Vatican's right to immunity being tested

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WORLDVIEW: The special position of the Catholic Church in international law is a vital part of its armoury, writes **PATRICK SMYTH**

WHEN US secretary of state Condoleezza Rice visited the Vatican in February 2005, she was caught off guard by Cardinal Angelo Sodano.

After discussions on Iraq, the Middle East and religious liberty, Sodano asked her if she could do something about an irksome court case in Kentucky.

As reported by John Allen, veteran Vatican correspondent for the US *National Catholic Reporter* (*NCR*), Sodano explained that the case, a class action to make the Vatican accountable for child sexual abuse by priests in the US, was a violation of the internationally recognised principle of "sovereign immunity".

The Vatican, as a recognised state, cannot be subject to the jurisdiction of other states, an extension of the old British maxim *rex non potest peccare* , the king can do no wrong.

Vatican spokesman Joaquin Navarro-Valls confirmed as much. "It's obvious and reasonable," he told Allen, "that the Holy See would present its positions as a sovereign entity to the American state department, and recall the immunity for its acts that international law anticipates."

Normal inter-state diplomacy at work . . . and the legal rationale for the Vatican's recent brush-off to the Murphy commission – not a pompous rejoinder to someone who doesn't understand diplomatic etiquette, but the deployment of an essential legal weapon in the Vatican armoury for protecting itself.

Rice replied that it was for the Vatican to assert immunity in the Kentucky court itself, and it has pleaded immunity successfully in, by Allen's reckoning, some two dozen US cases.

A 1976 law, the Foreign Sovereign Immunities Act, did make it easier, however, to sue sovereign entities in US courts under certain conditions – notably, when that entity engages in commercial activity in the US or its agents cause injury there by "tortious" act or omission.

In an Oregon case that is breaking new ground, *Holy See vs John Doe*, the supreme court last month agreed to hear an argument from a lower court that the Vatican can be sued – the "tortious" exception to immunity could apply because an abusive Irish priest, Andrew Ronan, could be argued to have been its agent.

The suit sought damages from the Vatican (and the archdiocese of Portland, the bishop of Chicago, and the Order of the Friar Servants) for sexual abuse in 1965 and 1966 by Ronan who had admitted abusing a child in Armagh, was transferred to Chicago and then Portland where he abused four others. The church knew of his admissions of abuse and failed to act against him or notify the police.

Among those cases where the Vatican successfully pleaded immunity is the long-running *Alperin vs Vatican Bank*, a case originally filed in San Francisco in 1999. The plaintiffs are Serb, Jewish, Roma and Ukrainian concentration camp survivors and their relatives and organisations representing over 300,000 Holocaust victims and their heirs. Their claim is for the return of some $50 million of the treasury of the Ustashe, the genocidal, Nazi-collaborating government of Croatia that, according to the US state department and others, was illicitly transferred to the Vatican, the Franciscan Order, and other banks after the end of the war.

In 2007 the Vatican got itself off the hook, leaving the Franciscans alone to fight the case, a ruling that puts the deeply anomalous position of the Vatican in sharp relief – while it may not be sued, an international Catholic order, and indeed any other international religious body, may.

In order not to jeopardise that valuable position, Vatican sources admitted to the *NCR* , the Holy See remained reluctant to enter into the details of sex abuse policy in the US. Indeed, Colm O'Gorman argues most plausibly that the failure of the Vatican to promulgate a mandatory worldwide code of conduct, with a reporting requirement – particularly important in the developing world – stems precisely from a fear of acknowledging its authority over national churches and implicitly conceding that priests and bishops, whom it appoints, are actually its agents in a legal sense.

It has also been careful for the same reason to insist repeatedly on the responsibility of the Irish dioceses for the issue.

The remarkable special position of the Catholic Church in international law is also reflected both in the diplomatic immunity of its nuncios and in its position at the United Nations.

Unlike any other religious organisation or NGO, the Holy See (not the Vatican state) participates in the business of the UN as a “non-member state permanent observer”, a designation that entitles it to participate but not vote in the General Assembly. It is allowed in practice also both to attend and vote at UN-sponsored international conferences.

Because such meetings operate by consensus the Holy See has played an important, some argue deeply reactionary, role in debates on a wide range of social policy issues from population, to the rights of women, to Aids. That has prompted a campaign led by the US organisation Catholics for Choice to have the status and rights of the Holy See at the UN reduced to that of any other observer NGO.

In the wake of the Murphy report, it is arguable that while Ireland should maintain a strong relationship at diplomatic level with an organisation representing one billion faithful, it is worth considering whether that should necessarily be conducted on a state-to-state basis. With all that that entails.

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