Questions Concerning the International Status of the Holy See

Árpád Margittay-Mészáros[*]

Abstract

The purpose of this study is to provide an overview of the international legal personality of the Holy See. The study examines the international legal position of the Holy See and seeks to answer the question: Is it necessary for the Holy See having in its possession any state in order to be able to exist as a sovereign subject of international law? In order to answer this question, the international legal situation arising from the dissolution of the States of the Church and the Papal States are discussed. The study examines the international treaty-making procedures of the Holy See, as well as the diplomatic relations of the Apostolic See, and some questions related to pontifical legates, both from the point of view of international law and canon law.

Keywords: Holy See, Pope, international legal personality, international treaties, pontifical legates

1. Introduction

In 1870, the end of the Papal States caused a serious crisis in the Holy See's one and a half thousand year history. Furthermore, the loss of the Holy See's possessions and the cessation of the Pope's secular authority posed a significant challenge to the Holy See's ability to sustain its operations based on its own sovereignty. Although the Holy See's sovereignty does not necessitate any territory from an international legal standpoint, as in the case of states, from a practical standpoint, the guarantee of its sovereign operation is ensured by a territory that is in the possession of the Holy See and where the Holy See's sovereignty is enforced. This was primarily the reason why Pope Pius IX (1846–1878) and his successors remained in the Vatican

* Árpád Margittay-Mészáros: Ph.D. student, Széchenyi István University, Győr, drmargittay@gmail.com.

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following the termination of the Papal States. Since the internal legislation of the Kingdom of Italy provided certain guarantees for the continued functioning of the Holy See and the Pope based on their international legal status, it was not clear from the provisions of Italian Domestic Law that the person of the Pope was completely independent of the Kingdom of Italy. Despite the primary focus of international law on states, the Holy See was also acknowledged as a subject of international law. The international legal status of the Holy See became a matter of concern after the cessation of the Pope's secular authority. Initially, this primarily affected the safeguarding of the Holy See and the Pope's own sovereignty, which was the rationale behind the so-called Roman Question, which aimed at a partial restoration of the Pope's secular authority.

2. The International Legal Status of the Holy See After the End of the Papal States

The inviolability of the Pope's person was not disputed by the Kingdom of Italy either, since the Law of Guarantees approved by King Victor Emanuel II on 13 May 1871 said so.[1] At the same time, the law also recognized the right of the Pope to send and receive envoys,[2] which is to continue to maintain diplomatic relations between him [the Holy See] and other states. Therefore, it can be inferred that despite the abolition of the Papal States by the Italians, the Pope and the Holy See as a subject of international law were still acknowledged in numerous ways. One of the most compelling evidences of this is the so-called Law of Guarantees itself.

It is absolutely necessary to emphasize that Article CIII of the General Treaty of the Congress of Vienna, dated 9 June 1815,[3] placed the majority of the territories that had made up before the States of the Church in the possession of the Holy See as a subject of international law. Therefore, all the States Parties to the treaty considered the Holy See as a subject of international law. Furthermore, Cardinal Ercole Consalvi, the Secretary of

1 N° 214. Legge sulle prerogative del Sommo Pontefice e della Santa Sede, e sulle relazioni dello Stato con la Chiesa, 13 maggio 1871, Article 1.

2 Id. Article 11.

3 General Treaty, signed in Congress, at Vienna, 9 June 1815, *in The Parliamentary Debates. Comprising the period from the First Day of February to the Sixth Day of March 1816*, London, 1816, T. C. Hansard, pp. 72–113.

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State of the Holy See was invited to the Congress as a representative of Pope Pius VII (1800–1823),[4] but it is a completely different matter that the Holy See did not become a party to the international treaty. Regardless of the fact that the Holy See did not become a party to the treaty, Secretary of State Cardinal Consalvi had conducted continuous negotiations with the Great Powers on the issues concerning the Holy See even before and during the Congress of Vienna. After the end of the States of the Church, a similar situation had existed as it did in 1870, when the Papal States ended. In both cases, the Holy See was able to survive as a subject of international law.

Prior to the Congress of Vienna, Cardinal Consalvi's task had been to represent the Pope and the Holy See in diplomatic negotiations to reclaim the Holy See's possessions and rights. The Secretary of State of the Holy See confirmed this to the Great Powers in his detailed list of reasons included in his memorandum, dated 23 June 1814.[5] By definition, Pope Pius VII did not advocate for the restoration of the States of the Church as an international legal entity. Moreover, this point is also emphasized in the memorandum of Secretary of State Cardinal Consalvi, wherein His Holiness requests the Holy See to return his personal possessions. This is due to Pope Pius VII's responsibility as the Custodian of the Patrimony of Saint Peter, and therefore he is obligated to safeguard what he had sworn to protect.[6] During this period, it became increasingly evident that, in the international legal relations of the time, the international legal status of the Pope and Holy See existed without interruption, regardless of the existence and temporary termination of the States of the Church. It should be mentioned in advance that a situation similar to the Treaty of Vienna existed in the case of the Lateran Pacts signed on 11 February 1929, since the so-called political treaty explicitly confirms the previously existing sovereignty of the Holy See as an international legal entity. In this particular instance, however, the Kingdom of Italy concluded all three treaties with the Holy See as a subject of international law, and the Kingdom of Italy acknowledged the exclusive sovereignty of the Holy See over the Vatican City State.

