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**HUMANITARIAN INTELLIGENCE AND DIPLOMACY WITHOUT
TERRITORY**

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of Religious Migrants in Europe**

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HUMANITARIAN INTELLIGENCE AND DIPLOMACY WITHOUT TERRITORY

The Holy See, the Sovereign Order of Malta, and the Protection of Religious Migrants in Europe^{*}

FEDERICO DOMENICO BARILLA

Zusammenfassung: Dieser Beitrag stellt das kollaborative Modell des kanonischen Rechts und des humanitären Völkerrechts als Projekt künftiger Zusammenarbeit zwischen dem Heiligen Stuhl und dem Souveränen Malteserorden zum Schutz vulnerabler religiöser Migrantinnen und Migranten in Europa vor. Er untersucht, wie ihre jeweils eigenständigen Rechtspersönlichkeiten, diplomatischen Positionen, kirchlichen Netzwerke und humanitären Kapazitäten die staatszentrierte Migrationsverwaltung und die Asylsysteme der EU ergänzen könnten. Auf der Grundlage des Völkerrechts, des kanonischen Rechts, des *ius melitense* und des EU-Asylrechts zeigt der Beitrag Lücken beim Schutz religiöser Migrantinnen und Migranten auf, insbesondere bei der Bewertung religiöser Identität und von Konversionen. Er untersucht drei Kooperationsbereiche: humanitäre Hilfe und Zugang, diplomatische Koordinierung und Vermittlung sowie die begrenzte Verwendung pastoraler Aufzeichnungen als ergänzende Beweismittel. Epikeia, phronesis und salus animarum bilden die normative Ausrichtung des Modells. Der Artikel bietet eine erste Kartierung der rechtlichen Grundlagen, institutionellen Möglichkeiten und Schutzmechanismen dieses Modells, ohne den Anspruch zu erheben, die aufgeworfenen Fragen erschöpfend darzustellen oder einen vollständigen Umsetzungsplan vorzulegen.

Summary: This article proposes a Canon Law and International Humanitarian Law Collaborative Model as a project for future cooperation between the Holy See and the Sovereign Military Order of Malta to protect vulnerable religious migrants in Europe. It examines how their distinct legal personalities, diplomatic positions, ecclesial networks, and humanitarian capacities could complement state-centred migration governance and EU asylum systems. Drawing on international law, canon law, the *ius melitense*, and EU asylum law, it identifies gaps in protecting religious migrants, particularly in assessing religious identity and conversion. It explores three dimensions of cooperation: humanitarian assistance and access, diplomatic coordination and mediation, and the limited use of pastoral records as corroborative evidence. Epikeia, phronesis, and salus animarum provide the model's normative orientation. The article offers a first mapping of its legal foundations, institutional possibilities, and safeguards, without purporting either to present an exhaustive account of the issues involved or to offer a complete implementation plan.

1 Introduction

The migration crisis that has shaped European politics since 2015 exposed a structural weakness in the continent's protection architecture. In Europe, migration is no longer only a logistical problem. It reveals a structural failure to protect human dignity. That failure is produced by the

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fragmentation of state action, governmental discontinuity, and short-term political visions, all of which prevent the emergence of a coordinated long-range European strategy.

The assumption that sovereign states, acting within their own territories, can alone protect persons fleeing persecution has not held up. The recalled political fragmentation, the securitization of migration, and the institutional limits of the Common European Asylum System (CEAS) have left many persons without effective protection, especially where the ground of persecution is religious identity rather than ethnicity or political opinion.

The Catholic Church's role in international law shows that normative authority can be exercised by actors whose influence does not depend on territorial command, but on institutional independence, transnational organization, and a stable doctrinal identity¹.

The difficulty lies less in the absence of norms than in their practical reach. The 1951 Geneva Convention, the Convention Against Torture, the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), and the EU Charter of Fundamental Rights together establish a layered normative architecture for the protection of persons fleeing persecution. Yet this framework, including instruments as detailed as the Qualification Directive 2011/95/EU, produces a dense web of legal sources marked by overlapping competences, jurisdictional conflicts, and persistent questions about actual enforcement.

It is undeniable that the formal existence of a right is not the same as the application of that right. In parallel, the existence of an international law is not the same as the application of that international law. These norms, in fact, often remain largely on paper, serving less to protect the vulnerable than to sustain the self-congratulatory narrative characteristic of Western liberal states². Indeed, even where these norms are applied, they presuppose a model of governance in which the state is both the primary duty-bearer and the sole legitimate actor. That model fails in cases involving religious conversion, apostasy, or membership in a persecuted minority, where the evidentiary burden is heavy, and the assessment of sincerity demands a form of knowledge that secular bureaucratic institutions are ill-equipped to provide.

