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## Saving Grace or Saving Face: The Roman Catholic Church and Human Rights

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# Saving Grace or Saving Face: The Roman Catholic Church and Human Rights

An act of the highest importance performed by the United Nations Organization was the Universal Declaration of Human Rights,<sup>1</sup> approved in the General Assembly of December 10, 1948 . . . . The document represents an important step on the path towards the juridical-political organization of the world community. For in it, in most solemn form, the dignity of a person is acknowledged to all human beings; and as a consequence there is proclaimed, as a fundamental right, the right of free movement in search for truth and in the attainment of moral good and of justice, and also the right to a dignified life.<sup>2</sup>

## I. Introduction

For hundreds of years the Roman Catholic Church has played a significant role in world affairs. The nature of this role has evolved from simply preserving the Church's own interests and worldly power, to acting as a mediator,<sup>3</sup> to acting as a protector of human

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1. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810 (1948).

2. JOHN XXIII, *PACEM IN TERRIS* Part IV (1963) [hereinafter *PEACE ON EARTH*].

3. H. CARDINALE, *THE HOLY SEE AND THE INTERNATIONAL ORDER* 89 (1976). According to Cardinale, some of the more important meditations of the Pope include:

1870 Work of mediation undertaken to prevent the Franco-Prussian War.

1885 Papal arbitration in the dispute between Germany and Spain about the right to possess the Caroline Islands.

1890 Intervention in the controversy between Great Britain and Portugal concerning the frontiers of the Congo.

1893 Papal arbitration in the border dispute between Peru and Ecuador.

1894 Papal mediation, proposed by Great Britain and Venezuela, in order to define frontiers of Guiana.

1895 Papal arbitration in a border conflict between Haiti and Santo Domingo.

1896 Pope's appeal to Emperor Menelik of Ethiopia on behalf of Italian prisoners of war.

1898 Papal intervention to prevent war between Spain and the United States over Cuba.

1900-1903 Papal arbitration of the dispute between Argentina and Chile on the determination of frontiers.

1905 The agreement between Columbia and Peru to submit to Papal arbitration all future disputes.

1906 Papal arbitration of the determination of frontiers in the disputes between Columbia and Ecuador.

1909-1910 Papal arbitration over the possession of gold deposits in the dispute between Brazil and Bolivia, and between Brazil and Peru.

1914 Papal arbitration offered to Argentina, Brazil, and Chile.

*Id.*

rights. The first part of this Comment examines the structure and organization of the Church, the means of papal diplomacy, and the Vatican's participation in international organizations. Special attention is focused on the Code of Canon Law, the Lateran Agreements, and other important documents. The second part of this Comment examines the role the Church plays as a protector of human rights. This focuses on the Church's actions and recent history in two nations, Chile and Poland, and examines the effects of papal visits to these countries and the publication of papal encyclicals dealing with human rights.

### Part One: Structure of the Church, Papal Diplomacy and Participation in International Organizations

#### I. The Structure and Organization of the Church, the Vatican, and the Holy See

The Roman Catholic Church in the twelfth through the fourteenth centuries collected the "holdings" of General Councils, Ecclesiastical Courts, Papal Encyclicals, and other important sources to form the Code of Canon Law ("the Code").<sup>4</sup> The canons evolved so as to encompass many aspects of the Roman Catholic Church.<sup>5</sup> Before examining how the Church acts in international affairs, it is important to note the role that history and Canon Law play in developing the hierarchical structure of the Church.

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4. Black's Law Dictionary defines canon law as:

a body of Roman ecclesiastical jurisprudence compiled in the twelfth, thirteenth, and fourteenth centuries from the opinions of the ancient Latin fathers, the decrees of General Councils, and the decretal epistles and bulls of the Holy See. The canon law is contained in two principal parts — the decrees or ecclesiastical constitutions made by the popes and cardinals; and the decretals or canonical epistles written by the pope, or by the pope and cardinals, at the suit of one or more persons.

BLACK'S LAW DICTIONARY 187 (5th ed. 1979).

5. The canons are currently divided into seven books:

Book I, General Norms (Canons 1-203). This book outlines the administrative process of the Church, and the power and authority of Church officers.

Book II, The People of God (Canons 204-746). This book spells out the hierarchical construction of the Church.

Book III, The Teaching Office of the Church (Canons 747-833). This book contains uniform methods and rites to be used by the clergy in leading the faithful.

Book IV, The Office of Sanctifying the Church (Canons 834-1252). This book outlines the Sacraments and other forms of worship.

Book V, The Temporal Goods of the Church (Canons 1254-1310). How the Church may acquire, administer, and alienate its goods are dealt with in this book.

Book VI, Sanctions in the Church (Canons 1311-1399). This book lists actions considered offensive to the Church and prescribes penalties to be given for such actions.

Book VII, Processes (Canons 1400-1752). The final book outlines the procedures to be followed for trials or hearings under the Code.

### A. *The Hierarchical Structure of the Church*

Canons 330 and 331 place the supreme authority of the Church with the "Roman Pontiff" — the pope.<sup>6</sup> The office of pope is an ecclesiastical office<sup>7</sup> which is filled by an election held within the college of cardinals.<sup>8</sup> A pope serves a life term unless he decides to resign<sup>9</sup> or is removed from office.<sup>10</sup> The pontiff has at his disposal a number of bodies to aid in the exercise of his office. These bodies include the college of bishops, the college of cardinals and various other synods.<sup>11</sup> Canon Law established the Roman Curia.<sup>12</sup> "The Supreme Pontiff," notes Canon 360, "usually conducts the business of the universal Church by means of the Roman Curia, which fulfills its duty in his name and by his authority . . . it consists of the Secretariat of State . . . the Council for Public Affairs . . . and other tribunals."<sup>13</sup> The Pope also has the power to appoint legates, or ambassadors, to states or international organizations.<sup>14</sup> Bishops are also appointed by the Pope.<sup>15</sup> The office of bishop carries with it "all the ordinary, proper, and immediate power which is required for the exercise of his pastoral office except for those cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority of the Church or to some other ecclesiastical authority."<sup>16</sup> Every five years a diocesan bishop is required to report the state of the diocese to the Pope,<sup>17</sup> and to appear before the Pontiff.<sup>18</sup> Thus, bishops have broad authority over their diocese yet they shoulder the responsibility of representing the Church in Rome. Bishops are encouraged to form conferences within regions of the world and specific nations.<sup>19</sup>

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6. *Codex Iuris Canonici*, 1983 CODE c. 330-331. Canon 331 states that:

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

*Id.* at c.331.

