just as in the Cairo Conference, the Holy See partially joined the Platform
of Action at the Beijing Conference. It expressed reservations with paragraphs which
mentioned sexual and reproductive rights, including access to contraceptives.

In the wake of both the 1994 Cairo Conference and 1995 Beijing Conference,
statements made by diplomats of the Holy See emphasized the importance of the right to

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85 Id.
86 Id. at 1851.
87 Fleishman, supra note 81, at 288. For instance, Fleishman cited the example of the Holy See forming an
alliance with Muslim countries to defeat a clause which would have included a woman’s right to determine
her own “sexual orientation.”
88 Abdullah, supra note 77, at 1854.
89 Id.
90 Id.
life in the discussions at the Conferences. Jean-Louis Cardinal Tauran noted, approximately five years after the Conferences, that both meetings reaffirmed that “abortion is never to be considered a means of family planning” and that no endorsement of a “right to abortion” occurred. Overall, instead of merely enunciating the symbolic role of the Holy See’s contributions to the international conferences, Cardinal Tauran noted that the Holy See, in a pragmatic alliance with Argentina, Nicaragua, and several other countries, was able to prevent the inclusion of a clause in the Programme of Action during the Cairo Conference that would have introduced the expression “emergency contraception” as a pretext for medically induced early abortion.

Discussion over the juridical effect of both the 1994 Cairo Conference and 1995 Beijing Conference indicates that the Holy See viewed its role as more of a state with international legal obligations, rather than a purely symbolic, universal moral witness to the world. For example, Cardinal Tauran stated that the documents adopted during both Conferences are not texts that are legally binding on states, but rather documents which establish general principles of “soft law.” This distinction implicitly adopted between “hard” law (which is legally binding) and “soft” law by the Holy See in its analysis of both Conferences shows that the Holy See saw its role as more of a state than a purely symbolic international voice and moral witness. Indeed, as Abdullah writes, the Holy

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92 *Id.*

93 *Id.*

94 *Id.*
See’s designation as a Non-Member Permanent Observer is not a “mere formality,” but instead gives the Holy See “tangible power on the world stage” because the rule that United Nations Conferences must operate by consensus gave the Holy See essentially the authority to “veto” any compromise adopted.  

As an alternative, Abdullah proposes that the Holy See cease to enjoy its status as a “state” at United Nations Conferences, and instead be considered a non-governmental organization. If this were the case, the Holy See would still have the ability to lobby just like any other non-governmental organization, but would have no negotiating role at conferences and could not block any consensus among nations.  

Consistent with its role as a universal moral witness, if considered a non-governmental organization, the Holy See would still be able to symbolically voice its concerns during United Nations conferences. However, in practice, while being considered a “state,” the Holy See has the more influential ability to pragmatically influence conference documents, negotiate with other nations, and is in a better position to promote human rights in this practical role in international politics. As the signs of pragmatism in the Holy See’s diplomacy emerged during the Cairo and Beijing Conferences, considerations of pragmatism once again took a clear role in the discussions over the creation of an International Criminal Court and the United Nations Convention on the Rights of Persons with Disabilities.

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95 Abdullah, supra note 77, at 1855.

96 Id. at 1871.
V. THE ROLE OF THE HOLY SEE WITH THE CREATION OF THE INTERNATIONAL CRIMINAL COURT

In 1998, developments in international law which moved toward a worldwide international criminal law tribunal to try those accused of the most heinous of human rights violations and atrocities crystallized with the 1998 adoption of the Rome Statute of the International Criminal Court, which formally took effect internationally with sixty international signatories on July 1, 2002. Former United Nations Secretary-General Kofi Annan, along with many other prominent leaders, have lauded the International Criminal Court “as a means to promote the rule of law, to render accountable the perpetrators of the worst atrocities, and to deter future abuses.” Philippe Kirsch and Valerie Oosterveld note that the fact that the Rome Statute was adopted, after decades of failure of establishing an international criminal tribunal and much entrenched resistance, is “a success in itself.”