4 Tamás Füssy OSB, *VII. Pius pápasága. II. rész*, Szent István Társulat, Budapest, 1876, p. 351.
5 Id. pp. 315–324.
6 Id. p. 321.

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3. The Maintenance of Diplomatic Relations

Regarding the status and international legal entity of the Holy See, it is imperative to emphasize that the legal entity of the Holy See existed concurrently with the Papal States, and the two legal entities had partially distinct governmental organizational systems. Furthermore, from the point of view of the previously mentioned provision of the Law of Guarantees, according to which the Pope recognized his right to receive and send envoys, it only means the recognition of the continued exercise of this pre-existing right, since the Papal States had never maintained diplomatic relations with any other state. The establishment of diplomatic relations and the upkeep of the diplomatic organizational system have always been exclusively within the purview of the Pope and Holy See. The first statement can also be said regarding the international treaties of the Holy See, since, for example, only the Holy See had always concluded concordats and other treaties with the states, so if the Holy See had not been subject to international law, it would not have been able to conclude international treaties.

It should be emphasized that after the termination of the Papal States, the diplomatic representatives previously accredited to the Pope and the Papal envoys sent to individual states, as a general rule, continued to effectively remain in office. However, all of this occurred due to the rules of international law, and not due to the generous provision of the Law of Guarantees of the Kingdom of Italy that recognized the Pope's right to send and receive envoys. Furthermore, it is noteworthy that subsequent to the annexation in 1870, the Holy See established diplomatic relations with an increasing number of states, rendering it difficult to comprehend that the newly established diplomatic relations were between those states and a non-international legal entity. Since the establishment of diplomatic relations in international law implies state recognition, this necessarily applies to the definitive recognition of the Holy See as a subject of international law, which is final and irrevocable. It is also important to mention that the problem arose in the 20th century, when scholarly literature began to proliferate, sometimes denying or questioning the Holy See as a subject of international law, and sometimes presenting its international legal personality in an abstract manner. Although the Holy See's role in international relations and its international legal status were not the subject of debate during the previous millennium and a half, there have been no changes in international law that would affect this until today.

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4. The International Treaties

It should also be noted that, despite the termination of the Papal States, the international treaties concluded by the Holy See remained in force. Nonetheless, the circumstance pertaining to international agreements is significantly more intricate than that of diplomatic relations. It is important to emphasize that the Holy See, as an international legal entity, must be considered to have legal continuity, which is unbroken both before the existence of the Papal States and after its termination. Before the end of the Papal States, there was also an international treaty concluded by the Pope, but it clearly contained provisions relating to the Papal States. At first glance, one might assume that such an international treaty concerning the Papal States was concluded by the Pope as the sovereign of the state. However, from an international legal perspective, the question is far from simple.

On 12 February 1850, the Pope acceded to the international agreement regarding the free navigation of the Po River, which had been concluded in Milan by Austria, Modena, and Parma on 3 July 1849,[7] and formally acknowledged by the accession document signed in the city of Portici.[8] As per the title of the accession document, the Pope personally joined the international treaty that had previously been concluded by three states. Nonetheless, the preamble of the accession document specifically mentions the consent of the Papal Government [which, in this instance, clearly refers to the Government of the Papal States] using the phrase "obtain the assent of the Pontifical Government". Furthermore, although the original treaty had been concluded by the three states mentioned above, it is already stated in the preamble of the treaty that the Austrian Emperor reserved the right of the Papal States to himself. Moreover, the treaty contained an explicit provision that specifically affected the Domestic Law of the Papal States. It was agreed that ships coming from any sea would be subject to the

7 Trattato tra i Governi d'Austria, di Modena, e di Parma, sulla Libera Navigazione del Fiume Po, *in* Lewis Hertslet (ed.), *A Complete Collection of the Treaties and Conventions, and Reciprocal Regulations, at Present Subsisting Between Great Britain and Foreign Powers, and of the Laws, Decrees, and Orders in Council concerning the same; so far as They Relate to Commerce and Navigation, Slave Trade, Post-Office Communications, Copyright, etc.; and The Privileges and Interests of The Subjects of The High Contracting Parties. Vol. IX*, Butterworths, London, 1856, pp. 924–929.

8 Atto d'Accessione di Sua Santità Pontificia al Trattato conchiuso il 3 Luglio, 1849, fra i Governi dell'Austria, di Modena e di Parma, risguardante la libera Navigazione sul Fiume Po, id. pp. 929–930.

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sanitary regulations prescribed in the Austrian or Papal ports at the mouth of the river, and that such ships should not proceed on their way until the requirements of these sanitary regulations are met. It should be noted that the treaty did not originally include any other rights or obligations towards the Papal States.