How to solve this gap?

The Holy See and the Sovereign Military Order of Malta (SMOM) possess distinct legal personalities under international law³, operational networks, and informational capacities that, if institutionalized through deeper cooperation, could position both entities as neutral mediators in international humanitarian and conflict resolution contexts. Rather than operating within the structures of existing international organizations, the proposed Canon Law and International

¹ Boyle, Elizabeth Heger / Golden, Shannon; Liao, Wenjie, The Catholic Church and International Law, in: Annual Review of Law and Social Science 13 (2017) 395-411, 395-398.

² Article 33 of the Convention relating to the Status of Refugees (1951); Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT); Article 7 of the International Covenant on Civil and Political Rights (1966) (ICCPR); Article 3 of the European Convention on Human Rights (ECHR); Articles 18-19 of the Charter of Fundamental Rights of the European Union; and Articles 4(1), 9 and 10 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted.

³ See *ex multis*: the Lateran Treaty of 11 February 1929, Art. 2; UN General Assembly Resolution A/RES/58/314 of 1 July 2004 concerning the participation of the Holy See in the work of the United Nations; and UN General Assembly Resolution A/RES/48/265 of 24 August 1994 concerning the observer status of the Sovereign Military Order of Malta.

Humanitarian Law Collaborative Model envisions the Holy See and the Sovereign Military Order of Malta acting as third parties of equal standing. The model relies on their global reach not only through conventional instruments of soft power but also through informational and diplomatic capacities that no state or NGO can replicate.

Practically, the Canon Law and International Humanitarian Law (IHL) Collaborative Model treats the principles of canon law, the *ius melitense*, understood as the Order's own legal and constitutional order, and IHL as interacting elements of a common normative framework. By bringing these legal orders into relation, the model seeks to provide the Holy See and the Sovereign Military Order of Malta with a basis for coordinating their respective action more coherently in the protection of vulnerable religious migrants, alongside existing state and European asylum law.

The argument proceeds as follows. Section 2 maps the legal architecture of asylum protection in Europe and identifies its structural gaps. Section 3 analyzes the international legal personality of the Holy See. Section 4 turns to the Order of Malta and functional sovereignty. Section 5 examines the sui generis observer status of both entities at the United Nations. Section 6 reconstructs the canonical foundations of the proposed model. Section 7 presents the Canon-International Humanitarian Law Collaborative Model itself. Section 8 concludes.

2 The Architecture of Protection and its Structural Gaps

The normative architecture sketched in the Introduction creates an expectation of protection. The reality of asylum adjudication tells a different story. The structural difficulty lies not in the quantity of legal instruments but in the epistemological mismatch between what these instruments demand and what secular bureaucratic institutions are equipped to deliver.

As an example of the utility of the proposed model, we will mainly consider, in this first and not exhaustive paper, the problem of credibility assessment in religious conversion cases. Article 4 of the Qualification Directive 2011/95/EU places on the applicant a duty to substantiate the claim, while obliging the Member State to cooperate in the assessment⁴. The CJEU, in *Bundesrepublik Deutschland v. Y and Z*⁵, has clarified that freedom of religion is a fundamental right (§ 57) and that, in assessing an application for refugee status on an individual basis, the competent authorities must ascertain, in the light of the applicant's personal circumstances, whether that person runs a genuine risk of persecution upon return⁶. Yet the operational reality is that forty judges from thirteen EU member states, convened by the European Chapter of the International Association of Refugee Law Judges in 2015, found themselves confronting a common difficulty: the sincere religious conviction that grounds an asylum claim is an inner fact, accessible only through external clues and the applicant's own statements. Religious certificates, including baptismal documents and pastoral letters, are consistently treated as non-conclusive by national

⁴ In this context, just as an example, credibility assessment concerns whether the applicant's account demonstrates a genuine religious conversion and whether the resulting religious identity or practice is sufficiently fundamental to place the applicant at risk of persecution if returned.

⁵ Joined Cases C-71/11 and C-99/11, Grand Chamber, 5 September 2012.