The International Criminal Court has the ability to try the most egregious and heinous of international crimes and the Rome Statute covers the international crimes of genocide, crimes against humanity, and war crimes. As Kirsch and Oosterveld write, the Rome Statute recognizes rape, sexual slavery, and sexual violence as war crimes and

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97 Id. at 1872.


99 Id.


101 Id.
crimes against humanity, includes the enlisting or usage of children under fifteen in any conflict as a war crime, and covers internal armed conflicts as well.\textsuperscript{102} However, while the Rome Statute recognizes the crime of aggression, the Court is unable to exercise jurisdiction over it until a definition is agreed upon.\textsuperscript{103} Because of the political nature of defining the “supreme international crime” against peace (aggression), and to whom shall be designated the authority to determine breaches of the prohibition against aggression, the evolution of the crime of aggression likely “will be slow.”\textsuperscript{104} Despite this limitation, jurisdiction of the Court can be triggered in three main ways, as proceedings can be initiated by a state party, the Security Council, or by the prosecutor of the Court.\textsuperscript{105}

The Holy See articulated three of its key main principles and priorities before the international community regarding the implementation of the Court.\textsuperscript{106} First, reaffirming the main fundamental priority of its diplomacy, the Holy See called for a Court which would “ensure protection of the dignity of the human person” at all stages, “from the unborn to the elderly,” and to reflect an “equal dignity shared by all.”\textsuperscript{107} Second, they urged that the principle of \textit{suum cuique} (“to each person his due”) to “underlie the justice to be dispensed and assured by” the Court.\textsuperscript{108} Third, the Holy See sought a Court in

\begin{itemize}
\item \textsuperscript{102} \textit{Id}. at 914-915. Kirsch and Oosterveld note that the humanitarian aspects of these crimes tended to be overlooked in prior discussions over the creation of an international criminal tribunal.
\item \textsuperscript{103} \textit{Id}. at 915.
\item \textsuperscript{104} BROOMHALL, \textit{supra} note 98, at 46-47.
\item \textsuperscript{105} Kirsch and Oosterveld, \textit{supra} note 100, at 915.
\item \textsuperscript{107} \textit{Id}.
\item \textsuperscript{108} \textit{Id}.
\end{itemize}
which reconciliation and restoring the proper relationships with the human family are emphasized rather than a Court which delivers verdicts in a spirit of revenge.\textsuperscript{109} Finally, the Holy See stressed the need to adopt statutes which would ensure the Court’s judicial independence from political concerns and pressures, to meet an ideal of justice where “everyone stands equal before the law.”\textsuperscript{110}

On July 17, 1998, the Rome Statute of the International Criminal Court was adopted by an overwhelming margin – 120 nations voted in favor, seven against and twenty-one abstained.\textsuperscript{111} The Holy See was among the States voting for the statute.\textsuperscript{112} Symbolically, vocally, and through their vote for the Rome Statute, the Holy See has largely indicated approval of the International Criminal Court, renewing a tradition of the Holy See’s advocacy of international structures to promote the fundamental rights of dignity of the human person. Reaffirming \textit{Pacem in Terris’} call for universal juridical structures to safeguard and promote the most essential of human rights, Pope John Paul II noted that such structures are not sufficient in themselves.\textsuperscript{113} Rather, they are “mechanisms which need to be inspired by a firm and persevering moral commitment to the good of the human family as a whole.”\textsuperscript{114}

\textsuperscript{109} \textit{Id.}

\textsuperscript{110} \textit{Id.}

\textsuperscript{111} BROOMHALL, \textit{supra} note 98, at 74.


\textsuperscript{114} \textit{Id.}
The approval of the International Criminal Court has even come directly from the statements of the Roman Pontiff, as Pope John Paul II in his 1999 World Day for Peace message referred to the International Criminal Court as an institution which “could gradually contribute to ensuring on a world scale the effective protection of human rights.” The Holy See has also offered a symbolic financial contribution - on July 1, 2002, the day the Court formally took effect internationally, the Holy See’s Permanent Observer Mission to the United Nations announced it was offering a symbolic contribution to the Trust Fund established by Secretary-General Kofi Annan to financially support the establishment of the Court. Through these statements and actions, the Holy See has symbolically given its approval to the International Criminal Court.