In the accession document, the first paragraph following the text of the international treaty mentions the subjects of His Holiness, but clearly in the sense of the citizens of the Papal States. Simultaneously, despite the fact that the initial Signatory States of the international treaty, and both the treaty and the accession document explicitly refer the entire international treaty to the Papal States, it cannot be definitively stated that the Papal States itself would have been State Party. In other words, with the accession, the Pope personally himself became a party to the international treaty concluded by the three State Parties. Moreover, this assertion is substantiated by the precise title of the accession document, which is stated as follows:

> "Act of Accession of His Holiness the Pope to the Treaty of July 3, 1849, between the Governments of Austria, Modena, and Parma, relative to the free Navigation of the River Po."[9]

Considering that during this period the sovereigns did not become party of an international treaty, only the states under their rule, it is completely impossible that in the case of this accession document the Pope would have appeared as the monarch of the Papal States, since this fact was not indicated in the accession document. In this case, the Pope represents the Holy See itself, which appears as the subject of international law and in the sense that it exercises exclusive sovereignty over the Papal States, also as a subject of international law. By the way, this also follows from the text of the accession document itself, according to which the Pope provided Cardinal Giacomo Antonelli, Pro-Secretary of State of the Holy See, with full authorization.

During this period, the Papal States already had a distinct government from the Holy See, however, the official position of the Government's President was always held by the Secretary of State of the Holy See. Therefore, this fact alone could even mean that the Papal States actually became party to the international treaty. However, a completely different outline emerges from the text of the accession document. Cardinal Giacomo Antonelli,

9 Id. p. 935.

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Pro-Secretary of State of the Holy See, signed the accession document with the clause "saving always the right of the Holy See, which have already been before reserved".[10] It follows that, regardless of how much the Papal States are affected by the international treaty in respect of which the document of accession was signed, the Holy See appears as the primary subject of international law in the international treaty-making process. In 1860, the Legation of Romagna, which was territorially affected by the Po River and was part of the Papal States, furthermore Modena and Parma as well, became part of the Kingdom of Sardinia-Piedmont, which in 1861 became the Kingdom of Italy. Finally, in 1866, the province of Austria, the Kingdom of Lombardy-Venetia, became part of the Kingdom of Italy, and the international treaty was terminated. Since the creation of the Vatican City State, this treaty-making question has become much simpler in practice. As the Holy See also enters into international treaties on behalf of the State, however, in the event that only the State becomes a party to the agreement, it is evident that the Holy See is acting on behalf of the State and not the Holy See itself. Exceptions are made in cases where the Holy See itself is also a contracting party in parallel with the State.

As it was mentioned before, if the international legal personality of the Holy See had not existed, it would have been unable to maintain diplomatic relations and it would not have been able to conclude international treaties. A particularly excellent example of this is the Spanish Concordat dated at Madrid, 16 March 1851,[11] and the additional agreement dated at Rome, 25 August 1859,[12] which were concluded by the Holy See and were in force regardless of the existence or termination of the Papal States. As an example, we can also mention the Agreement between the Swiss Federal Council and the Holy See dated at Lucerne, 23 October 1869, on the integration of the villages of Poschiavo and Brusio in Graubünden into the Diocese of Chur,[13]

10 Id. p. 936.

11 Concordat concluded between His Holiness and Her Catholic Majesty, signed at Madrid on 16 March 1851, UNTS, Vol. 1221, No. 827.

12 Convenio adicional firmado en Roma el 25 de agosto de 1859, at https://laicismo.org/concordato-de-1851-entre-isabel-ii-y-pio-ix/184118.

13 'Übereinkunft zwischen dem Schweizerischen Bundesrate und dem Heiligen Stuhle betreffend die Einverleibung der bündnerischen Gemeinden Poschiavo und Brusio in das Bistum Chur', *Schweizerische Eidgenossenschaft. Fedlex. Die Publikationsplattform des Bundesrechts*, SR-Nummer: 0.181.1, at www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/X/289_259_289/18700829/de/pdf-a/fedlex-data-admin-ch-eli-cc-X-289_259_289-18700829-de-pdf-a-1.pdf.

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for which the previous statement is also true. Even after the end of the Papal States, the Holy See continued to conclude international treaties, such as the two Conventions between the Swiss Federal Council and the Holy See on Church Relations, dated at Bern, 1 September 1884,[14] the Concordat with the Kingdom of Portugal, dated at Rome, 23 June 1886,[15] or the Concordat with the Republic of Colombia, dated at Rome, 31 December 1887.[16]

It is also necessary to emphasize that the so-called *Codex Pii-Benedicti*, the first uniform law book summarizing the rules of canon law (the codification work of which took place between 1904 and 1917) contained provisions on international treaties affecting the Holy See. The *Codex Iuris Canonici*[17] states that the canons of the *Codex* do not invalidate the agreements made by the Holy See with various nations and do not affect them. Therefore, despite the contrary provisions of this Code, they remain in effect in their present form.[18] It is evident that the Legislator essentially subordinates the Ecclesiastical Law to the international treaties, as he declares their continuance in force and their inviolability even in the event of explicitly contradictory provisions of canon law, as if giving priority to the international treaties. By the way, both the current effective Latin and Eastern Codes adopted the 1917 regulation with so many additions that it applies the regulation to contracts concluded not only with individual states, but also with other political organizations (*e.g.* international organizations).

