
THE UNCRC AND THE HOLY SEE: HOW ISSUES OF STATEHOOD, ATTRIBUTION AND IMMUNITY CONSTRAIN CHILDREN'S RIGHTS

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Abstract

This contribution analyses the complex problems arising from the application of the United Nations Convention on the Rights of the Child (UNCRC) to the Holy See. Taking the continuous scandal of sexual abuses on children within the Catholic Church as a case study, it highlights the still persistent tension within international law between the protection of sovereignty and the full enjoyment of human rights, including children's rights. To this end, after a preliminary analysis of the Holy See's *sui generis* international legal personality, this contribution investigates two issues that prevent the Holy See from being held responsible for violation of children's rights under international law. First, it examines the attribution of the conduct of local bishops/priests accused of sexual abuses worldwide to the Holy See, also in light of Pope Francis' latest institutional reforms. Second, it addresses the immunity granted to the Holy See in these circumstances, thus questioning the rationale of such immunity when children are involved. Indeed, this article argues that, despite the Holy See having ratified the UNCRC (Article 34 of which calls on parties to protect the child from all forms of sexual exploitation and sexual abuse), children's rights and their best interests are generally ignored when the sexual abuse plague within the Church is encountered in international fora.

Keywords: UNCRC; Holy See; Vatican City State; international law of responsibility; immunity; sexual abuses.

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[A] INTRODUCTION

The relationship between the United Nations Convention on the Rights of the Child (UNCRC) and the Holy See has always been a troubled one, yet this is often overlooked (Hailu, 2017; Worster 2021; Zambrana-Tévar 2022). When it became a party to the UNCRC in 1990, the Holy See made it sufficiently clear, by way of a reservation to the Convention, that its application should be compatible “in practice with the particular nature of the Vatican City State and of the sources of its objective law (art. 1, Law of 7 June 1929, no. 11)”.¹ Moreover, through a declaration, the Holy See also added that, by joining the UNCRC, it did “not intend to prescind in any way from its specific mission which is of a religious and moral character”.² In a nutshell, according to the Holy See, its unique nature and position within the international community should be taken into account in determining how it respects its international obligations under the UNCRC.

Yet, the never-ending scandal of sexual abuse of children perpetrated by members of the Catholic Church has raised several questions as to the compatibility of the role and prerogatives that the Holy See (and the Vatican City State) enjoys under international law with the duty to fully respect the UNCRC. The victims of abuse and their families usually claim violations of a range of substantial rights protected by the UNCRC (eg protection from all forms of physical or mental violence, including sexual abuse—Article 19 UNCRC; prohibition of torture—Article 37 UNCRC). However, too often, at national and international levels, they are prevented from seeking judicial redress and from having their allegations heard and publicly assessed. In this respect, it should be noted that the Holy See has not (yet) accepted the competence of the Committee on the Rights of the Child (UNCRC Committee) to receive individual complaints; it is also not a party to any other human rights treaty that has set up a judicial body empowered to receive and decide on individual claims, such as the European Convention on Human Rights (ECHR).³ Even when

¹ For the status of ratification of the UNCRC and the reservations/declarations attached to it, see UN Treaty Collection, [Convention on the Rights of the Child](#).

² On the distinction between “reservation” and “declaration”, see the ILC, Guide to Practice on Reservations to Treaties 2011, paragraphs 1.2 and 1.3. For a discussion on the compatibility of the reservations with the UNCRC’s object and scope, see Hailu (2017: 789-805).

³ The Holy See never applied for membership of the Council of Europe (CoE) or wished to become a party to the ECHR. It nonetheless has held the status of “observer” within the CoE since 1970. Documents of the Parliamentary Assembly of the CoE referring to the Holy See indicate that it “participates [in the CoE] according to its specific nature and mission”: Parliamentary Assembly, The Council of Europe and Its Observer States: The Current Situation and the Way Forward, resolution 1600 (23 January 2008) and Doc 11500 (21 January 2008), paragraph 30.

alleged victims who are prevented from seeking justice at the domestic level against the Holy See resort to the European Court of Human Rights (ECtHR) to claim a denial of their right to a fair trial (Article 6 ECHR) against state parties to the ECHR, the privileges enjoyed by the Holy See under international law prevent such an international claim from being assessed on its merits. Other international mechanisms, by virtue of their specific mandate, have also proved ineffective in addressing the sexual abuse plague. The example of the much discussed, yet controversial, attempt to involve the International Criminal Court (ICC) in the investigations against high-level Vatican officials for crimes committed by priests and others associated with the Roman Catholic Church is a case in point (Akande 2010).⁴