However, throughout the process leading to the adoption of the Rome Statute, the Holy See not only voiced its concerns in a symbolic role as a universal moral witness without legal obligations, but actively and pragmatically entered into compromises to influence the final language of the Statute, similar to its role during the Cairo and Beijing Conferences. The Holy See first lobbied against an inclusion of a reference to “forced pregnancy” as a crime against humanity, since it could be interpreted as a “justification of

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115 His Holiness Pope John Paul II, Message of His Holiness Pope John Paul II For the Celebration of the World Day of Peace, January 1, 1999, available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_14121998_32.html. The Holy Father stated: “A positive sign of the growing willingness of States to recognize their responsibility to protect victims of such crimes and to commit themselves to preventing them is the recent initiative of a United Nations Diplomatic Conference: it specifically approved the Statute of an International Criminal Court, the task of which it will be to identify guilt and to punish those responsible for crimes of genocide, crimes against humanity and crimes of war and aggression. This new institution, if built upon a sound legal foundation, could gradually contribute to ensuring on a world scale the effective population of human rights.”

116 Zenit News Service, supra note 11.
abortion.”¹¹⁷ During the preparatory meetings for the Court, the Women’s Caucus for Gender Justice, an international human rights organization advocating gender-inclusive justice for women, called for a definition which would state that “withholding abortion from raped women should be explicitly defined as a war crime and a crime against humanity.”¹¹⁸ The calls for a reference to “forced pregnancy” were largely in response to the crisis in Bosnia-Herzegovina and the campaign of systematic rape against Muslim women committed by the Serb military and Croat nationalist forces which occurred in the early 1990s.¹¹⁹

In the final document, the Holy See unsuccessfully attempted to have the definition of forced pregnancy “deleted or replaced.”¹²⁰ Instead, the Holy See’s delegation lobbied and agreed to compromise language which defined “forced pregnancy,” adding qualifying language which did not include the right to abortion.¹²¹

¹¹⁷ Tauran, supra note 91.

¹¹⁸ LifeSiteNews.com, Planned Parenthood Says Pope Guilty of “War” Against Women,” June 30, 2000, http://www.lifesite.net/ldn/2000/jun/00063005.html. For more information on activities of the Women’s Caucus for Justice (now known as Women’s Initiatives for Gender Justice) and the International Criminal Court, see http://www.iccwomen.org

¹¹⁹ Tauran, supra note 91. See also, Michael Sells, THE BRIDGE BETRAYED: RELIGION AND GENOCIDE IN BOSNIA 21-22 (1996). Sells notes: “The rapes in Bosnia are a manifestation of the toleration for and condoning of rape throughout history. Rape is also a feature of warfare, and some have argued that is a rationale for war – that a purpose of war is the free rein it gives to rape. But the use of rape against Muslim women in Bosnia has been overwhelming even by the bleak standards of war. In one town, Foča, a rape center was set up in the former Partizan Sports Hall in May 1992. Muslim girls and women were held there, underwent continual rape and other physical violence, and also were sent out to apartments where they were held for several days and then returned to the Partizan Hall. The organized rape of Muslim women took place throughout the portions of Bosnia occupied by the Serb military, as well as in areas controlled by Croat nationalist forces. Militiamen boasted about their gang rapes of Muslim women. Human rights reports also show rapes of Christian women, but to a lesser extent and apparently without organization and planning. The organized rape of Bosnian women was gynocidal – a deliberate attack on women as childbearers.”

¹²⁰ Id.