5. The Pope and the Holy See

The person of the Pope should not be interpreted as the sovereign of a state, both from the standpoint of canon law and international law. In this case, the traditionally used titles *Pontifex Pontificium* and *Pontifex Maximus* are not the starting point. It is important to note that, from an international

14 'Uebereinkommen zwischen dem schweizerischen Bundesrathe und dem heiligen Stuhl, betreffend kirchliche Verhältnisse', *Schweizerisches Bundesblatt*, Vol. 3, Issue 43, 1884, pp. 657–662.

15 'Publicum de re sacra Conventum die 23 Iunii anno 1886 a S. Sede et Lusitaniae Rege initum', *Acta Sanctae Sedis*, Vol. 19, 1886, pp. 185–189.

16 'Pacta conventa inter S. Sedem et Rempublicam Columbiae', *Acta Sanctae Sedis*, Vol. 21, 1888, pp. 7–12.

17 'Codex Iuris Canoninci', *Acta Apostolicae Sedis*, Vol. 9, Pars II, 1917, pp. 11–456.

18 Id. Canon 3. *Cf.* 1983 CIC, Canon 3 and CCEO, Canon 4.

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legal point of view, the status of the Pope as a person is much more complicated than the position of sovereigns in the Middle Ages. It is first and foremost canonically necessary to define the person of the Pope and the Holy See itself in order to be able to determine the international legal status of the Holy See, but also of the Pope. It was noted before that the *Codex Pii-Benedicti,* promulgated in 1917, codified the canon law that had been in effect before, so the provisions governing Papal authority must be considered retroactively valid for previous centuries, not just after the Code came into force. The Code of Canon Law states that the Pope of Rome has supreme and complete jurisdiction over the Entire Church.[19] The legally elected Pope of Rome acquires the full power of supreme jurisdiction by divine right immediately after accepting the election.[20]

By the way, it is worth noting that on 18 July 1870, the issue of Papal primacy was declared as dogma by the Constitution *Pastor aeternus* of the First Vatican Council[21] a few weeks before the final end of the Papal States. But the issue of primacy and universal jurisdiction of the Bishop of Rome had been raised long before the creation of the States of the Church. The Papal primacy appeared in the early centuries, for example, in the letters of Pope Leo I (440–461) and Pope Saint Gregory I (590–604).[22] The codification of Eastern Canon Law commenced in 1929, although it was not published as a uniform code. However, between 1949 and 1957, Pope Pius XII (1939–1958) promulgated Eastern Law with several Motu Proprios, most recently on 2 June 1957, the Laws on Rites and Persons.[23] Canon 162 and Canon 163 of the Motu Proprio *Cleri sanctitati*[24] contained identical provisions regarding the power and jurisdiction of the Roman Pontiff as the provisions of the Latin law, specifically the Pio-Benedictine Code discussed above. The current [Latin] Code of Canon Law[25] states that the Bishop, specifically the Bishop of Rome, is the Vicar of Christ and the Shepherd of the Entire Church on this Earth. Therefore, as a result of his office,

19 Id. Canon 218, para. 1.
20 Id. Canon 219.
21 'Constitutio dogmatica Pastor aeternus', *Acta Apostolicae Sedis. Ex Actis Oecumenici Concilii Vaticani*, Vol. 6, 1870, pp. 40–51.
22 Szabolcs Anzelm Szuromi O.Praem., *Szempontok a Katolikus Egyház jogrendjének működéséhez,* Szent István Társulat, Budapest, 2010, p. 20.
23 Péter Erdő, *Az egyházjog forrásai,* Szent István Társulat, Budapest, 1998, pp. 249–250.
24 'Litterae Apostolicae Motu Proprio Cleri sanctitati', *Acta Apostolicae Sedis. Acta Pii PP. XII.*, Vol. 49, Issue 9, 1957, pp. 433–603.
25 'Codex Iuris Canoninci', *Acta Apostolicae Sedis*, Vol. 75, Pars II, 1983, pp. 1–301.

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he possesses the supreme, complete, direct, and universal ordinary power within the Church, which he freely exercises.[26]

It should be noted that the current Eastern Law follows the same rules as Latin Law, so the Code of Canons of the Eastern Churches[27] contains a similar provision.[28] The Pope is the head of the body of bishops, the body of bishops is the bearer of the supreme and complete power over the whole Church, and the body of bishops exists only together with its head, never without him.[29] In a theological sense, however, the Papal office is not only of episcopal origin, but also includes primacy due to the succession of the See of Peter. The body of bishops, as the exerciser of the supreme and complete power over the Church, does not exist without the Pope.[30] The 'unlimited' power of the Pope is further specified in the law, according to which, by virtue of his office, he not only has power over the whole Church, but also has supreme ordinary power over all particular churches and their communities.[31] However, he has the right to determine, in accordance with the needs of the Church, the personal or corporate manner in which he exercises this task.[32] There is no appeal against his judgment or decision.[33] In essence, the above provisions emphasize the complete and unlimited legislative, governmental and judicial power of the Pope, despite the fact that he can exercise his power both directly and indirectly.