In the context of the complex legal scenario where different international rules intersect and different interpretations of the position of the Holy See under the UNCRC are increasingly emerging (UNCRC 2014), this article aims to provide a significant—yet brief—contribution to the way in which the international responsibility of the Holy See (and the Vatican City State) could be established when the rights of the child are violated by local clergy worldwide. The plague of sexual abuse serves as a case study to offer new insights into how international law “protects” the Holy See from being held accountable for violations of the rights of the child perpetrated by Church officials. This contribution is therefore structured as follows. Section B offers a preliminary consideration of the peculiar international legal personality of the Holy See. Section C investigates the attribution to the Holy See of the conduct of local bishops/priests that have been accused of sexual abuse worldwide, also incorporating a discussion of Pope Francis’ latest institutional reforms. Section D turns to the issue of immunity enjoyed by the Holy See. It questions the overall rationale of immunity rules when children’s rights and their best interests are involved. Section E concludes with some remarks on the best way forward to ensure justice for abused children and their families despite the international law constraints discussed here. The contribution posits that, given the gravity of the sexual abuse phenomenon and the international obligations of the Holy See emerging from the UNCRC, children’s rights must be central to the discussion. The protection of children’s rights should indeed prevail over other general rules of international law given

⁴ ICC (2013), Office of the Prosecutor, ICC Doc No OTC-CR-159/II. For the Office of the Prosecutor, the alleged crimes do not fall within the ICC’s jurisdiction. According to the ICC Rome Statute 1998, the ICC has jurisdiction over crimes included in the Rome Statute only if committed on the territory of a state party or by one of its nationals. However, whereas it is unclear whether sexual abuses could be qualified under the crimes included in the Rome Statute, neither the Vatican City State nor the Holy See are parties to it.

the value they represent for the international community as a whole. This leads us to argue that the Holy See should be held accountable under the UNCRC if it is found that the Pope gave instructions to suppress or was negligent or acquiescent in addressing sexual abuse-related claims. Thus, the abuses should be publicly acknowledged and victims should have access to reparations.

[B] THE INTERNATIONAL LEGAL PERSONALITY OF THE HOLY SEE: A NECESSARY PREMISE

The terms “Catholic Church”, “Vatican City State” and “Holy See” are often used synonymously and thought to be interchangeable, but from an international legal perspective this is not the case (Morss 2015).

The conclusion of the Lateran Pacts in 1929 allowed for the creation of the small enclave in the Italian territory, over which the Roman Pontiff reigns (see Articles 2, 3 and 4 of the Lateran Treaty). The term “Vatican” thus refers to the city state enclosing St Peter’s Basilica and the Apostolic Palace, giving the Holy See an instrument to fulfil its religious mission (Cardinale 1976: 45).

The term Holy See itself does not therefore refer to a specific territory. According to the Code of Canon Law (CCL), it designates, *sensu stricto*, the moral personality of the Pope,⁵ thus entailing more ancient roots in comparison with the Vatican City State. Yet, the Pope exercises sovereignty over the Vatican and, at the same time, is also the entity at the head of the Catholic Church (Duursma 1996: 387). As a result, the Holy See has a dual nature as the government of a specific territory and as a world religious organization.

From an international law perspective, such a scenario raises questions about the exact international legal personality enjoyed by these different entities.⁶ On the one hand, the Vatican City can be defined as a state because of its internal (a government, a territory and a population) and external (independence) sovereignty, thus enjoying the rights and obligations connected to statehood such as immunity (Ryngaert 2011;

⁵ Article 331 CCL states that the Pope “possesses supreme, full, immediate, and universal ordinary power in the Church”. Article 360 CCL states that the Pope “usually conducts the business of the universal Church by means of the Roman Curia, which fulfils its duty in his name and by his authority”. See also Article 361 CCL.

⁶ Despite its limitations, for a definition of “state”, see the Convention on the Rights and Duties of States 1933, 165 LNTS 19, Article I: “The State as a person of international law should possess the following qualifications: a. a permanent population; b. a defined territory; c. government; and d. the capacity to enter into relations with the other States.”