¹²¹ Id. See Rome Statute of the International Criminal Court, art. 7.2(f), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]. Article 7.2(f) defines “forced pregnancy” as: forced pregnancy means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic
Even after the adoption of the Rome Statute, during the preparatory meetings prior to the official establishment of the Court, the Holy See’s lobbying efforts continued. In August 1999, Canada and France proposed that the Court be enabled to hear evidence, even from “private religious counselling of all faiths.”\textsuperscript{122} If adopted, the proposal would have endangered one of the Catholic Church’s most grave obligation for priests, who are under an inviolable ecclesiastical law duty to protect the seal of confession.\textsuperscript{123} After intense lobbying by the Holy See, the draft document of the preparatory committee reflected respect for the seal of confession.\textsuperscript{124}

Far from being only seen as a symbolic endorsement of the Court, the Holy See’s view of the International Court has been regarded as “not without nuance” and the discussions of the Holy See do not seem “quite closed.”\textsuperscript{125} Two legal advisers to the Holy See, Professors John Czarnetzky and Ronald Rychlak, who participated in the Holy See’s delegation during discussions of the Rome Statute, have argued that the Court as currently comprised represents a “legalistic” view of justice.\textsuperscript{126} They contend that the composition of any population or carrying out other grave violations of international law. \textit{This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.}”

\textsuperscript{122} LifeSiteNews.com, Canada Proposes Forcing Priests to Reveal Confessions, August 6, 1999, http://www.lifesite.net/ldn/1999/aug/99080601.html

\textsuperscript{123} 1983 CODE c.983, §1. The canon states: “The sacramental seal is inviolable; therefore, it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason.”

\textsuperscript{124} LifeSiteNews.com, ICC Reluctantly Allows Priests Confession Secrecy, August 18, 1999, http://www.lifesite.net/ldn/1999/aug/99081803.html. The document instead stated, “The Court shall recognise as privileged the communications made in the context of a sacred confession when it is an integral part of the practice of that religion.”


\textsuperscript{126} John Czarnetzky and Ronald Rychak, \textit{An Empire of Law? Legalism and the International Criminal Court}, 79 NOTRE DAME L. REV. 55, 62-63 (2003). The authors state: “The efforts of the past half century to deal with violations of human rights have culminated in a classic legalist solution – an international criminal court divorced almost entirely from moral politics and purposely insulated from any
fundamental flaw of the International Criminal Court is that it lacks any moral and political check as part of its structure, and instead propose that the jurisdiction of the Court be tied to the United Nations Security Council, an institution which Czarnetzky and Rychlak contend is currently best representative of the international body politic.127

The concerns of Czarnetzky and Rychlak were explicitly addressed by the comments of Cardinal Martino, the Apostolic Nuncio and official representative of the Holy See at the United Nations.128 Cardinal Martino argued the Court should be independent from political concerns, stating that “any structures or rules which could lead to decisions about guilt or innocence that are based upon political rather than juridical considerations have a questionable role in the proposed statute.”129 In addition, while such a case is likely never to be formally addressed by the Court, there is the remote possibility that the Roman Pontiff could be subject to a future prosecution by the Court. In March 2002, Karl-Friedrich Lentze, a German artist, filed a suit against Pope John Paul II in the International Court in the Hague.130 Lentze argued that the Pope “should be made responsible for the deaths of countless people” because the Church’s stance against contraception shows “significant contempt and arrogance towards human life.”131

outside influence, political or otherwise. This elevation of judicial law precludes the possibility of non-legalistic, political modes of thought and action concerning justice and morality. In many situations, this exclusive reliance on legalistic justice, and the concomitant refusal to recognize any alternate path to justice, will lead to injustice in the form of renewed political turmoil and its ultimate extension, war.”

127 Id. at 117-119.

128 Martino, supra note 106.

129 Id.


131 Id.
In conclusion, the Holy See holds significant pragmatic concerns about the practical effects of the Court. Rather than merely symbolically approving of the overall ideal of a Court which seeks to effectively safeguard human rights in a role as a universal moral witness, the Holy See actively and pragmatically lobbied to prevent the inclusion of a “forced pregnancy” clause that included the right to abortion and also had its concerns over the independence of the Court from political considerations included in the text of the Rome Statute. If it had been merely acting in a symbolic role as a universal moral witness, it is likely the Holy See’s approval would have stopped at the statement of Pope John Paul II during the World Day of Peace and its symbolic contribution. Instead, the Holy See is pragmatically and closely monitoring the effects of the Rome Statute and the activities of the Court.