In the context of international law and canon law, it is appropriate to compare the canons described above with the provision of the *Codex Pii-Benedicti*, which states *expressis verbis* that the name Apostolic See or Holy See in the *Codex* does not mean only the person of the Roman Pope, but – unless due to the nature of the case or the context of the text nothing else follows – also the congregations, the tribunals, the offices through which the Roman Pontiff administers the affairs of the Universal Church.[34] The currently effective Latin Code has a similar provision, with the exception

26 Id. Canon 331.
27 'Codex Canonum Ecclesiarum Orientalium', *Acta Apostolicae Sedis*, Vol. 82, Issue 11, 1990, pp. 1061–1363.
28 Id. Canon 43.
29 1983 CIC, Canon 336. *Cf.* CCEO, Canon 49.
30 Péter Erdő, *Hivatalok és közfunkciók az Egyházban,* Szent István Társulat, Budapest, 2003, p. 97.
31 1983 CIC, Canon 333, Section 1. *Cf.* CCEO, Canon 45, Section 1.
32 Id. Section 2. *Cf.* CCEO, Canon 45, Section 2.
33 Id. Section 3. *Cf.* CCEO, Canon 45, Section 3.
34 1917 CIC, Canon 7.

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that the name Apostolic See or Holy See in the present Code does not only denote the Pope of Rome, but – unless the contrary is apparent from the nature of the matter or the context of the text – the Secretariat of State, the Council for the Public Affairs of the Church and other institutions of the Roman Curia.[35] The Code of Canons of the Eastern Churches contains similar provisions in parallel, but it solely mentions the Dicasteries and other bodies of the Roman Curia more generally.[36] From this the conclusion can be drawn that, traditionally, both Latin and Eastern Law basically start from the fact that, in a legal sense, the person of the Pope is basically the same as the Holy See or the Apostolic See itself. However, apart from the exception rules in the Latin and Eastern Codes, the Holy See and the Apostolic See should be understood by extension to include both the person of the Pope and the Dicasteries of the Roman Curia.

The task of the Roman Curia is clearly defined by the law, according to which the Pope used to manage the affairs of the Universal Church with its help, and which performs its task in his name and with his authority for the benefit and service of the particular churches. It is composed of the Papal or State Secretariat, the Council for the Public Affairs of the Church, Congregations, tribunals, and other institutions.[37] In this case, the canonical provisions also have international legal significance, since if the Holy See is interpreted narrowly, then it means only the person of the Pope, if it is extended, then the person of the Pope is understood jointly with the Dicasteries of the Roman Curia. Here, it is necessary to note that many previous international legal documents do not even use the designation Holy See, but only the Pope is mentioned in them, such as in the Regulation concerning the precedence of Diplomatic Agents of the Congress of Vienna.

The culmination of Papal influence in international relations occurred during the Middle Ages. From the time of the Carolingians onwards, rulers considered themselves almost equal to the Pope. In the year 1075, Pope Gregory VII (1073–1085) published his twenty-seven points tenets on Papal supremacy and primacy known as *Dictatus papae*, wherein he extended the powers of the Pope to the point where he could depose monarchs. During the debate between Emperor Henry IV and the Pope regarding the fundamental principles of *Dictatus Papae*, the Pope emerged victorious. The successors of Pope Gregory VII also consistently maintained the position

35 1983 CIC, Canon 361.
36 CCEO, Canon 48.
37 1983 CIC, Canon 360.

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regarding the powers of the Pope.[38] Among the international treaties of the Holy See, the first concordat was the Concordat of Worms concluded on 23 September 1122, between Pope Callixtus II (1119–1124) and Holy Roman Emperor Henry V, which concluded the investiture war in the Middle Ages. Upon the conclusion of the treaty, the Emperor renounced the investiture of the ring and crosier on behalf of himself and his successors, but retained the investiture of the scepter, however, he lost the right to appoint the Imperial Bishop, as well as all his privileges in the Roman territory. His rights related to the investiture in the Imperial Possessions were also limited.[39] The Papal authority rose to the top of the fiefdom hierarchy, thereby being acknowledged as superior to the secular powers. This was not a matter of debate later on. The Pope also determined the order of the rulers, thus establishing himself as the most decisive leader in international relations.[40]

At the same time, in addition to the return of the former territories of the Papal States to the possession of the Holy See, the Regulation concerning the precedence of Diplomatic Agents dated 19 March 1815, incorporated into the Final Act of the Congress of Vienna dated 9 June 1815 under number XVII, cannot be ignored.[41] Although the Regulations stated that the diplomatic representatives should be ranked according to the date of the official notification of their arrival within their own class, the treaty also stipulated that the previous provision could not result in any modifications regarding the respect of the representatives of the Pope.[42] Essentially, the nuncio sent by the Pope was automatically recognized as the Dean of the Diplomatic Corp of the receiving state.[43] Furthermore, the Regulations of the Congress of Vienna classified ambassadors, Papal legates and nuncios as equals in Class I of the diplomatic hierarchy.[44] Therefore, internation-

38 Szabolcs Anzelm Szuromi, *Egyházi intézménytörténet,* Szent István Társulat, Budapest, 2003, pp. 99–100.

39 Szabolcs Anzelm Szuromi, *Medieval Canon Law. Sources and Theory,* Szent István Társulat, Budapest, 2009, pp. 181–182.