⁶ CJEU, Grand Chamber, Judgment of 5 September 2012, Case C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*, ECLI:EU:C:2012:518, paras 57, 65, operative part conclusions 1 and 2. Cf. also *Berlit, Uwe / Doerig, Harald / Storey, Hugo*, Credibility Assessment in Claims based on Persecution for Reasons of Religious Conversion and Homosexuality. A Practitioners Approach, in: *International Journal of Refugee Law* 27 (2015) 649-666, 649, 651, 659.

courts, capable of demonstrating that a ceremony took place but not that the underlying belief is genuine⁷.

A remarkable study of forty-eight rulings of the Finnish Immigration Service reveals a deeper structural problem. Decision-makers reduced Christianity to an "inward orientation", treating it as an individual matter of thoughts and emotions rather than a social phenomenon manifested through belonging and associated religious rituals. This normative understanding, which guides the credibility assessment of religious conversion, is not supported by UNHCR's Guidelines on International Protection regarding religion-based refugee claims⁸.

Yet the Finnish Immigration Service's credibility assessments continue to be shaped by precisely that understanding. The consequence is that asylum officials who do not recognize communal and ritual dimensions of religious identity as authentic manifestations of faith risk excluding from protection persons whose conversion is genuine but whose religious life does not conform to a normative model centred on private belief.

The credibility assessment problem just examined, which alone would warrant far more extensive treatment, is only one of several criticalities that illustrate a broader pattern: the system, in practice, operates as religion-blind. Faith-based organizations are collapsed - in the view of international actors - into the generic category of NGOs and stripped of their distinct legal and diplomatic rights, status, and privileges. For many migrants, religious belonging is not secondary to the claim. It is the ground on which persecution is built.

3 The Holy See as a Subject of International Law

A serious account of the Holy See must begin with a distinction that is elementary but often blurred. The Holy See is not the Vatican City State. The Holy See (*Sancta Sedes*) is the central governing body of the Catholic Church and a sovereign subject of international law, recognized as such since long before the Lateran Treaty of 1929 created the Vatican City State⁹. The Vatican City State is the territorial instrument that guarantees the independence of the Holy See. This is not just a quibble about terminology. It determines whether one understands the Holy See's diplomacy as an exercise of territorial sovereignty or as something more unusual: the projection of authority through a transnational ecclesiastical structure that precedes and outlasts any territorial arrangement.

The Secretariat of State, reformed by Pope Francis through the apostolic constitution *Praedicate Evangelium* in 2022, manages relations with states and the United Nations. The network of apostolic nunciatures also performs an ecclesial reporting function: under canon 364 § 1, 1° of the Code of Canon Law, the pontifical legate is required to inform the Apostolic See about the condition of particular Churches and matters touching the life of the Church and the good of souls. This dual function enables the Holy See to receive information from communities, including remote ones, whose religious life may not be fully captured through ordinary

⁷ *Ibidem*.

⁸ Blumgrund, Ilona, Credibility Assessment of Religious Conversion in the Asylum Process: A Theological Analysis, in: *Studia Theologica* 77 (2023) 125-152, 131-136, 144.

⁹ Ryngaert, Cedric, The Legal Status of the Holy See, in: *Goettingen Journal of International Law* 3 (2011) 829-859, esp. 830, 832, 858. On the prior subjectivity of the Holy See and its continuity across the period 1870-1929, see Araujo, Robert John, The Holy See. International Person and Sovereign, in: *Ave Maria International Law Journal* 1 (2011) 1-66, esp. 31, 35, 58.

diplomatic reporting. This practically means that the network of apostolic nunciatures creates a communicative channel from parish to bishop to nuncio to Rome, reaching into communities - even the most remote ones - that journalists cannot access and other diplomats cannot reach¹⁰. This is the operational reality and the power of a very well-structured Human Intelligence system.

The Holy See's international personality is not reducible to territorial statehood. Its subjectivity persisted through the Roman Question, from the loss of the Papal States in 1870 to the Lateran Treaty of 1929, a period during which it continued to conclude concordats, conduct mediation, and maintain both active and passive diplomatic relations¹¹. One stricter reading of the Lateran settlement, advanced in the literature, treats the Holy See and the Vatican City State as a single state-like construct capable of acquiring rights and incurring responsibilities under international law¹². However, this interpretation does not appear persuasive also because the Lateran Treaty distinguishes the legal roles of the two entities: it recognizes the Holy See's sovereignty in the international sphere while establishing Vatican City as the territorial arrangement intended to secure that sovereignty. The Treaty is therefore better understood as establishing a functional relationship between the two entities, rather than merging them into a single international person.