Greppi 2017). Despite the doubts raised in relation to its lack of a stable population and its exiguous territory,⁷ it cannot be said that the acquisition of statehood is dependent on *de minimis* thresholds for the number of inhabitants or the size of the geographical area over which an entity exercises control (Crawford 2006: 223). On the other hand, even though the Holy See can enter into international agreements,⁸ it is traditionally regarded as entailing a *sui generis* legal personality under international law, rather than clearly being qualified as a state (Cassese 2021: 175-176; Conforti & Iovane 2023: 10).

It therefore follows that, by recognizing the Holy See's "dual nature", the UNCRC Committee stated that the Holy See had an obligation to comply with the UNCRC *inside* the Vatican City State and "*worldwide* through individuals and institutions under its authority" (UNCRC Committee 2014: 8 emphasis added). Although briefly, the next section analyses the implications of this dual nature when victims of sexual abuse try to hold the Holy See internationally responsible for failing to observe the relevant rights of the child.

[C] INTERNATIONAL RESPONSIBILITY: THE PROBLEM OF ATTRIBUTION

Research has shown that, often, efforts to hold members of the Catholic Church accountable for alleged sexual abuses against children have resulted in private settlements with local dioceses paying economic concessions to victims (Child Rights International Network 2013: 12). Such settlements do not generally imply admission of wrongdoing and they tend to avoid public scrutiny of local churches' conduct. From an international law perspective, private settlements obscure the possible role played by the Holy See in not preventing, or even actually facilitating, such abuse through its policies or by its omissions. Any attempts to assert the responsibility of the Pope in such cases have always failed. Immunity issues aside (see Section D), it is difficult to establish a hierarchical relationship between the Pope and officials involved in the sexual abuse of children that would trigger the duty of the Holy See to take preventative action. Although not legally grounded in the UNCRC, it being the result

⁷ Citizenship and other residence rights may be withdrawn at any time at the discretion of the Pope (Duursma 1996: 383).

⁸ The Holy See is party to bilateral and multilateral treaties, including the Vienna Convention on Diplomatic Relations 1961, and has formal relations with most states worldwide. It is worth mentioning that, in the *travaux préparatoires* for the Vienna Convention on the Law of Treaties 1969, the International Law Commission noted that treaties are "entered into [force] not by reason of territorial sovereignty over the Vatican State, but on behalf of the Holy See, which exists separately from that State".

of an individual claim before the ECtHR for the alleged violation of the ECHR, the ECtHR's judgment in the case *JC & Others v Belgium* (2021) illustrates this point.

As a brief reminder of the facts of the case, several people who alleged that they had been sexually abused during their childhood by Catholic priests in Belgium initiated a claim for compensatory damages against the Holy See. At that time, the evaluation of claims relating to sexual abuses was possible in Belgium only for a limited time through the creation of a special arbitration chamber. According to the applicants, such a redress mechanism was ineffective given the limited compensation awarded to the victims in comparison with how Belgian ordinary justice would have assessed similar cases (*JC & Others v Belgium* 2021: paragraphs 4-17). Their action before the Belgian courts was, however, rejected on the grounds that the Holy See enjoys in Belgium, as well as in other states, immunity from jurisdiction. With Belgium being a party to the ECHR, the applicants therefore claimed, before the ECtHR, a violation of the right to a fair trial (Article 6 ECHR) for not having the opportunity to have their case heard and assessed in a court of law.

One of the applicants' key arguments was that the Holy See was responsible for the ill treatment (as for acts contrary to Article 3 ECHR) that they had allegedly suffered. In fact, the systemic dissimulation policy over sexual abuses adopted by the Roman Curia hindered prevention of such crimes as well as any attempts to carry out effective investigations and to prosecute those responsible in each case. Interestingly, in the applicants' view, the international responsibility of Vatican City as a state was not at play here. They argued that, as a non-state entity separate from the Vatican City, the Holy See was the only relevant actor and as a religious organization would not enjoy immunity privileges because these would be denied to any such organization.⁹ Not surprisingly, acting as a third intervener before the ECtHR, the Holy See did not address the Vatican City State/Holy See distinction; but rather it pointed out that "the complex relationship between the Pope and the local bishops" should be assessed through the relevant rules in the CCL (*JC & Others*: paragraph 52).

In this respect, the ECtHR found that the Belgian judges were correct in rejecting the assertion that the alleged actions or omissions of the Belgian bishops could be attributed to the Holy See (*JC & Others*: paragraph 69). It shared the view that local bishops are not *under the direction* of the

⁹ This argument was already raised in domestic litigations concerning similar facts, yet unsuccessfully. See the United States developments in this field: *O'Bryan v Holy See* 2009.