40 Katalin Siska & Sándor Szemesi, *A nemzetközi jog története,* Debreceni Egyetem Kossuth Egyetemi Kiadója, Debrecen, 2006, pp. 15–17.

41 Act No. XVII. Regulation concerning the precedence of Diplomatic Agents, *in Translation of the General Treaty, signed in Congress, at Vienna, June 9, 1815; with the Acts Thereunto Annexed,* R. G. Clarke, London, 1816, p. 147.

42 Id. Article IV.

43 Marek Šmid, *Mission. Apostolic Nuncio in Prague*, Karolinum Press, Prague, 2020, p. 17.

44 Regulation concerning the precedence of Diplomatic Agents, Article I.

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al law in diplomatic relations still ensured the privileges of nuncios and legates, who were all diplomatic representatives of the Pope.

6. The Papal Legates

There are data available regarding the institution of Papal diplomatic representatives, namely the legates, dating back to the 4th century.[45] Between the 5th and 13th centuries, the Pope accredited a completely unique, non-permanent representative as a legate, who was called *apocrisarius* or *responsalis*. It is quite certain that Pope Saint Leo the Great I (440–461) sent an *apocrisarius* to the Imperial Court in Constantinople,[46] but for example Pope Saint Gregory the Great I (590–604) was himself an *apocrisarius* in the Imperial Court in Constantinople before his pontificate, as the emissary of his immediate predecessor, Pope Pelagius II (579–590).[47] Over the centuries, the Pope regularly sent legates who represented him with full authority, but their mandate was not permanent, but *ad hoc*. The precise designation of the legate in this instance is *legatus missus,* and in the event that the emissary was a cardinal, then the title *legatus a latere* was used as a distinction.[48] Despite the fact that since the beginning of the 16th century, the Holy See has established permanent diplomatic representations under the leadership of a nuncio as a legate and, in certain instances, an internuncio or pronuncio as the head of the permanent diplomatic representation of the Holy See, the institution of the *legatus a latere*, a legate from the side of the Pope, has endured to the present day and possesses actual authority. In each case, his mandate is based on a unique measure of the Pope, which is for a specific event or time, and such a mandate is given to one of the cardinals.

Nonetheless, *legatus* in its narrow sense encompasses not solely *legatus a latere*, but also *legatus natus*, which emerged at the commencement of the second millennium. In accordance with the actual meaning of the term, the *legatus natus* is a born legate of the Holy See, who was legally associated with specific bishoprics. The *legatus natus* title was conferred upon the appointment to the given bishopric, and cannot be obtained separately.

45 Szuromi 2003, p. 192.
46 Szuromi 2009, p. 183.
47 Mihály Medvigy, *Pápa életpályák,* Panoráma, Budapest, 1991, p. 13.
48 István Késmárky, *Az esztergomi érseknek mint Magyarország prímásának jogai és kiváltságai,* Franklin Társulat, Budapest, 1896, p. 55.

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Although it is uncommon, it has endured to this day. This is similar to the title of primates, which are also attached to some episcopal sees. By the way, the Archbishoprics of Esztergom and Salzburg are the best examples of this. The *legatus natus* title was attached to both metropolitan sees, just like the primate title. It should be emphasized that the primate and *legatus natus* titles are inherently completely independent of each other. Considering that, in international law, the maintenance of the Holy See's diplomatic relations had nothing to do with the termination of the Papal States, Papal legates are discussed in Chapter V of the unified *Codex Iuris Canonici* of 1917. The *Codex Iuris Canonici* of 1983, which is currently in force, also regulates in Chapter V the pontifical legates. Although the Code of 1917 is not in force, its rules for legates include not only certain types of Papal legates known before its entry into force, but also currently known, which are not named at all in the currently effective Code.

Above all, the Pio-Benedictine Code clearly reflects the functions of the Papal legates, both secular and ecclesiastical. The Code declared that the Pope had exclusive authority to send legates to any part of the world, regardless of any secular power, with or without ecclesiastical jurisdiction.[49] It is imperative to emphasize that the aforementioned canon does not solely pertain to situations where the Holy See, as a sovereign legal entity of international law, maintains effective bilateral diplomatic relations with a state. Rather, it holds universal validity, so the Pope's authority to dispatch legates is universal and feasible even without diplomatic relations. This principle is exemplified in practice in the appointment of a legate, namely the *legatus a latere* and the apostolic delegate, namely the *delegati apostolici*.