The clergy who exercise ecclesial authority cannot simply be described as state organs, a point that matters when UN treaty bodies apply state-jurisdiction concepts to the Holy See¹³. This personality is independent of any territorial base and has persisted without interruption, even during the decades when the Holy See held no territory, and has never been seriously challenged¹⁴. The practical implication is this: the Holy See is a diplomatic actor whose value lies not in coercion but in access, mediation, and the capacity to hear what the state in which it operates does not hear.

4 The Sovereign Military Order of Malta (SMOM) and Functional Sovereignty

The Sovereign Military Order of Malta illustrates something unusual: the persistence of sovereignty after the loss of territory. The Order's origins lie in Jerusalem in the eleventh century, when a hospice was established for pilgrims. Its canonical and diplomatic recognition was consolidated by Pope Paschal II in 1113 through the bull *Pie postulatio voluntatis*¹⁵. The Order later possessed Rhodes (from 1310) and Malta (from 1530), before losing the latter to Napoleon in 1798. What survived was a form of sovereignty that no longer attached to land in the ordinary state-centred sense.

¹⁰ Francis, Apostolic Constitution *Praedicate Evangelium* on the Roman Curia and its Service to the Church and to the World, 19 March 2022, in: AAS 114 (2022) 375-455, Arts. 44 and 49. 19 March 2022, Art. 44 and 49.

¹¹ Araujo, Holy See (Anm. 6), 31-35.

¹² Cismas, Irina, Religious Actors and International Law, Oxford 2014, 184-185.

¹³ Zambrana-Tévar, Nicolás, The International Responsibility of the Holy See for Human Rights Violations, in: Religions 13, no. 6 (2022), art. 520, 8, 12-13.

¹⁴ Araujo, Holy See (Anm. 6), 58.

¹⁵ Paschal II, *Pie postulatio voluntatis* (1113). Cf. also Marti, Federico, Short Notes on the International Status of Sovereign Order of Malta under International Law. Functional Limits and Dependence upon the Holy See in the Light of the New Constitution of 3 September 2022, in: Stato, Chiesa e pluralismo confessionale 1 (2023) 73-87, 82.

The phrase *functional sovereignty* captures this accurately. The Order is sovereign not because it governs territory, but because it retains a distinct legal personality ordered to a defined mission. Its motto, *Tuitio Fidei et Obsequium Pauperum* (defence of the faith and service to the poor), is not a spiritual aspiration alone. It functions as a legal charter that defines the scope of the Order's international activity. Some Order's jurists use to advocate for a fuller interpretation of this sovereignty¹⁶.

It cannot, however, be overlooked the Holy See legally binding interpretation to be found in the pivotal 1953 Cardinalial Sentence¹⁷ and in Pope Francis's 2024 Address to SMOM Ambassadors¹⁸. From it unquestionably emerges that the Order's sovereignty is "*functional*", in the sense that it exists in the borders of serving its humanitarian finalities. This functional sovereignty - as it emerges from the literal wording of these two documents - which assures to the Order its international status required for its humanitarian missions, is a concept that has continuously evolved since the mid-twentieth century¹⁹ by expanding and narrowing, and in some periods completely removing, its aforementioned present-day borders. Also the Order's position is described as "quasi-sovereign", capturing the way its international personality persists without territorial control²⁰.

The 2022 Constitutional Charter, promulgated by Pope Francis on 3 September, did not alter this interpretation. The Order's juridical personality remains functional, extending only to its institutional purposes and not to its legal system or governance structure, which remain subject to the Holy See²¹. The recalled 1953 Cardinalial Tribunal took a more cautious approach, recognizing that the Order comprises the enjoyment of a number of rights which the Order possesses as a subject of international law while declining to equate those rights with full state sovereignty²².

The Order's two fundamental legal instruments, the Constitutional Charter and the Melitense Code, have since been supplemented by the *Rescriptum ex Audientia Sanctissimi*, dated 10 April 2026 and published on 23 June 2026²³. In this act, Pope Leo XIV approved *in forma specifica* amendments to the Constitutional Charter and the Melitense Code, including provisions concerning the election of the holders of the Order's high offices, the territorial articulation of its government, and the establishment of Associations. The Rescriptum therefore constitutes a subsequent development of the Order's internal constitutional and institutional framework, and should be taken into account when assessing the legal setting within which its functional

¹⁶ See on the contrasting vision on full sovereignty of the Order of Malta reported by *Ronzitti Natalino*, *Introduzione al diritto internazionale*, Torino 2013, 31-32. Cf. also for a more recent position *Papanti-Pelletier, Paolo*, in: *Tomer Alberto*, *Il nuovo assetto del Sovrano Militare Ordine di Malta. La riforma del 2022 nella fedeltà a una storia millenaria*, Modena, Mucchi Editore, 2023, 10-12.