Pope. Further, owing to the ECtHR's deferential attitude towards national authorities, no real attempt was made to analyse the Holy See's authority over local dioceses or clergy, in the context of the impact of its policies on the Church worldwide. Furthermore, the ECtHR did not address the case from the perspective of children's rights by reading the ECHR's obligations in light of the principle of the best interests of the child (BIC), which is its usual approach when children are involved. Indeed, applying the principle of systematic interpretation (Article 31 of the Vienna Convention on the Law of the Treaties), the ECtHR is expected to read the ECHR's provisions in light of other—more specialized—human rights treaties, including the UNCRC (Danisi & Crock 2018). It is also for this reason that the Court often reiterates that “there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance” (*Jeunesse v the Netherlands* 2004: paragraph 109). However, despite this stance, there is no guarantee that a different conclusion would have been reached if the ECtHR had given consideration to children's rights. Nevertheless, it would have raised at least the duty to specify the weight to be afforded to the BIC and, indirectly, to the UNCRC's obligations in similar cases.

Given the ECtHR's conclusion, the issue of the relationship between the Holy See and the Catholic clergy worldwide for the purpose of establishing international responsibility under the UNCRC remains open. Yet, in customary international law as codified by the International Law Commission (ILC) (2001), when establishing the international responsibility of a state, the attribution of an action or an omission to a state depends on the specific subjects involved. For example, according to Article 4 of the ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARSIWA), conduct is considered an act of a state under international law when it is carried out by one of its organs, regardless of the position it holds within its organization and provided that it has this status in accordance with its internal law and internal practice, as pointed out by the ILC in its commentary (ILC 2001: 42). Although the Holy See is not a state, it enjoys certain prerogatives reserved to states and has relations with other states in a position of equality (see also Section B above). Moreover, as the rules concerning the responsibilities of other international subjects (ILC 2011) have been based on states' responsibility, drawing upon the ILC's work to establish attribution of conduct to the Holy See might not be inappropriate.

It therefore follows by analogy that an investigation of the CCL in order to verify the status of bishops with respect to the Pope is necessary (under Article 4 DARSIWA). In this regard, the reform undertaken by

Pope Francis through the promulgation of a new Apostolic Constitution “Praedicate Evangelium” in 2022 is noteworthy. Beyond the internal aspects concerning the Roman Curia (Pope Francis 2022: I.3, 12), the overall reform is characterized by a

spirit of a “sound decentralization” to leave to the competence of Bishops the authority to resolve, in the exercise of “their proper task as teachers” and pastors, those issues with which they are familiar ... always acting with that spirit of co-responsibility, which is the fruit and expression of the specific *mysterium communionis* that is the Church (Pope Francis 2022: II.2).

Whereas the previous Apostolic Exhortation *Evangelii Gaudium* (Pope Francis 2013: Article 32) had already pointed out that it would be inappropriate for the Pope to replace local episcopacies in tackling every issue taking place in their territories, it seems clear that the maintained decentralization of power would allow bishops to act even more autonomously within their dioceses than they had in the past.

From an international law perspective, however, the Pope’s authority is not undermined by such a decentralization because it would always involve the exercise of sovereign powers over local bishops and clergy. For instance, in the context of the renovated effort promoted by Pope Francis to put an end to the sexual abuse of children and avoid the cover-up of such abuse,¹⁰ the Pope has already exercised his power to accept, deny or even call for the resignation of bishops who had been involved in the sexual abuse of children.¹¹ Moreover, as Judge Pavli duly noted in his dissenting opinion in the ECtHR’s *JC & Others* case analysed above, the determination of a chain of attribution directly to the Holy See cannot be excluded when a clear code of silence was imposed by way of official acts of the Holy See.¹² These few elements suggest that, at the very least, a chain of command connects the Catholic Church from the centre in Rome to its borders, while specific omissions on the part of the Holy See—when it did not take action despite having knowledge of possible sexual abuse by local clergy—may be relevant for the purpose of establishing its

¹⁰ Book VI CCL was already amended in 2021 out of the necessity to tackle the plague of sexual abuse, whereas the Pontifical Commission for the Protection of Minors, which was instituted by Pope Francis in 2014, is now integrated in the Dicastery for the Doctrine of the Faith to signal a stronger effort in this respect.