7. *Id.* at c.145.

8. *Id.* at c.349.

9. *Id.* at c.187-89.

10. *Id.* at c.192-95.

11. *Id.* at c.334.

12. *Id.* at c.360.

13. *Id.* at c.360.

14. Canon 362 notes that "the Roman Pontiff possesses the initate and independent right to nominate, send, transfer and recall his own legates . . . to states and to public authorities; the norms of international law are to be observed concerning the sending and the recalling of legates appointed to states." *Id.* at c.362.

15. Section 1 states that "the Supreme Pontiff freely appoints bishops . . ." *Id.* at c.377.

16. *Id.* at c.381.

17. *Id.* at c.399.

18. *Id.* at c.400.

19. *Id.* at c.447.

The by-laws of each conference must be reviewed by the Holy See.<sup>20</sup> These conferences may issue documents outlining the teachings and policies of the Church. These documents, however, may not be in conflict with teachings developed by the Holy See and are also subject to review by Rome.<sup>21</sup> In short, the Pope, by virtue of the legal authority granted to his office by the Code of Canon Law, coupled with the historic importance granted his position, exercises broad authority over the Catholic Church in world affairs. Another source of authority for the pope comes from his position as a head of a state — Vatican City.

### *B. Vatican City, a Nation State*

At the Montevideo Convention on the Rights and Duties of States, a standard definition of statehood was developed. The definition holds:

The State as a person of international law should possess the following qualifications:

- (1) a permanent population;
- (2) a defined territory;
- (3) government; and
- (4) capacity to enter into relations with other States.<sup>22</sup>

Regarding the attributes of statehood, O'Connell notes that the "[S]tate is no mere haphazard aggregation of individuals, it is an organized community, and thus implies a population occupying a defined territory which it asserts to be exclusive to it . . . administered through governmental agencies competent to deal with foreign States in the way accepted as normal by the international community."<sup>23</sup> The Vatican fulfills all of these qualifications for statehood.

1. *A Permanent Population.*—Article 9 of the Lateran Treaty notes that "all persons having fixed residences in Vatican City are subject to the sovereignty of the Holy See."<sup>24</sup> According to Cardinale, this means that the "dignitaries, the officials, and the lower grade employees who must actually reside there, and the cardinals who reside in the Vatican" are indeed citizens of Vatican City.<sup>25</sup> Further, Article 9 notes that citizenship "is not lost by the

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20. *Id.* at c.456.

21. *Id.* at c.458.

22. Hudson, *Int. Leg.*, Vol. VI, at 620; U.S.T.S., 881; 49 Stat. 3097; L.N.T.S., Vol. 165, at 19.

23. 1 D. O'CONNELL, *INTERNATIONAL LAW* 284 (2nd ed. 1970).

24. Lateran Agreement, Feb. 11, 1929, Italy-Vatican City, 0 V.T.S. 161, *Europ.T.S.* No. 590019 [hereinafter *Lateran Agreement*].

25. H. CARDINALE, *supra* note 3, at 107.

simple fact of temporary residence elsewhere . . . ."<sup>26</sup> Hence the staff of papal missions abroad, as well as those who inhabit the city, are considered citizens.

2. *A Defined Territory*.—Article 3 of the Lateran Treaty defines the territory of Vatican City<sup>27</sup> with Article 4 giving "the sovereignty and exclusive jurisdiction" of the area to the Holy See.<sup>28</sup> Article 7 grants the Vatican integrity of its air space by prohibiting aircraft from flying over the area without the permission of the Holy See.<sup>29</sup>

3. *Government*.—The Pope, via the Code of Canon Law and Article 3 of the Lateran Treaty, is the temporal and spiritual ruler over the Vatican City and its citizens.<sup>30</sup> The Vatican has an armed force, the Cohors Helvetica (Swiss Guard), a railway and postal system, and a telephone and telegraph system.<sup>31</sup>

4. *Relations with other States*.—The Vatican currently maintains diplomatic relations with over one hundred different nations<sup>32</sup> including the United States.<sup>33</sup> Pope Paul VI addressed the duties of papal representation in a letter titled *Sollicitudo Omnium Ecclesiarum*.<sup>34</sup> Pope Paul noted that papal representatives "received from the Roman Pontiff the charge of representing him in a fixed way in the various nations or regions of the world."<sup>35</sup> A Pontifical Legate to a nation should do three things: "(A) promote and favor . . . relations with the government of the nation to which he is accredited; (B) treat questions concerning relations between Church and State; and (C) concern himself with agreements" between the Church and State.<sup>36</sup> Pontifical Representatives to international organizations are to "inform the Holy See regularly of the activity" of the organization while seeking to "sustain and favor the activity of international

26. Lateran Agreement, *supra* note 24, at art. 9.

27. *Id.* at art. 3.

28. *Id.* at art. 4.

29. *Id.* at art. 7.

30. *Id.* at art. 3. Note that this is by implication. Article 3 states that "Italy recognizes full possession and exclusive and absolute power and sovereign jurisdiction of the Holy See over the Vatican . . . ." The term Holy See, according to Cardinale, has three meanings:

1. the Pope, together with the central offices of the Roman Curia, or
2. the Pope in his role as the visible head of the Roman Catholic Church, or
3. the spiritual organization of papal government.

H. CARDINALE, *supra* note 3, at 82. By granting "absolute power and sovereign jurisdiction" to the Holy See, Italy is, in fact, granting such power and jurisdiction to the pope. *Id.*

31. H. CARDINALE, *supra* note 3, at 114.

32. CATHOLIC ALMANAC 173 (1988).

33. "The United States and the Vatican announced on January 10, 1984, the establishment of full diplomatic relations, thus ending a gap of 117 years in their relations. The announcement followed action by Congress in November, 1983, to end a prohibition on diplomatic relations enacted in 1867." *Id.* at 173-74.