VI. THE HOLY SEE AND THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

On December 13, 2006, the United Nations General Assembly approved the first new human rights treaty of the twenty-first century when it approved the United Nations Convention on the Rights of Persons with Disabilities.\textsuperscript{132} United Nations Secretary-General Kofi Annan called the Convention the “dawn of a new era for people with disabilities.”\textsuperscript{133} The Convention most fundamentally guarantees that persons with disabilities enjoy the inherent right to life on an equal basis with others.\textsuperscript{134} It also affirms

\begin{footnotesize}

\textsuperscript{133} \textit{Id.}

\end{footnotesize}
the equal rights and advancement of women and girls with disabilities, and also protects children.\(^{135}\) In addition, the Convention upholds the right to equal accessibility for disabled persons and requires States “to identify and eliminate obstacles and barriers, and ensure that persons with disabilities could access their environment, transportation, public facilities and services, and information and communications.”\(^{136}\) The Convention was opened for states to sign on March 30, 2007, and it officially will enter into force 30 days after its ratification by 20 states.\(^{137}\)

The Holy See took great interest in developing a treaty to protect the rights of persons with disabilities and participated in the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Disabilities”). Article 10 states: “State Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”

\(^{135}\) Id., art. 6, 7. Article 6 states: “1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. 2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention.”

Article 7 states: “1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities and of all human rights and fundamental freedoms on an equal basis with other children. 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

\(^{136}\) Id., art. 9. Article 9 states: “To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”

Dignity of Persons with Disabilities. In a special homily on the 25th anniversary of the Declaration on the Rights of the Disabled on December 3, 2000, Pope John Paul II emphasized the rights, equality and inviolable dignity of disabled persons. Pope John Paul II also noted that political leaders across the globe, including those working on the international level, should work to protect the “dignity” of those with disabilities so it “is effectively recognized and protected.”

The Holy See’s representative at the United Nations, Archbishop Celestino Migliore, stated before the United Nations General Assembly that the “living heart” of the Convention “lies in its affirmation of the right to life.” However, the Holy See declined to sign the Convention. Article 23 of the Convention referred to the right of access of persons with disabilities to reproductive and family planning education.

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139 His Holiness Pope John Paul II, Jubilee of the Disabled, Homily of John Paul II, December 3, 2000, available at http://www.vatican.va/holy_father/john_paul_ii/speeches/documents/hf_jp-ii_spe_20001203_jubildisabled_en.html. Pope John Paul II stated, “We know that the disabled person – a unique and unrepeatable person in his equal and inviolable dignity – needs not only care, but first of all love which becomes recognition, respect and integration: from birth to adolescence, to adulthood and to the delicate moment, faced with trepidation by so many parents, of separation from their children, the moment of “after us.””

140 Id. Pope John Paul II said, “I would like to ask those who have political responsibilities at every level to work towards ensuring living conditions and opportunities such that your dignity ..... is effectively recognized and protected.”

141 Migliore, supra note 12.

142 Id.

143 United Nations Convention on the Rights of Persons with Disabilities, supra note 134, art. 23.1(b). Article 23.1(b) states: “The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided.”
Holy See noted it interpreted this clause and the word “gender” in its reservations and statements of interpretation at the Cairo and Beijing Conferences.\textsuperscript{144}