Otherwise, the provisions of the Code will sequentially follow the historical development of each type of legate. Foremost, the law states that, in relation to the *legatus a latere*, a cardinal can receive this appointment, and his authority is limited to what the Pope entrusts him with.[50] The present law no longer regulates this separately, however, this situation persists in practice. In the case of the *legatus natus*, the office no longer comes with actual powers. Special rights of this pontifical legate attached to certain privileged episcopal sees were abolished by the Code, but not the title itself.[51] The Archbishopric of Esztergom was in a privileged position. Archbishop János Kanizsai received the appointment of Primate of Hungary and

49 1917 CIC, Canon 265.
50 Id. Canon 266.
51 Id. Canon 270.

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legatus natus from Pope Boniface IX (1389–1404) with a Bull dated 24 April 1394, which only applied to his person and Ecclesiastical Province. Then, on 17 March 1395, the Pope extended these two titles to the Archbishop's successors for the territory of the Metropolitan Archdiocese of Esztergom, while for the person of Archbishop Kanizsai alone, the Pope extended the rights to the other Hungarian Ecclesiastical Province, the Metropolitan Archdiocese of Kalocsa.[52] At the request of King László V of Hungary, during the archbishopric of Cardinal Dénes Széchy, Pope Nicholas V (1447–1455) permanently attached the title of *legatus natu*s to the Hungarian Primatial See in 1452.[53] Since then, the Metropolitan Archbishops of Esztergom have been bearing the title *legatus natus* not as Archbishops, but as Primates of Hungary. However, it should be noted that the Archbishop of Esztergom, as *legatus natus*, is entitled to wear the purple even without the cardinal appointment, and every Archbishop of Esztergom has maintained and exercised this right to this day.[54] A similar situation exists in the case of the Archbishop of Salzburg. But it must be emphasized that this does not conflict with the provision of the Code, since the law abolished only the actual powers of the *legatus natus* as a pontifical legate.

The current effective *Codex Iuris Canonici*, in accordance with historical traditions, elucidates much more clearly that sending legates is not solely a sovereign right of the Pope, but also an inherent right. The current law also details the cases in which the Pope has the right to send legates. According to this, legates can be appointed, as well as transferred and recalled, to any particular churches in any country or region of the world, states or public authorities.[55] However, the law also declares that the delegates and observers of pontifical missions at international councils and conferences also represent the Apostolic See.[56] According to the applicable Code, only with regard to envoys sent to states shall the rules of international law be observed in the case of the appointment and recall of these legates.[57]

52 Norbert C. Tóth, *Az esztergomi székeskáptalan a 15. században. III. rész. Az ún. 1397. évi esztergomi székeskáptalani egyházlátogatási jegyzőkönyv,* MTA Magyar Medievisztikai Kutatócsoport, Budapest, 2021, p. 32.

53 Késmárky 1896, pp. 56–57.

54 Margit Beke, 'Egy egyházi címer születése. Megfontolások egy bíboros-prímási címer kapcsán' [in English: The birth of a church coat of arms. Reflections on a cardinal-primate coat of arms], *Magyar Sion,* Vol. 7 / 49, Issue 2, 2013, pp. 217–231.

55 1983 CIC, Canon 363, Section 1.

56 Id. Section 2.

57 Id. Canon 362.

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Regarding the envoys sent to the states, the Pio-Benedictine Code did not explicitly stipulate that the rules of international law has to be observed, but it is important to emphasize that the Holy See always acted accordingly. The previous Code, on the other hand, designated the nuncio and internuncio as envoys sent to states. Their mandate is to foster relations between secular governments and the Apostolic See, where a permanent diplomatic representation operates. They are also responsible for monitoring the status of local churches and are obligated to inform the Pope about it. Additionally, they are responsible for all other delegated powers in addition to the aforementioned two ordinary powers.[58] It is evident that, compared to the usual practice in international law, the powers and obligations of the heads of permanent diplomatic representations of the Holy See were already much broader compared to the heads of diplomatic representations of the states.

By the way, it should be noted that Ferdinand II, the King of Aragon, sent the first envoy to Pope Sixtus IV (1471–1484) in the person of Gonzalo de Beteta in 1480.[59] The first permanent diplomatic representation of the Holy See was established during the reign of Pope Alexander VI (1492–1503). The first apostolic nunciatures of the Holy See were opened in 1501 in Paris and Venice, followed by 1513 in Vienna.[60] As was previously discussed, the Regulations concerning the precedence of Diplomatic Agents of the Congress of Vienna 1815 named Papal legates and nuncios as first-class diplomatic representatives, while the internuncio was not mentioned among the second-class representatives. However, the institution of the internuncio had already appeared earlier.[61] In the 19th century, the number of internuncios as second-class permanent heads of diplomatic representations increased. Therefore, it is no coincidence that the 1917 *Codex Pii-Benedicti* mentions among the pontifical legates the internuncio in addition to the nuncio as the Pope's diplomatic representative sent to the states. The institution

58 1917 CIC, Canon 267, para. 1.