34. PAUL VI, SOLLICITUDO OMNIUM ECCLESiarUM (1969) [hereinafter S.O.E.].

35. *Id.*

36. *Id.*

Catholic organizations.<sup>37</sup> The Holy See maintains a permanent observer mission to the United Nations,<sup>38</sup> and is very active within international organizations.<sup>39</sup>

## II. Papal Diplomacy

Papal Diplomacy is "aimed at regulating the mutual relations between Church and State, to maintain a peaceful harmony between the two powers and thus to promote the religious, moral, and social well-being of peoples."<sup>40</sup> The means of papal diplomacy are four-fold: Papal visits, Dispute Arbitration, Concordats, and the Issuance of Encyclical Letters.<sup>41</sup> The use of papal visits to advance the goals of papal diplomacy is a relatively recent development in the history of the Church. Pope John Paul II in his eleven years as pope has made over forty trips outside of Italy, and has visited over seventy different nations.<sup>42</sup> Many of these trips were of a dual pastoral/dip-

37. *Id.*

38. Currently the permanent observer of the Holy See to the United Nations is His Excellency The Most Rev. Renato Raffaele Martino, Apostolic Nuncio. This mission was established on January 26, 1964.

39. According to Cardinale, the Holy See maintains

1. Permanent observers at the
  - United Nations New York headquarters,
  - United Nations Office in Geneva,
  - World Health Organization,
  - International Labor Organization,
  - Food and Agriculture Organization,
  - United Nations Educational, Scientific and Cultural Organization,
  - United Nations Children's Fund, and
  - Council of Europe;
2. delegates at the
  - International Atomic Energy Agency (of which it is a founding member),
  - United Nations Industrial Development Organization,
  - Council for Cultural Co-operation of the Council of Europe,
  - International Institute for the Unification of Private Law,
  - International Committee of Military Medicine and Pharmacy,
  - International Union of Travel Organizations, and
  - Council of Europe Resettlement Fund for National Refugee and Over-Population;
3. and is a member of the
  - Executive Committee of the High Commissioner's Program at the Office of the United Nations High Commissioner for Refugees,
  - United Nations Conference on Trade and Development,
  - International Union for the Protection of Industrial Property,
  - International Union for the Protection of Literary and Artistic Works, and
  - International Geographic Union;
4. The state of Vatican City is also a member of the
  - Universal Postal Union,
  - Universal Telecommunications Union, and
  - International Wheat Council.

H. CARDINALE, *supra* note 3, at 264-65.

40. *Id.* at 34.

41. *Id.*

42. According to the United States Catholic Conference, Pope John Paul II has visited

lomatic nature. For example, during a trip to Ireland during September 1979, the Pope, while addressing young Catholics, noted that "what Christianity forbids is to seek solutions . . . by the ways of hatred, by the murdering of defenseless people, by the methods of terrorism."<sup>43</sup> This has been interpreted as a direct message to both the Irish Republican Army and the Government of Great Britain.<sup>44</sup>

Dispute arbitration between nations, once the hallmark of papal diplomacy,<sup>45</sup> is still an important element of papal activity in international affairs. A recent example of papal arbitration in dispute settlement is the Beagle Channel Dispute. The dispute between Chile and Argentina over the islands at the southern tip of South America was characterized as "complex" and "bitter," for at stake were not only historical claims to the area but also valuable fishing and oil rights as well as national pride.<sup>46</sup> Following a failed British attempt at arbitration in 1978, the dispute looked as though it would lead to war between the two nations.<sup>47</sup> In December 1978 both nations asked for the Pope to assist in finding a solution.<sup>48</sup> At first the negotiations did not go well, but "the Pope broke with tradition to propose a solution of his own."<sup>49</sup> The Pope's solution provided to be acceptable to both parties, and on May 2, 1985 representatives of both Chile and Argentina met at the Vatican to sign a treaty ending the dispute.<sup>50</sup>

A third means of papal diplomacy are concordats. Concordats are agreements "made by a temporal sovereign with the pope."<sup>51</sup> It is important to note that these treaties are negotiated according to the practices prescribed by international law, that they are negotiated with any nation regardless of the faith of the majority of that nation's population or its rulers, and that they remain valid even if

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the following nations: Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Cameroon, Canada, Central African Republic, Columbia, Congo, Costa Rica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Fiji, France, Gabon, Ghana, Great Britain, Guam, Guatemala, Haiti, Honduras, India, Ireland, Ivory Coast, Japan, Kenya, Lesotho, Liechtenstein, Luxembourg, Mexico, Morocco, Mozambique, the Netherlands, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, San Marino, Singapore, Solomon Islands, South Korea, Spain, Swaziland, Switzerland, Thailand, Togo, Trinidad and Tobago, Turkey, United States, Uruguay, Venezuela, West Germany, Zaire, and Zimbabwe. (Document to attest on file with the editor of the DICKINSON JOURNAL OF INTERNATIONAL LAW.)

43. New York Times, Sept. 29, 1979, at A3, col. 2.

44. *Id.*

45. *See supra* note 3.

46. Garrett, *The Beagle Channel Dispute: Confrontation and Negotiation in the Southern Cone*, 27 J. INTERAM. STUD. 80, 85 (1985). For more information on the agreement itself, see Morris, *Southern Cone Maritime Security After the 1984 Argentine-Chilean Treaty of Peace and Friendship*, 18 OCEAN DEV. & INT'L L. 235 (1987).

47. Garrett, *supra* note 46, at 85.

48. *Id.*

49. *Id.* at 98.

50. *Id.* at 80.

