

LEGAL ISSUES AND THE POPE'S VISIT

The purpose of this document is to deal with certain legal questions which are being regularly raised in connection with the visit of His Holiness Pope Benedict VI to the UK. It is presented in a question and answer format

Neil Addison (*Barrister*) National Director Thomas More Legal Centre

www.ThomasMoreLegal.org

Q; Is the Church, the Vatican or the Pope above the law

A; No All three are answerable to National or International law. However just as they are not above the Law they should not be treated as below the law or not deserving of the normal rules and protections of the law. Therefore critics who accuse the Church, the Pope or the Vatican of crimes should have to justify their criticisms by applying normal legal rules

Q: Why is the visit of Pope Benedict a State visit paid for by the Taxpayer

A: Pope Benedict was invited to visit Britain by then Prime Minister Gordon Brown speaking on behalf of the Queen which is why it is an official State Visit . The visit to Britain by Pope John Paul II was at the invitation of the British Bishops and not the British Government which is why the financing of that visit was different to this visit. Had Pope Benedict refused the invitation from Gordon Brown that could have been regarded as an insult to Britain and to the Queen

Q; But surely the Vatican is not a real State because

(i) it was created by Mussolini

A; This is a rather simplistic view of a complicated history, the Holy See has had diplomatic relations with different countries for at least 1000 years and the Italian Government never occupied or ruled the territory of the Vatican State prior to the Lateran Pacts of 1929. In any event in legal terms it makes no difference how a State is formed. The USA for example was created when British Colonies in America declared their independence from Britain in 1776 whilst Canada by contrast was created by Act of the British Parliament in 1867, very different origins but both the USA and Canada are equally regarded as states in international law.

(ii) It is not a member of the United Nations

A; The Holy See has not joined the United Nations but does have permanent Observer Status however the fact that a State is or is not a member of the UN

does not make it nor prevent it being a State in International Law. Switzerland, for example, was a permanent observer at the UN until 2002 but nobody has ever suggested that Switzerland was not a state before 2002 conversely prior to the break up of the USSR both Belorussia and Ukraine were members of the UN even though they were not regarded as States under International Law. The UN has 192 members and the Holy See has diplomatic relations with 176 of them.

(iii) it's status could be challenged in the Courts

A; Under UK Law when the UK Government gives diplomatic recognition to a state that decision is binding on the Courts. The UK maintains an Embassy with the Holy See and fully recognises the Vatican as a State and the Pope as Head of State. The Courts would be bound in law to accept that decision by the Government. In a recent case in the US the American Courts fully accepted that the Vatican was a State and the Pope a Head of State.

Q; Does this mean Catholic Churches are Foreign Territory and Bishops foreigners

A; No there is a distinction between the Holy See and National Churches. The Pope for example travels on a Vatican Passport but Archbishop Nichols travels on a British Passport. Once again this distinction was accepted in the recent case in the US where the Courts held that

(I) the Holy See was a foreign state and therefore was not covered by the 1st Amendment to the US Constitution which guarantees Freedom of Religion.

(II) US Dioceses etc however were not Agencies of the Holy See and so were covered by the 1st Amendment

the same principle would apply in Britain. The status of the Catholic Church in Britain, its property and its officials is governed by the same law as applies to other religions in Britain.

Q; Does this mean that the Pope is Immune from the Law

A; Any Head of State or foreign diplomat enjoys certain exemptions from national law when visiting any other country however the Pope and the Vatican are still answerable for any alleged violations of international law

Q; Can the Pope be arrested for “Crimes against Humanity”

A; It would be legally unprecedented for a serving Head of State or head of government to be arrested in another country (NB Pinochet was not a serving head of state when he was arrested in Britain). It is theoretically possible but only

if there is a charge contrary to what is known as “The Rome Statute” which created the International Criminal Court. This Court deals with crimes of Genocide, War Crimes, Crime of Aggression and Crimes Against Humanity. The legal definition of “Crime Against Humanity” includes sexual crimes such as rape but requires that those crimes be committed *“as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”* and even the worst allegations involving the child sex abuse scandal in the Church do not constitute a *“widespread or systematic attack directed against a civilian population”* which clearly relates to military attacks

Q; Is the Government planning to change the law to prevent the Pope being arrested

A; If the government had any such plans then it has left it too late anyway since the legal changes required would need Parliamentary approval. The legal changes proposed are in fact principally designed to prevent arrest warrants being applied for against Israeli ministers and military officers when they are visiting Britain. The proposals have nothing to do with the Pope

Q; Are criminal Bishops or Priests being sheltered in the Vatican

A; This allegation is usually made in connection with Cardinal Bernard Law who was the former Archbishop of Boston 1984-2002 and who now works in Rome. However Cardinal Law's activities as Archbishop were fully investigated for 16 months by the Massachusetts State Attorney General and he appeared before 2 Grand Juries. Following this the Attorney General issued a report stating that Cardinal Law had not broken any state laws. The Cardinal is not being “sheltered in the Vatican” because he was not wanted for any crime in the US.

Q; Isn't it unfair on other religions for the Pope to have International Law Status

A; Other religions have different structures and histories. The Papacy has maintained diplomatic relations with other countries for over a thousand years unlike other religious leaders. In addition other religions have other organisations for example Muslim Countries maintain the Organisation of the Islamic Conference which, like the Vatican, has observer status at the UN and which uses the votes of its 57 UN member states to advance Islamic objectives. All its officials have diplomatic status