¹⁷ Tribunale Cardinalizio, January 24th, 1953, in: AAS 45 (1953), 765-767.

¹⁸ Address of His Holiness Pope Francis to the Ambassadors of the Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes and of Malta, Consistory Hall, January 27th, 2024, Holy See Press Office Bulletin, no. B0088, 27 January 2024, [00171-IT.02].

¹⁹ *De Fischer, Béat*, *The Sovereign Order of Malta Today*, in: *International Review of the Red Cross* 1975, 15 (166), 3-6.

²⁰ *Cox, Noel*, *The Continuing Question of Sovereignty and the Sovereign Military Order of Jerusalem, of Rhodes and of Malta*, in: *Australian International Law Journal* 13 (2006) 211-232, 211-212.

²¹ *Marti*, *Short Notes* (Anm. 12), 84-87.

²² *Cox*, *Continuing Question of Sovereignty* (Anm. 17), 221-222.

²³ *Sovereign Military Order of Malta*, *Rescriptum Ex Audientia Sanctissimi* con il quale vengono approvate le modifiche alla Carta Costituzionale e al Codice Melitense del Sovrano Militare Ordine Ospedaliero di San Giovanni di Gerusalemme, di Rodi e di Malta, published by the Cancelleria del Sovrano Militare Ordine di Malta and curated by the Dipartimento degli Affari Interni, dated 10 April 2026 and published on 23 June 2026, at: <https://www.orderofmalta.int/news/rescriptum-ex-audientia-sanctissimi/>.

sovereignty is exercised. The *Rescriptum* also expressly records that the request submitted by the Grand Master was heard by the Holy Father²⁴. This appears to suggest an intention to recognize the Order's institutional position and to take its request into account in the revision of its constitutional framework. Read together with the reference to the Order's peculiar nature as a lay religious order, this wording gives the intervention a tone of institutional recognition within the Church's canonical order, presenting the Order's *sui generis* character as a relevant element in the papal assessment.

It cannot be disregarded that canon law belongs to the body of legal sources that also constitute the legal foundation of the new Constitution and the new Code of the Order of Malta. In this sense the Order may be also considered a *persona mixta*²⁵: a religious order in canon law that also possesses a functional international personality. It is something the international legal system had to make room for. And that matters, because it is exactly the kind of actor Europe needs not only to deal with migration crisis, but also to act as a neutral mediator in conflicts.

The practical consequences of this peculiar status are, in fact, significant. The Order maintains diplomatic relations with 115 states and the European Union, and it issues diplomatic passports²⁶. In environments where political actors cannot operate freely, the Order can do so because its authority is not derivative of territorial control. It can open doors, preserve confidentiality, and sustain a presence where the ordinary instruments of state power are either unavailable or counterproductive. The Order may also function as a diplomatic scout, testing political terrain in sensitive regions where its neutral humanitarian character allows access that states cannot achieve. This functional sovereignty matters for religious migrants because the central problem is often not the absence of law but the absence of a trusted neutral institutional intermediary.

5 Two Sui Generis Observers at the United Nations

The Holy See and the Order of Malta occupy an institutional space at the United Nations that no other religious actor shares. Both are permanent observers, both are non-territorial, and both are treated as *sui generis* participants in the international order.

The Holy See has been a permanent observer since 1964, and its rights were formalized by UN General Assembly Resolution A/RES/58/314 of 1 July 2004²⁷. These rights allow the Holy See to speak, circulate documents, and take part in debates without voting. The Holy See also participates as observer at UNESCO, WHO, UNIDO, and the Council of Europe²⁸.

The Order of Malta obtained permanent observer status in 1994 through General Assembly Resolution A/RES/48/265²⁹. The recognition confirms that the international community accepts the idea that a sovereign religious order can participate in global governance without being a

²⁴ *Ibidem*.

²⁵ Sarlo, Gregorio, Il sovrano militare ordine di Malta modello di persona mixta, in: Amministrativ@mente 3-4 (2015) 1-9.

²⁶ *Sovereign Military Order of Malta*, Diplomatic Activities, at: <https://www.orderofmalta.int/diplomatic-activities/>. *Sovereign Military Order of Malta*, Passports, at: <https://www.orderofmalta.int/government/passports/>.