51. BLACK'S LAW DICTIONARY 283 (5th ed. 1979).



the government that negotiated the concordat should fall.<sup>52</sup> These treaties deal with matters in which the "Church and State both have a great interest, such as questions relating to the celebration of marriage . . .; to education; . . . to the division of ecclesiastical districts; to economic questions; to the appointment of bishops and other Church authorities; to the establishment of religious orders; and to ecclesiastical property."<sup>53</sup>

Encyclical letters also stand out as an important means of papal diplomacy. Encyclicals outline principles to guide Catholics regarding specific moral, political, economic, or social problems. These letters are, in a sense, intended to aid Catholics in applying their faith to the world in which they live.<sup>54</sup> John Paul II has used encyclicals to discuss the rights of workers,<sup>55</sup> outline the Church's social teaching,<sup>56</sup> and underscore the rights of the elderly.<sup>57</sup> One of the most important encyclicals of the post-war era is *Pacem in Terris* (Peace on Earth). Written by Pope John XXIII in 1963, *Peace on Earth* calls upon all nations to embrace the United Nations Declaration of Human Rights, to slow the world-wide arms race, and to attempt to come to a greater understanding of each other.<sup>58</sup>

### III. Participation in International Organizations

The Catholic Church sees its mission as being universal in nature. In order to fulfill this mission the Church acts with other nations and also within international organizations.<sup>59</sup> In *Sollicitudo omnium Ecclesiarum*, Paul VI notes that

[r]elations between the Holy See and International Organizations are manifold and of a varied juridical nature. In some of them we have instituted permanent missions in order to testify to the interest of the Church in the general problems of civilized living and offer the aid of its co-operation.<sup>60</sup>

When participating within an international organization, however, the Church is careful to make an important distinction between the Holy See as a juridical being and the state of Vatican City.<sup>61</sup>

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52. H. CARDINALE, *supra* note 3, at 34-35.

53. *Id.* at 34.

54. *Id.* at 32.

55. JOHN PAUL II, *LABOREM EXERCEN* (1981).

56. JOHN PAUL II, *SOLLICITUDO REI SOCIALIS* (1987) [hereinafter *ON SOCIAL CONCERN*].

57. JOHN PAUL II, *ON THE FAMILY* (1981).

58. *PEACE ON EARTH*, *supra* note 2.

59. *S.O.E.*, *supra* note 2.

60. *See supra* note 39.

61. Initially, the presence of a papal representative at the United Nations caused some problems for the world body as to how to categorize the office. After a short period of confusion, Secretary-General Dag Hammarskjöld and the Holy See came to an agreement whereby it was agreed that

Although the Vatican City is a member of the Universal Postal Union, the Universal Telecommunications Union, and the International Wheat Council, it is the Holy See which sends papal representatives to international organizations.<sup>62</sup> The Church does this because its primary goal in international organizations is participation, not representation: it seeks to participate in international dialogue, not in the making of international policy. Representatives of the Holy See are sent to international organizations to "restate values," "plead the cause of the needy," and foster a greater understanding among mankind.<sup>63</sup>

#### IV. Summary

The Church is a unique institution which has a complex hierarchical structure. At the top of the structure, with all of the worldly authority and responsibility of the Church, is the Pope. His authority is vested not only in the tradition of the Church, but also in the Code of Canon Law. Furthermore, the Pope is recognized not only as the juridical head of the Church, but also as a head of state. This dual recognition allows the Pope to either act as a head of state or as the head of a church in order to promote and protect the Church's interests and policies. An important example of papal diplomacy is the Church's participation in international organizations. In some organizations the papal representative acts as an envoy of Vatican City; to most, however, the papal representative is a representative of the Holy See.

### Part Two: An Examination of the Human Rights Policy of the Roman Catholic Church

#### I. Introduction: Catholic Social Teaching

Since the end of the Second World War the Roman Catholic

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. . . in view of certain doubts concerning the relations which the General Secretariat of the United Nations maintains with the Secretariat of State [of the Holy See], the latter wishes to make it clear that said relations should be understood as being established between the United Nations and the Holy See. Similarly, it is the Holy See which is represented by the delegations accredited by the Secretariat of State to the different sessions of the various organs of the United Nations.

H. CARDINALE, *supra* note 3, at 257.

It is the Holy See, then, which sends representatives to the United Nations. This may have been asked for by the Holy See so as to permanently limit its role in the United Nations to observations, because the Holy See, although a juridical person in international law, does not fulfill the requirements of a state: it holds no territory and has no permanent population. See *supra* note 22. Lacking these two qualifications for statehood, some hold that the Holy See would not be eligible for membership under Article 4 of the United Nations Charter. See also Kunz, *The Status of the Holy See in International Law*, 46 AM. J. INT'L L. 313 (1952).

62. See *supra* note 32.

63. H. CARDINALE, *supra* note 3, at 272.

Church has taken a public stand on questions of human dignity and human rights. In 1964 Pope John XXIII underscored the Church's stand by noting that "every human being is a person, . . . his nature is endowed with intelligence and free will. By virtue of this, he has rights and duties of his own flowing directly and simultaneously from his very nature, which are . . . universal, inviolable and inalienable."<sup>64</sup> *Pacem in Terris* (Peace on Earth), an encyclical letter published less than two months before Pope John's death, notes a number of rights of condition to which each person is due.

Every man has the right to life, to bodily integrity, and to the means which are necessary and suitable for the proper development of life; these are primarily food, clothing, shelter, rest, medical care, and finally the necessary social services. Therefore a human being also has the right to security in case of sickness, inability to work, widowhood, old age, unemployment, or in any other case in which he is deprived of the means of substance through no fault of his own.<sup>65</sup>

In addition to the rights of condition, John XXIII noted that man is entitled to certain political rights: the right to move freely within a nation or to emigrate to another nation, the right to take an active part in the public affairs of a nation, and the right to have one's rights protected by a free and independent judiciary.<sup>66</sup> The Pope notes that there are economic rights to which every person is entitled, such as the right to safe working conditions, the right to private ownership of property, and the right to a fair working wage.<sup>67</sup> *Pacem in Terris* was a watershed writing in this area for two reasons. First, it specifically mentioned rights to which man is entitled. Second, it was not only addressed to Roman Catholics, but to "all men of good will,"<sup>68</sup> thus alerting the world that the Vatican has renewed its concern for human rights and will act to protect these rights.

The Church's pro-human rights position continues under John Paul II's stewardship. In *Sollicitudo Rei Socialis* (On Social Concern), the Pope notes that the "social concern of the Church is directed toward an authentic development of man and society which would respect and promote all the dimensions of the human person."<sup>69</sup> By addressing the problems and shortcomings of the modern

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64. PEACE ON EARTH, *supra* note 2, at pt. I.