¹¹ For example, in 2017 the Holy See reported that Pope Francis accepted the resignation of the French bishop Hervé Gaschignard. According to the media, the Pope invited him to resign following the alleged accusations of sexual abuse towards young people in the diocese of Aire et Dax: RaiNews (2017).

¹² *JC & Others v Belgium*, Judge Pavli’s dissenting opinion, paragraph 14, where reference is made to a letter approved by Pope John XXIII, *Crimen sollicitationis*, in 1962, and John Paul II’s *Motu proprio, Sacramentorum Sanctitatis Tutela* (2001).

international responsibility under the UNCRC. If one, instead, accepts that the local clergy do not operate within the Holy See in the same way as state agents under Article 4 DARSIIWA, it remains unclear why their relationship cannot be assessed under other rules of attribution concerning state responsibility. For example, given the role of the Holy See's instructions over bishops and other local clergy, an investigation into the attribution of the latter's conduct based on the criteria provided for by Article 8 DARSIIWA (instructions, direction or control of a person or group of people) should not be excluded.¹³ These criteria would help to identify what effective chain of command is really at stake on a case-by-case basis in every claim alleging sexual abuse of children.

An investigation of this kind was not carried out in *JC & Others* before the ECtHR. For both domestic and European judges, the decentralization of power between central and local Church authorities seemed to grant enough autonomy to bishops to preclude attribution of their conduct to the Pope (Pasquet 2021; Ryngaert 2021). If compared with the rules of attribution as applied to states, such a different approach can only be explained by the *sui generis* nature of the Holy See. Yet, other human rights developments show that another interpretation of the international responsibility of the Holy See under the UNCRC is possible as far as the problem of attribution is concerned. The findings related to the implementation of the International Convention on the Elimination of Racial Discrimination 1969 (CERD), which is another human rights treaty ratified by the Holy See, are a case in point. The CERD Committee, having considered that the Holy See had ratified the CERD "in part to manifest its moral authority", found that:

the Holy See was not responsible for racist acts by Catholic priests acting in other countries. At the same time, ... responsibility could be engaged if it failed to take appropriate measures to prevent and redress the conduct of its citizens or others *under its authority or control* (CERD Committee, 2015: emphasis added).

A similar stance can be identified in the UNCRC Committee's 2014 concluding observations on the second periodic report of the Holy See (UNCRC Committee 2014: paragraph 8), despite the criticism it drew in the literature (Hailu 2017: 785-789). Although it comes with a risk of overlapping different concepts (ie attribution and jurisdiction under human rights treaties), this approach seems to suggest that it would be perhaps wiser to focus the overall reasoning on "jurisdiction" for the

¹³ Article 8 DARSIIWA: "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."

purpose of the application of the UNCRC. This would seem appropriate in light of the specific meaning that this term has acquired in the latest UNCRC Committee litigation (*LH & Ors v France* 2019) and in international human rights law more widely (Vandenhole 2019), while also applying it to the specific authority exercised by the Holy See over the clergy worldwide (Worster 2021: 396-421). If jurisdiction is established and omissions are at stake, in terms of a lack of action to protect the child from all forms of sexual abuse under Article 34 UNCRC, any discussion on attribution arguably becomes less central in establishing the international responsibility of the Holy See, while also taking into account its *sui generis* nature.

Whether such an approach would eventually lead to a better definition of the Holy See's obligations concerning the rights of the child and the consequences of its violations remains to be seen, as the immunity granted to the Pope under international law is likely to prevent further developments on this matter, as the next section illustrates.

[D] INTERNATIONAL RESPONSIBILITY AND THE PROBLEM OF IMMUNITY

A different, yet connected/preliminary, problem in establishing the international responsibility of the Holy See with respect to sexual abuses is indeed the recognition of immunity before national courts. The Pope enjoys immunity from jurisdiction similarly to any other head of state. While immunity *per se* cannot be a problem because, overall, it corresponds to the current practice of states with respect to the Holy See,¹⁴ the difficult question is whether an exception to this immunity applies, given the violations of the rights of the children who are victims of sexual abuse. In this regard, two specific aspects are worthy of discussion here. Again, the reasoning of the ECtHR in the *JC & Others* case is useful to critically assess the state of affairs on this subject.