While the Holy See announced its view of Article 23 and its interpretation, Article 25 was rejected.\textsuperscript{145} The Holy See noted that access to reproductive health was a “holistic” concept, that Article 25 did not create any new international rights, and that the article was “merely intended to ensure that a person’s disability is not used as a basis for denying a health service.”\textsuperscript{146} However, the Holy See stated that in some nations reproductive health services include abortion; therefore Article 25 conflicted with Article 10 which upholds the fundamental right to life of persons with disabilities.\textsuperscript{147} In sum, the Holy See expressed that “the same Convention created to protect persons with disabilities from all discrimination in the exercise of their rights, may be used to deny the very basic right to life of disabled unborn persons.”\textsuperscript{148}

The Holy See’s position during the proceedings with regard to the Convention on the Rights of Persons with Disabilities was pragmatic. Once again, the Holy See, acting more like a “state” than a universal moral witness with merely symbolic concerns, lobbied to include provisions consistent with its ideals and goals; once the process was completed the Holy See took a “balanced evaluation” of the document.\textsuperscript{149} In 2003, near

\textsuperscript{144} Migliore, \textit{supra} note 141.

\textsuperscript{145} \textit{Id. See} United Nations Convention on the Rights of Persons with Disabilities, art. 25(a). Article 25(a) states that the parties to the Convention shall “Provide persons with disabilities the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes.”

\textsuperscript{146} \textit{Id.}

\textsuperscript{147} Migliore, \textit{supra} note 12.

\textsuperscript{148} \textit{Id.}

\textsuperscript{149} Tauran, \textit{supra} note 91.
the beginning of the outset of the Ad Hoc Committee process which produced the draft Convention, the Holy See stated that “solidarity with the disabled will also ensure furthering of the common good.”\textsuperscript{150} In the difficult balancing of the favorable and unfavorable provisions in the Convention, the Holy See took a notable position in refusing to sign the document, but realized the “positive potential” of the Convention.\textsuperscript{151}

Furthermore, and most importantly, the Holy See’s actions with both the 1994 Cairo Conference and the Convention on the Rights of Persons with Disabilities are distinct. In both cases, language including “reproductive health” was included, and reservations entered into by the Holy See. However, during the 1994 Cairo Conference, the Holy See eventually agreed to a consensus on a Draft Programme of Action which included compromise language.\textsuperscript{152} With the Convention on the Rights of Persons with Disabilities, the language including “reproductive health” led the Holy See to decline signing the Convention. While the two cases seem inconsistent, the Programme of Action adopted at the Cairo Conference is not legally binding and only “soft law.” However, the Convention on the Rights of Persons with Disabilities is binding “hard law.” While the Rome Statute preceding the adoption of the International Criminal Court is also “hard” law, the Holy See successfully lobbied and successfully addressed all of its potential concerns with the fundamental right to life.\textsuperscript{153} Instead of viewing international agreements in purely symbolic terms consistent with its position as a universal moral witness, the foregoing cases show the Holy See is making conscious and pragmatic

\textsuperscript{150} Migliore, \textit{supra} note 138.

\textsuperscript{151} Migliore, \textit{supra} note 12.

\textsuperscript{152} Abdullah, \textit{supra} note 77 at 1851.
distinctions between “soft” and “hard” law, acting more like a state with binding legal obligations, and entering into agreements and conventions accordingly.

VII. CONCLUSION

Contrary to widely-accepted belief, the Holy See’s role in international affairs is more pragmatic and based on distinctions between “hard” and “soft” law than solely on considerations of its role as a universal moral witness to humanity, detached from the temporal world of political negotiation and compromise. By closely examining two unique cases involving “hard” law with differing results, the International Criminal Court and the Convention on the Rights of Persons with Disabilities, the Holy See’s pragmatic approach which began during the Cairo and Beijing Conferences was further crystallized. In both cases, the Holy See lobbied to include favorable language to the fundamental right to life and took positions entirely consistent with its theological and historical tradition. While the international community faces many challenges in its pursuit of human rights, the dignity of all persons, peace, and the universal common good, the Holy See looks likely to follow in the footsteps of its involvement in recent international negotiations in keeping a visible, symbolic, and pragmatic role in the discussions over international human rights.

153 Tauran, supra note 91.