59 Roger Boase, 'María de Velasco (c. 1467–1549), Pinar's Juego trobado, the Carajicomedia, and the mystery of King Fernando's death', *eHumanista*, Vol. 37, 2017, pp. 512–527.

60 Lecture by Archbishop Jean-Louis Tauran on the theme "The Presence of the Holy See in the International Organizations", Catholic University of the Sacred Heart, Milan, Monday, 22 April 2002, The Holy See, Roman Curia, Secretariat of State, at www.vatican.va/roman_curia/secretariat_state/documents/rc_seg-st_doc_20020422_tauran_en.html.

61 G. H. Bolsover, 'The Meaning and History of the Term 'Internuncio", *Bulletin of the Institute of Historical Research*, Vol. 12, Issue 36, 1935, pp. 145–151.

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of the internuncio was also recognized by customary international law, which is proved better by the fact that it was already included in the 1961 Vienna Convention on Diplomatic Relations as an institution previously recognized by customary international law.

It is necessary to note that during the 20th century, the Holy See did not accredit as nuncios, but as pronuncios the permanent heads of diplomatic missions until 1990 in those countries that were unwilling to recognize the Pope's legate as the Dean of the Diplomatic Corp. The Holy See has abandoned this practice, as well as the appointment of internuncios. Therefore, the Holy See only accredits a nuncio to each state with which it maintains diplomatic relations. Furthermore, it is essential to mention that the powers and obligations of the Papal legates were further expanded by the current *Codex Iuris Canonici*. The law, however, defines powers and obligations that affect all Papal legates, and there are other special powers and obligations that, in addition to the above, only apply to those legates who are accredited to the states under the rules of international law.

In a certain sense, the Papal envoys hold the privileged position of remaining in office and fulfilling their duties in the event that the *Sede Vacante* commences with the death or resignation of the Pope, unlike the majority of the heads of the Dicasteries of the Roman Curia. The exception is when the Papal credential provides differently.[62] Regarding the general powers, which apply to all legates, the main task of the Papal legate is to strengthen the bond and make it more efficient between the Apostolic See and the particular churches. In this context, the legate shall inform the Holy See about the circumstances of the particular churches in his area of competence. He must provide assistance to the local bishops without causing any offense in the legitimate exercising of their authority. Furthermore, he must maintain a close relationship with the local Episcopal Conference. He must forward to the Apostolic See the names of the local bishop candidates, and may make a proposal for the appointment. He shall also carry out the information procedure on the persons of the candidates. It is also charged with supporting causes that promote peace, development, and cooperation among peoples. He collaborates together with the bishops to promote the relationship between the Catholic Church and other denominations, as well as non-Christian religions. Together with the bishops, the legate has to protect those things which pertain to the mission of the Church and the

62 1983 CIC, Canon 367. *Cf.* 1917 CIC, Canon 268, para. 1.

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Apostolic See before the leaders of the state. He also executes all the duties assigned to him by the Holy See.[63] The additional exclusive obligation of pontifical legates accredited to states under the rules of international law is to promote relations between state authorities and the Apostolic See, to discuss issues affecting the relationship between the state and the Church, as well as the preparation and implementation of concordats and other agreements.[64] During the exercise of the latter two powers, the pontifical legate is obliged to obtain the opinion of the local bishops in advance on all matters, and afterwards to inform them of the state of affairs.[65] It is also necessary to mention that, with the exception of marriages, the seat of the pontifical legation is excluded from the power of governance of the local ordinary, so in addition to the immunity provided by international law, apostolic nunciatures also enjoy a privilege similar to international law from the point of view of canon law and church governance.

7. Conclusions

In the Middle Ages, the issue of Papal primacy gradually developed, which was closely related to the role of the Holy See in international relations. Although the territorial extent of the States of the Church was gradually increasing over the centuries, the importance of the Pope's international position did not stem from his quality as a secular ruler. The Pope and the Holy See have developed a specific diplomatic organizational system over the centuries, which has been preserved in both canon law and international law to this day. For more than a millennium, it was not of particular importance from an international legal point of view to demarcate the special position of the Holy See, since the Pope was both a secular and non-secular ruler. The special international legal position of the Holy See was first demonstrated in the case of the Congress of Vienna in 1815, when the international treaty signed by the great powers returned most of the territories of the former States of the Church to the possession of the Holy See as an international legal entity. After the termination of the Papal States in 1870, the lack of secular territory did not affect the international legal position of the Holy See. From an international legal point of view, it caused

63 Id. Canon 364, paras. 1–8.
64 Id. Canon 365, Section 1, paras. 1–2.
65 Id. Section 2.

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a much more practical problem in terms of ensuring the actual sovereignty of the Holy See and the free exercise of Papal authority. In fact, the so-called Roman question solved this problem with the Lateran Pact. At the same time, the question of the international legal personality of the Holy See also raised many scientific problems during the 20th century. However, the Holy See's international treaty-making procedures and its diplomatic relations with states over the long centuries unfailingly prove the Holy See's international legal position, which is completely independent of whether a state falls under its sovereignty or not.

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