65. *Id.*

66. *Id.*

67. *Id.*

68. It is important to note that this was the first encyclical that was also addressed to the whole world. *Id.*

69. ON SOCIAL CONCERN, *supra* note 56, at pt.I, 1.

world — the widening gaps between rich and poor,<sup>70</sup> the problems of homelessness,<sup>71</sup> the increasing numbers of the unemployed and underemployed<sup>72</sup> — the Church shows that it is concerned not only with Catholics but with mankind as a whole. John Paul II calls for “authentic development” as a solution, for any “type of development which did not respect and promote human rights — personal and social, economic and political, including the rights of nations and of peoples — [is not] really worthy of man.”<sup>73</sup>

Both Popes note the role the United Nations must play in helping to foster human rights among men. John XXIII calls the Declaration of Human Rights “an act of highest importance,” for the declaration proclaims an “ideal to be pursued by all peoples and all countries.”<sup>74</sup> John Paul II credits the Declaration as “a sign of growing awareness” of the importance that is to be attached to the rights of man.<sup>75</sup> In short, the Church, through the issuance of papal encyclicals, has adopted and articulated a high standard regarding human rights. It has made the spread of human rights one of its moral imperatives. This strong commitment to human rights undertaken by the Vatican has caused local churches in various nations to become more sensitive and active in the protection of these rights. Two examples of the national churches acting to promote human rights within their nations are found in Poland and Chile.

## II. Case Study: Poland

Over ninety-five percent of Poland’s population is Roman Catholic, making Poland the most Catholic nation in Eastern Europe.<sup>76</sup> By some measures Poland might be considered one of the most Catholic nations in the world.<sup>77</sup> The history of the Catholic Church

70. *Id.* at pt. III, 13-14.

71. *Id.* at pt. III, 17.

72. *Id.* at pt. III, 18.

73. *Id.* at pt. IV, 33.

74. PEACE ON EARTH, *supra* note 2, at pt. IV.

75. ON SOCIAL CONCERN, *supra* note 56, at pt. III, 26.

76. THE WORLD ALMANAC 573 (1985). In addition, the number of priests, places of worship, and parishes has grown in the post-war era. See Walaszek, *An Open Issue of Legitimacy: The Church and State in Poland*, 483 ANNALS AM. ACAD. POL. & SOC. SCI. 118, 121 (1986).

	Places of Worship	Priests	Parishes
1937	7,251	11,348	5,170
1967	13,273	17,986	6,334
1970	13,392	18,151	6,376
1980	14,585	20,617	7,089

Moreover, there are currently over 80 bishops in Poland, in comparison to Czechoslovakia where there are only 5 bishops and 3,000 priests. Paltrow, *Poland and the Pope: The Vatican's Relations with Poland 1978 to present*, 15 MILLENNIUM 1, 3 (1986).

77. Luxmoore, *Polish Catholicism Under Fire*, 1 ETHICS & INT'L AFF. 161, 162 (1987).

in Poland is deeply intertwined with the history of the Polish people.<sup>78</sup> From the unification of the Slavic tribes in the tenth century to more recent history, the Catholic Church has constantly acted as a rallying point for Poles and as a source of nationalism.<sup>79</sup> The fact that many Catholic priests were active in the Resistance and were sent to Nazi concentration camps helped to increase the status of the Polish Catholic Church during the Second World War.<sup>80</sup> Because of the Nazi occupation in Poland and the fascist influence over Italy, the Polish Church was unable to communicate with the Vatican during the war. This caused the Church in Poland to become independent and autonomous from the Vatican.<sup>81</sup> The Primate of Poland, Cardinal Stefan Wyszyński, became the center of the Polish Church.<sup>82</sup>

Following the war, Central Europe became the focus of an ideological conflict between the United States and the Soviet Union. The Vatican, under Pope Pius XII, adopted a hard line against communism. The edict of 1949 threatened excommunications of any Catholic who actively promoted "the materialist and anti-Christian doctrine of Communism."<sup>83</sup> The hard line that the Church adopted against communism, however, may have been a backlash, causing the Soviets to repress the Church in Eastern Europe.<sup>84</sup> Cardinal Wyszyński, in an effort to escape a Stalin-like crackdown upon the Church in Poland, defied the Vatican by signing an agreement with Poland's Communist government. This agreement pledged support of the government's foreign policy and respect for the government in turn for religious freedom.<sup>85</sup>

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By some measures Poland might be the most Catholic nation on earth; Warsaw and Krakow have ten times as many churches in proportion to the baptized population as Dublin, Ireland; the Diocese of Przemyśl contains more churches than the Diocese of Rome; and close to ten percent of the world's Catholic ordaines are Polish citizens. *Id.*

78. Paltrow, *supra* note 76, at 3. The Polish people date the birth of Poland from the baptism of Prince Mieszko I in 966. His baptism unified a number of Slavic tribes into a single nation. *Id.*

79. For example, during the late 1830's priests such as Father Loga travelled around the Polish countryside advocating violent revolt against the forces of Russian occupation. This, according to Paltrow, "was the beginning of a long tradition, carried into the current era by such priests as the recently murdered Father Jerzy Popieluszko, of nationalist dissent and militancy by members of the clergy, especially rank-and-file parish priests." *Id.* at 3.

80. *Id.* In addition, Luxmoore notes that during the Second World War close to 3,000 Polish priests died. Luxmoore, *supra* note 77, at 164.

81. Luxmoore, *supra* note 77, at 167.

82. *Id.*

83. Paltrow, *supra* note 76, at 5.

84. *Id.* at 5-6.

85. Nowak, *The Church in Poland*, 31 PROBS. COMMUNISM 8 (1982). The agreement between Wyszyński and the Bierut government did not last very long. By the early 1950's the government of Poland was forced by the Soviet Union to repress the Church. The repression included the jailing of Wyszyński in 1953. It is important to note, however, that the crackdown on the Church in Poland was not as severe as that which took place in Hungary or Czechoslovakia.

