

Put the Pope in the dock ?

- 1) In the Guardian Friday 2 April 2010 Geoffrey Robertson QC called for the arrest of the Pope for alleged complicity in sex crimes in the article ["Put the Pope in the Dock"](#) The Article suggested that the status of the Vatican State "as a state" was bogus and could be challenged in the UK Courts and the European Court of Human Rights and in addition that Pope Benedict could be tried by the International Criminal Court for "Crimes against humanity" involving the Sex abuse scandal by some Catholic Priests

- 2) Amongst other things the article said
" the Vatican was created by fascist Italy in 1929 when Mussolini endowed this tiny enclave – 0.17 of a square mile containing 900 Catholic bureaucrats – with "sovereignty in the international field ... in conformity with its traditions and the exigencies of its mission in the world". The notion that statehood can be created by another country's unilateral declaration is risible: Iran could make Qom a state overnight, or the UK could launch Canterbury on to the international stage."

- 3) Well with all due respect to Geoffrey Robinson Sovereignty and Statehood is a matter of fact in International law and whether it is created unilaterally or multilaterally is irrelevant, all that matters is whether independent statehood is recognised by other independent states. Whether Geoffrey Robinson likes it or not the independence of the [Vatican State](#) and of [the Holy See is recognised diplomatically by a majority of countries](#) including the UK, the USA, all the member countries of the European Union and members of the Council of Europe. The Holy See Issues passports which are recognised internationally and during the Second World War the Italian Government recognised the Neutrality of the Vatican and did not interfere with the Holy Sees' contact with Governments with which Italy was at war. Similarly when Germany occupied Rome after the fall of Mussolini it did not occupy the Vatican and neither did the Allies when they entered Rome.

- 4) The legal status of the Vatican as an independent state may be regarded by some as ridiculous and it can be described as anomalous but it is nevertheless a legal fact and it is frankly fatuous for a lawyer to suggest otherwise, but the article

goes further

"This claim [that the Vatican is a State] could be challenged successfully in the UK and in the European Court of Human Rights"

- 5) What Geoffrey Robinson fails to mention is that the [European Court of Human Rights](#) only has jurisdiction to determine whether the [European Convention on Human Rights](#) has or has not been breached by the member states of the Council of Europe and it has absolutely no power to determine whether the Vatican is or is not a state. As for the British Courts under the Diplomatic Privileges Act 1964 the decision whether a state is a state and whether or not someone is or is not a head of state is entirely a decision for the government and the UK government does recognise the statehood of the Vatican

- 6) Finally Geoffrey Robinson suggests that the Pope personally could be brought before the [International Criminal Court](#) for unspecified Crimes. The ICC came into being on 1 July 2002 when the "Rome Statute" was brought into force and it can only prosecute crimes committed on or after that date so any allegations prior to that date are irrelevant so far as the ICC is concerned. In addition the ICC has jurisdiction over the crimes of "genocide", "crimes against humanity", "war crimes", and "the crime of aggression" and I am assuming that not even Geoffrey Robinson is accusing the Pope of Genocide, War Crimes or International Aggression. To the best of my knowledge the [Swiss Guard](#) have not launched an invasion of any country recently so that leaves us with the possibility of a prosecution for "Crimes Against Humanity"

- 7) [Article 7 of the Rome Statute](#) defines "Crimes against Humanity" as follows (my emphasis)
*"For the purpose of this Statute, "crime against humanity" means any of the following acts **when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack**"*
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of

fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Even the worst facts, or exaggerations, regarding sex abuse by Catholic Priests would find it difficult to define it as a "*widespread or systematic attack directed against any civilian population,*" and to attempt to try to bring such acts within the definition of "crimes against humanity" demeans the entire concept of such crimes