First, the nature of the alleged abuse against children calls into question the usual distinction between sovereign acts (so-called *acta jure imperii*) and private acts (*acta jure gestionis*) (Gragl 2019: 230-231). Immunity from jurisdiction can be invoked by states and the Holy See, to which state privileges extend, only in connection with the first category

¹⁴ See discussion *JC & Others v Belgium*, paragraphs 55-59, 63. In that case the ECtHR seems to identify the source of the Holy See's immunity in customary international law whereas jurisdictional immunity had arguably been enshrined to the Holy See on the sole basis of bilateral agreements or domestic legislation, for example, via the Lateran Pacts in Italy (Article II of the Lateran Treaty; yet see interpretation given by Corte di Cassazione, Judgment No 22516, 21 May 2003) and the Foreign Sovereign Immunity Act in the United States.

of acts. When the ECtHR was confronted with this distinction, it adopted the Belgian court's approach in referring to the "policy of silence" on sexual abuse and the related omissions of the Holy See in the context of the exercise of its public powers. As such, immunity from jurisdiction applied. This approach was criticized because it seems to ignore the dual nature of the Holy See as discussed above (Section B). In fact, it does not discriminate between acts performed by the Holy See in the exercise of the government of the Vatican City State, to which immunity certainly applies, and those it instead performs worldwide in the context of the Roman Catholic Church. In the latter context, its nature as a religious organization, combined with the disputable nature of its acts as sovereign (Ryngaert 2011: 857), suggest that the immunity of the Holy See cannot be equal to that of states, thus it should be restricted or not granted at all (Pasquet 2021).

Perhaps, it is even more striking that, in assessing the existence of a possible exemption to this rule when alleged cases of sexual abuse involve torture or inhuman or degrading treatment, the ECtHR (again) did not take into consideration the rights of the children or the BIC principle by, possibly, referring to the UNCRC. Indeed, in what seems an exercise in detaching children's rights from the plague of sexual abuses within the Church, the ECtHR did not even investigate whether the domestic judges have paid appropriate attention to the children's best interests as it would have done in other cases concerning children (Danisi & Crock 2018). Instead, the ECtHR limited its analysis to the current state of customary international law as determined by the International Court of Justice in the case of *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* 2012: paragraphs 81-97); no exemption to immunity of jurisdiction has yet emerged in cases concerning serious violations of human rights, humanitarian law or *jus cogens* (*JC & Others v Belgium*: paragraph 64).¹⁵ Again, it is not clear whether a consideration based on the BIC principle would have led to a different conclusion. However, this would at least have required an investigation into the practice and the *opinio juris* of states in order to assess potential developments on this subject,¹⁶ something that the ECtHR *a priori* denied.

¹⁵ In the same terms used in previous case law: eg *Jones & Others v UK* 2014: paragraphs 186-198.

¹⁶ On this evolution, see the debate on "comfort women" in South Korea and the dispute with Japan and the final decision adopted by the Central District Court of Seoul (*Comfort Women* 2021); and, previously, the Italian Constitutional Court's decision of 22 October 2014, in Case No 238. See also the interesting, yet not fully persuasive, *Changri-la* case 2021, decided by the Brazilian Supremo Tribunal Federal.

Second, there is the question as to whether claims of sexual abuse of children can trigger the application of one of the exemptions to immunity that have already been recognized as being part of customary international law. The rule codified in Article 12 of the UN Convention on Jurisdictional Immunities of States and Their Property 2004 is a case in point. It provides, under some conditions, for the possibility that a state cannot “invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding that relates to pecuniary compensation for death or injury to the person” harmed by an act or omission of the first state. Of course, the relevant conduct needs to be attributable to the first state. For the reasons already discussed in the previous section, the issue of the attribution to the Pope of local clergy’s conduct prevents even such exemption from being raised by alleged victims in proceedings against the Holy See. Again, the *JC & Others* case shows how such an argument risks being paradoxical. On the one hand, bishops are qualified as autonomous entities with respect to the Pope, so that their acts carried out under his “mere influence” cannot be attributed to the Holy See and no exemption from immunity applies. On the other hand, both the acts and the omissions of the Pope concerning sexual abuse have been identified to fall within the exercise of sovereign powers (*acta jure imperii*) over the Catholic Church worldwide, of which bishops and local clergy are nonetheless essential components. As a result of this unpersuasive reasoning, the restriction of the right to a fair trial suffered by children/victims of sexual abuse during their childhood was deemed to be proportional to the legitimate aim pursued (ie the respect of international law on immunity of states).