In the early post-war era, Wyszyński engaged in *realpolitik* with the communists by using the limited bargaining power of the Polish Church.<sup>86</sup> In addition to the agreement of support, Wyszyński pleaded with his countrymen for calm and order so as to forestall Soviet invasion. Later, in 1956, the Polish Primate and the government issued a joint communiqué promising “full support for the work undertaken by the government.”<sup>87</sup> Wyszyński recognized that the Church and the government could offer each other things which they needed. By having the support of the Church, or at least no opposition from the Church, the government was granted a degree of legitimacy.<sup>88</sup> In turn, the Church, by dealing with the government, could protect its own institutional interests — the building of more churches and seminaries and allowing the Church to have some degree of freedom.<sup>89</sup> The Vatican, because it held two important bargaining chips over the Polish government and the Soviet Union, could have made things easier upon the Church in Poland during this period. First, Rome had not assigned Polish bishops east of the Oder-Neisse Line; thus, the Vatican refused to recognize Poland’s post-war borders.<sup>90</sup> Second, the Vatican continued to maintain diplomatic relations with the exiled Polish government.<sup>91</sup> With the passing of Pope Pius XII and Stalin, the Church’s hard-line, anti-communist policy changed. “The Roman Curia,” notes Scot J. Paltrow, “concluded that Pius XII’s policies towards the East had been disastrous, threatening the church in several of the East European countries with little short of extinction.”<sup>92</sup> The primary goal of Vatican policy under John XXIII and Paul VI became the survival of the Church in communist nations.<sup>93</sup>

The Church in Poland in the last twenty years has become a strong advocate of human rights in Poland.

—In 1968 the Polish Church strongly supported student protests for greater cultural independence and freedom of expression.

—In 1970 the Polish church wholeheartedly endorsed the demands of Baltic stevedores for economic and social reforms.

—In 1976 the Polish Church opposed government-sponsored amendments to the Polish constitution.

—By the late 1970’s the Church in Poland demanded an independent judiciary, an independent civil service, a freely

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86. Paltrow, *supra* note 76, at 6.

87. *Id.* at 6-7.

88. Walaszek, *supra* note 76, at 123.

89. *Id.*

90. Paltrow, *supra* note 76, at 7.

91. *Id.*

92. *Id.* at 6.

93. *Id.*

elected parliament, free and independent trade unions, free education, and a free press.<sup>94</sup>

By adopting these positions, the Polish Church and not the Polish Government began to win the struggle for the hearts and minds of the Polish people.<sup>95</sup> Yet the Polish Church was careful not to antagonize the government. "Let no one think that the [Polish] bishops embarked on a struggle against the system," noted Cardinal Wyszyński, "they only recalled the rights of man, of the family, and of the citizens of their country."<sup>96</sup> The Polish government, in an effort to undercut the growing support of the Catholic Church in Poland, tried to play the Vatican off against the Polish episcopate.<sup>97</sup> In 1973, 1974, and 1977, the Polish government and the Vatican came very close to establishing formal diplomatic relations.<sup>98</sup> The Vatican sought relations with Poland because this might have opened the door to relations with other Eastern European nations, and a lessening of Church oppression within the Soviet bloc. The Vatican, then, was willing to "subordinate Poland's interests to its larger foreign policy goals."<sup>99</sup>

The ability of the Polish government to play the Vatican off against the local church ended in 1978 when Polish-born John Paul II became Pope.<sup>100</sup> The Vatican and the Polish Church actively supported the Solidarity movement of 1980, but the Church acted in a realistic and practical manner. The strategy of the Church was simple — gain as much as possible while the opportunity for progress presented itself, yet do not press so hard that Soviet intervention in Polish affairs would be risked.<sup>101</sup> The goals of the Church during this period were four-fold: preserve peace, defend human rights, respond to the needs and aspirations of Polish society, and protect its own institutional interests.<sup>102</sup> By working with the government and the Solidarity movement to keep calm during the crisis, the Church was able to obtain approval for an agricultural fund for Poland's farmers, approval of construction permits for new churches, and approval to broadcast Mass on state radio.<sup>103</sup> During the 1980's the Church remained a citadel of free speech with sermons substituting for newscasts.<sup>104</sup> In short, then, the Church in Poland acts to articulate and

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94. Luxmoore, *supra* note 77, at 169.

95. Walaszek, *supra* note 76, at 120.

96. Luxmoore, *supra* note 77, at 169-70.

97. Paltrow, *supra* note 76, at 9.

98. *Id.* at 809.

99. *Id.* at 8.

100. *Id.* at 9.

101. Luxmoore, *supra* note 77, at 177.

102. *Id.* at 168.

103. *Id.* at 158.

104. Walaszek, *supra* note 76, at 133. Further, National Public Radio (NPR) an-

promote human rights in Poland. Further, the Church uses its bargaining power with the government and the Soviet Union to achieve the advancement in human rights in Poland.

### III. Case Study: Chile

#### A. *Background on the Church in Central America*

During colonization, the Church in many Latin American nations was closely tied to the government. The Spanish monarch had the right of *patronito*, whereby the monarch could select the names of bishops, draw diocesan boundaries, and control Vatican communications with the New World.<sup>105</sup> This right established a direct link between the Church and State within many Central American nations.<sup>106</sup> The Roman Catholic Church in the eighteenth and nineteenth centuries became affiliated with strong authoritarian governments the world over. Their affiliation sprung out of similar values and objectives: the establishment of social order and harmony, and the suppression of anarchists and radicals.<sup>107</sup> This affiliation with strong right-wing governments spilled over into the 1920's and 1930s with Catholic bishops providing little or no resistance to the rise of fascist or corporatist governments in Austria, Argentina, Brazil, Germany, Italy, Portugal, and Spain.<sup>108</sup>

This position changed radically during the middle part of the twentieth century when the Second Vatican Council noted that it was the responsibility of the leaders of the Church to "pass moral judgments, even on matters of the political order whenever basic personal rights . . . make such judgment necessary."<sup>109</sup> Moreover, in 1968 the bishops of Latin America met in Medellin, Columbia and committed themselves "to denounce everything which, opposing justice, destroys peace" and "to defend the rights of the poor and the oppressed."<sup>110</sup> The Latin America bishops reiterated their commit-

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nounced that 80 Solidarity members were conducting a sit-down strike in a Polish Cathedral. The workers' concerns, according to NPR, were both economic and political in nature. *National Public Radio: All Things Considered* (NPR radio broadcast, Nov. 13, 1988). On November 17, 1988 it was reported that

Poland's Catholic Church accessed the country's Communist leaders of blocking talks with the Solidarity trade union aimed at achieving national reconciliation. In what was considered its harshest attack in years on the Warsaw government, the Church also criticized plans to close the Lenin Shipyard in Gdansk, the birthplace of Solidarity.