The reasoning discussed so far is mainly based on the traditional presumption that the Holy See should always enjoy immunity, just like any other state. Yet, given the special nature of the Holy See’s international legal personality and the commitments to human rights for the entire international community, now is the time for questioning such a presumption because it should—at least—be based on a more coherent set of arguments than those that were relied upon in the past. More importantly, a more restrictive interpretation should be applied where children and their best interests are concerned.

[E] CONCLUDING REMARKS

This contribution has highlighted the difficult relationship between the UNCRC and the Holy See by focusing on some of the legal obstacles, such as immunity and attribution, which prevent the Holy See from being held accountable in cases concerning the violation of children’s

rights as protected by the UNCRC. With regard to the plague of sexual abuses, despite the obligations undertaken by the Holy See in ratifying the UNCRC (see, among others, Article 34), its peculiar international personality and internal organization protect the Holy See from even responding before national judges to allegations of children's rights violations that are committed by Catholic priests worldwide. With it being impossible for victims or their families to raise a complaint before the UNCRC Committee, the analysis of the first international case ever to raise (indirectly) these issues before the ECtHR has shown not only the difficulty of attributing either acts or omissions concerning sexual abuses to the Pope but also highlighted the privileges which the Holy See still enjoys as a *sui generis* subject of international law when children's rights are at stake. The ensuing judgment is a clear indication of the current state of affairs, where the traditional interests connected to the protection of "the sovereign" prevail over children's rights and their best interests, despite the fact that the latter are arguably increasingly being held up as a common value by the international community. So far, this state of affairs removes any incentive to resort to procedural justice and, where possible, to international human rights mechanisms to tackle the systemic reasons behind such abuses.

If a new report under the UNCRC were (ever) to be submitted by the Holy See,¹⁷ the UNCRC Committee would have a difficult role to play. Unlike the ECtHR in the *JC & Others* judgment, it would primarily need to address the absence of a children's rights perspective from any examination of sexual abuses in which the Holy See is involved. To this end, the UNCRC Committee will need to clarify how the balance of opposing interests underlying any restriction of children's rights should be solved in cases where other general rules of international law, such as those on immunity, enter into conflict with children's rights and/or the fundamental principles underlying the UNCRC. The evolution of the interpretation of the rules on state immunity when serious violations of human rights are at stake could support the UNCRC Committee in adopting a brave(r) position and, in turn, contribute to that general evolution. Moreover, bringing the UNCRC to the centre of such debates would mean giving primary attention to the notion of jurisdiction (Article 2 UNCRC), thus shedding light also on the real scope of application of the Holy See's international obligations as a preliminary step to the problem of attribution.

¹⁷ Which is doubtful given the delay of 14 years in the submission of its second and last periodic report: UNCRC Committee 2014: paragraph 2.

The roots of most of these issues arguably lie in the confusion generated by the dual nature of the Holy See. Only a twofold process would make it possible to move beyond this state of affairs. On a state level, more evidence is required to critically reassess the privileges of the Holy See as an international actor¹⁸ and the continuous legitimacy of the original rationale used to justify the granting of privileges intended for states. The special treatment reserved to the Holy See was traditionally justified on Eurocentric historical grounds, namely the attempt to universalize the values of a religious community developed mainly in Europe during the Middle Ages (Pasquet 2021). Yet, such a rationale is highly disputable today, especially when it puts at risk the protection of other—now consolidated—universal values, including the protection of children’s rights and their best interests. With regard to the Holy See, given the renewed willingness of Pope Francis to tackle the plague of sexual abuses within the clergy worldwide and the Holy See’s international obligations under the UNCRC, a clear recognition of its role in ensuring impunity in relation to the conduct of local Catholic authorities when involved in sexual abuse would facilitate attribution from an international law perspective. If both of these processes take place, positive implications for better accountability of the Holy See under the UNCRC and justice for children who are victims of abuses will certainly follow.

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¹⁸ See, for example, the judgment of the Italian Supreme Court, *De Jorio Rosada de Sangro v Pontifical Lateran University*, No 12442/2022. Here the alleged immunity of the Pontifical Lateran University was denied on the basis that it cannot be considered, as the Holy See argued, a “central body of the Catholic Church” according to Article 11 of the Lateran Treaty. The Court also stressed that judicial protection is “intimately connected with the very principle of democracy to ensure to all and always, for any controversy, a judge and judgment”, something that would be clearly denied if immunity were recognized to *acta juri gestionis* (ibid paragraphs 5.7-5.8).

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