Wall Street Journal, Nov. 17, 1988, at 1-A, col. 3.

105. Sigmund, *Revolution, Counterrevolution, and the Catholic Church in Chile*, 483 ANNALS AM. ACAD. POL. & SOC. SCI. 25, 25 (1986).

106. *Id.*

107. S. SMITH, THE CHURCH AND POLITICS IN CHILE 283 (1982).

108. *Id.*

109. DOCUMENTS OF VATICAN II 289 (W.M. Abbott ed. 1966).

110. S. SMITH, *supra* note 107, at 284.



ments in 1979 by denouncing authoritarian governments that permit "assassination, disappearance, arbitrate imprisonment, acts of terrorism, kidnappings, and acts of torture."<sup>111</sup>

*B. Chile: The Allende Years*

During the presidency of Salvador Allende, the Church in Chile was torn between liberal priests who embraced and supported the policies of the Marxist government and conservative bishops who, although supportive of the goals of socialism, opposed the means employed by Marxism.<sup>112</sup> Following Allende's election, eighty priests organized a movement — Christians for Socialism — supporting the president's reforms.<sup>113</sup> In an effort to unify the Chilean Church, the bishops, under the leadership of Cardinal Silva, published *Evangelio, Política y Socialismos* (The Gospel, Politics and Socialism). In interpreting this document Paul Sigmund notes that:

The bishops' letter argued that although the Church could not endorse a specific political point of view, support for socialism was not incompatible with Christian belief and, indeed, might be seen as a direct application of its principles. However, it warned that the Marxist variety of socialism was based on atheism, doctrines of class hatred, and a materialistic view of history — elements not compatible with Christian teaching. Christians were not prohibited from working with those who endorsed such views on specific political programs, but they could not embrace such doctrines themselves.<sup>114</sup>

The effect of *The Gospel, Politics, and Socialism* was to state that although Catholics were not barred from working with Marxists on certain political programs, they could not adopt Marxist doctrines or become Marxists themselves.<sup>115</sup> In the spring of 1972, however, the Christians for Socialism challenged the letter and the Chilean Catholic hierarchy by hosting an international meeting of the group in Santiago.<sup>116</sup> The Chilean bishops reacted by stating that the group was being politically exploited by Marxists seeking to promote revolution.<sup>117</sup> The bishops charged that the movement had come to equate partisan political positions with Catholicism, and that the group urged the direct participation of priests in politics.<sup>118</sup> In short, then, during the Allende years the leadership of the Chilean Church

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111. *Id.*

112. Sigmund, *supra* note 105, at 30.

113. *Id.*

114. *Id.* at 30-31.

115. *Id.* at 31.

116. *Id.*

117. *Id.*

118. *Id.*

urged the faithful to resist extremism, especially Marxist extremism. However, a small segment of the Church did not comply with the leadership and supported Marxist reforms.<sup>119</sup> The rift in the Church mirrored the polarization of Chilean society, and in the late summer and early fall of 1973, it appeared that Chile would slip into civil war.<sup>120</sup>

### C. Chile: The Pinochet Years

Civil war was averted in Chile by a bloody military coup in September 1973. On September 13, two days after the coup, the Chilean bishops issued a statement against "the blood which has reddened our streets" and called for "moderation towards the vanquished" and "a prompt return to institutional normality."<sup>121</sup> There is evidence that, even as the bishops made their proclamation, some members of the Church welcomed the coup as a means of restoring order and avoiding conflict.<sup>122</sup>

Immediately following the coup, all independent and social organizations, save the Church, were either outlawed or greatly restricted.<sup>123</sup> This made the Church the only institution which could answer the needs of those adversely effected by the turmoil. Cardinal Silva set up an interdenominational Committee of Cooperation for Peace "to aid all families and persons affected by the current situation."<sup>124</sup> The Committee gave material support to the families of political prisoners and kept track of reported instances of murder and torture.<sup>125</sup> The Church also established the Committee to Aid Refugees which cooperated with the United Nations to help relocate hundreds of foreign nationals fleeing Chile.<sup>126</sup> Smith notes that the Cardinal and the government came to an understanding whereby the

119. It should also be noted that a smaller section of the Church advocated revolution in order to purge the nation of Allende. Sigmund notes that right-wing Catholic journals called for Allende's ouster and that a well known member of the clergy criticized the government on the Catholic University television station. *Id.* at 32.

120. *Id.* at 31.

121. *Id.* at 32.

122. S. SMITH, *supra* note 107, at 212. A 1975 survey of priests, nuns, and lay leaders in urban and rural working class areas regarding the question of whether the military intervention in September 1973 was necessary provided the following responses:

	Priests (N = 31)	Nuns (N = 24)	Laity (N = 17)	Total (N = 72)
Yes	61.3% (19)	58.3% (14)	47.0% (8)	56.9% (41)
No	25.8 (8)	12.5 (3)	41.2 (7)	25.0 (18)
Don't Know	12.9 (4)	29.2 (7)	11.8 (2)	18.1 (13)

123. *Id.* at 289.

124. Sigmund, *supra* note 105, at 32.

125. *Id.*

126. *Id.*

Church would accept the legitimacy of the government and the government would permit the Church to continue its pastoral and humanitarian activities.<sup>127</sup> It is for this reason, in Smith's mind, that during the early days of the coup the Church opted to help the victims of oppression rather than criticize the oppressor — it was a pragmatic move to protect the Church while fulfilling its mission.<sup>128</sup>

By the spring of 1974 the full degree of government repression became apparent to the Church. The government caused disappearances, arrested people without cause, used torture, and arbitrarily executed people — all in violation of the Declaration of Principles by which the government purportedly embraced human rights.<sup>129</sup> The Committee of Cooperation for Peace provided "bishops with undeniable evidence of continued violation of human rights and denial of basic needs of government."<sup>130</sup> In April the conference of bishops strongly criticized the regime's abuses of power and urged for the re-establishment of democracy.<sup>131</sup> General Pinochet, the head of the junta government, dissolved the Committee for Cooperation and Peace in 1975 and criticized the bishops for acting as "vehicles for Marxism."<sup>132</sup> A new Catholic aid program, the Vicariate of Solidarity was established.<sup>133</sup> In order to protect the Vicariate from government pressure and to allow the bishops greater control of the organization, the Vicariate was made part of the Archdiocese of Santiago.<sup>134</sup>

The Church increased its pressure upon the government by allowing *Mensaje* (a widely circulated Jesuit magazine) to attack the regime's human rights record, making repeated pleas for a return to a constitutional democracy, and calling for a no-vote on the 1980 constitutional plebiscite.<sup>135</sup> In response to this pressure the govern-

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127. S. SMITH, *supra* note 107, at 290.

128. *Id.* at 290-91.

129. *Id.* at 294.

130. *Id.*

131. Sigmund, *supra* note 105, at 33.

132. *Id.*

133. S. SMITH, *supra* note 107, at 318.

134. *Id.* Founded in 1976, the Vicariate of Solidarity provides legal, health, nutritional, educational and occupational services to the citizens of Chile. In addition, the Vicariate publishes a newsletter which is distributed through the Catholic churches. The Vicariate, however, is best known for the work of its human rights lawyers. See also Sagaris, *Chile: Fighting to Abolish Tyranny*, STUDENT LAW., 24 (Jan. 1987). The Vicariate received the Carter-Medil Human Rights Award on November 3, 1987. N.Y. Times, Nov. 11, 1987, at A5, col. 2.

135. Sigmund, *supra* note 105, at 33. Undoubtedly the Church was opposed to many parts of the 1980 constitution. Accord Bersier, *Legal Instruments of Political Repression in Chile*, 34 REV. INT'L COMMISSION OF JURISTS, 54, 55 (1985). The twenty-fourth transitional provision of the document holds that "the President of Chile may, on the grounds of 'violence designed to disrupt public order,' or in light of a 'danger that internal peace might be disturbed declare a special, and renewable, state of emergency lasting up to six months. During the state of emergency detentions may take place, the right of assembly is restricted, passage in and out as well as within Chile is limited.'" Bersier further notes that the effect of Article 24 and other Chilean laws is to make torture legitimate. Bersier, *supra* at 58.

ment made a keen attempt to discredit the Church through the publication of *La Iglesia del Silencio en Chile*, (The Silent Church in Chile).<sup>136</sup> The cover of the publication showed Cardinal Silva joking with Marxist President Allende, and the content dwelled upon the "links" between the two men.<sup>137</sup>

"By the early 1980s," notes Sigmund, "it was clear that Cardinal Silva was a strong opponent of the regime. He had made many statements, especially to the foreign press, criticizing the regime for its human rights violations . . . and especially for its failure to return to civilian rule."<sup>138</sup> When Silva retired, the Vatican named Archbishop Juan Francisco Fresno as the new Cardinal. This was significant because Fresno was one of the few Chilean bishops who openly favored the 1973 coup.<sup>139</sup> Yet despite the change in leadership, the Church's activities in promoting human rights did not diminish.

The Vatican became strongly involved when John Paul II visited Chile during the fall of 1987.<sup>140</sup> The Pope called the Pinochet government "dictatorial," insisting that the Roman Catholic Church do what it could to bring democracy back to Chile.<sup>141</sup> The Pope was quick to draw two parallels between Chile and the Phillipines. First, in both nations the Church had denounced human rights violations and the limits placed on political freedom. Second, bishops in both nations helped to organize coalitions among opposition moderates.<sup>142</sup> Indeed, the Church, by openly supporting the no-vote in the October 1988 plebiscite, was calling for the ouster of Pinochet and the return to democratic rule.

In short, then, the Catholic Church of Chile acts as a promoter of human rights within that nation. The Vicariate of Solidarity, an organ of the Church, acts as a watchdog over the government and alerts both the Church and the world as to human rights abuses carried on by the Pinochet regime. Finally the efforts of the Chilean Church are welcomed and encouraged by John Paul II.

136. Sigmund, *supra* note 105, at 33.

137. *Id.*

138. *Id.*

139. S. SMITH, *supra* note 107, at 292. In October 1972, Archbishop Fresno stated that the coup was necessary because "the soul of the populace was in the process of being destroyed." *Id.* He initially saw the coup as a liberation of Chile rather than as the beginning of oppression. *Id.*

140. John Paul II's 1987 trip to Chile was originally planned as a celebration of the Vatican's mediation between Chile and Argentina over the Beagle Islands. N.Y. Times, Apr. 1, 1987, at A2, col. 3.

141. *Id.*

142. *Id.* The Pope said that he "thinks it is not only possible but necessary," that the Church play the same role as it did in the Phillipines "because of the pastoral mission of the Church."

#### IV. Conclusion

Encyclicals and papal visits underscore the Roman Catholic Church's commitment to promoting human rights in all nations. It should be noted, however, that this commitment to human rights is a recent one, undertaken by the Church only within the past thirty years of a two thousand year existence. In the two nations studied, Poland and Chile, the Church is the only institution that is able to promote human rights. It is the only viable institution which is able to affect changes in these two repressive governments. The Catholic Churches of the two nations are selective, however, in their promotion of human rights. They are quick to work for the advancement of the rights of condition, yet they are slow to challenge the repressive governments. In order to advance the political rights of people the Vatican's activities need to be better coordinated with those of the national Catholic Churches. In addition, the Pope needs to continue to act with the authority generated by his position as a head of state and as the temporal head of the Church here on earth. Until these efforts are coordinated, repressive governments will continue to play the Vatican off against local bishops, and the actions of the Church will be only those of saving face.

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