²⁷ UN General Assembly, Resolution A/RES/58/314: Participation of the Holy See in the work of the United Nations, 16 July 1st, 2004

²⁸ Holy See, Bilateral and Multilateral Relations of the Holy See, at: https://www.vatican.va/content/dam/wss/roman_curia/secretariat_state/documents/rc_seg-st_20010123_holy-see-relations_en.html.

²⁹ UN General Assembly, Resolution A/RES/48/265: Observer Status for SMOM, August 24th, 1994.

state. That recognition is evidence that the international legal order accommodates forms of sovereignty that are functional rather than territorial.

The coexistence of these two observers creates a unique configuration. One is ecclesial and primarily moral and diplomatic. The other is hospitaller and primarily operational and humanitarian. Together, they represent a pairing of authority and informative access that constitutes the institutional precondition for the proposed cooperative model.

6 The Canonical Engine

The argument developed in the preceding sections is that the Holy See and the Sovereign Military Order of Malta can coordinate their distinct legal and institutional capacities within the proposed Canon-IHL Model to protect vulnerable religious migrants. This section develops the canonical basis of that claim by examining *epikeia* and *salus animarum* as the model's principal norms, *phronesis* as the virtue that mediates their application, and the concrete legal duties that give those norms institutional expression.

6.1 *Epikēia* (ἐπιείκεια): The Correction of Law for the Sake of Justice

Epikēia, later called *aequitas canonica* is a concept with deep classical roots. Aristotle develops it in the *Nicomachean Ethics*³⁰. There he defines ἐπιείκεια as the correction of law precisely where law, by virtue of its universality, fails to meet the demands of justice in a particular case. The lawgiver legislates for the general run of cases, but particular circumstances may produce outcomes that the legislator would never have intended. *Epikēia* (the transliteration traditionally loses the tonic diphthong εἰ, maybe for a wrong medieval transcription) corrects this gap in the canon law system.

Epikēia is not a license for arbitrary discretion, but its completion. It operates within the logic of justice and not against it. The *epikēia* that Aristotle describes is, in effect, a form of legal intelligence that recognises the limits of general rules.

Sophocles dramatized the same tension in *Antigone*, where Creon's edict collides with a higher claim that no sovereign decree can suppress³¹. Plato, in the *Laws*³², insists that law must be oriented toward the common good and not merely toward the convenience of the ruler. These ideas form the conceptual genealogy of a principle that canon law has inherited and transformed.

The transmission of this classical insight into canon law occurred through Thomas Aquinas, who treated *aequitas* (the Latin rendering of ἐπιείκεια) in the *Summa Theologiae*³³ as a higher rule of human actions. For Aquinas, equity is not a rival to law but its most intelligent application: the correction that keeps law faithful to its own telos. Cardinal Enricus de Bartholomeis da Susa

³⁰ Aristotle, Ἠθικὰ Νικομάχεια, Book V, chapter 10, 1137b11-1138a3, ed. I. Bywater, *Aristotelis Ethica Nicomachea*, Oxford, Clarendon Press, 1894.

³¹ Sophocles, Ἀντιγόνη, vv.450-460, ed. and trans. Francis Storr, Loeb Classical Library 20, London, William Heinemann Ltd.; New York, The Macmillan Company, 1912.

³² Plato, Νόμοι, book IV (714b-715d) and book IX (875a-d), in *Platonis Opera*, ed. John Burnet, vol. 5, Oxford, Clarendon Press, 1903.

³³ Aquinas, Thomas, *Summa Theologiae*, II-II, q. 120, a. 1, ad 2, in *Sancti Thomae de Aquino Opera omnia iussu impensaue Leonis XIII P. M. edita, Corpus Thomisticum*, t. 9, Romae, Ex Typographia Polyglotta S. C. de Propaganda Fide, 1897.

(Henricus de Segusio, 1197-1271) later reformulated this tradition in a specifically canonical register³⁴.

In the contemporary Code of Canon Law, *aequitas canonica* functions as a flexibility instrument alongside *dispensatio*, *tolerantia*, and *dissimulatio*. These instruments belong to a broader normative architecture through which canon law adjusts its application to particular circumstances without compromising its structural coherence. Canonical equity safeguards the natural justice accessible to human reason, ensuring that ecclesiastical law remains open to the demands of mercy. In this sense, *epikeia* carves out a space within the legal order where rigid application would yield an unjust result.

For the present argument, the decisive point is that those who apply canonical law cannot treat legal rules as mechanically self-executing. The practical question, then, is what kind of judgment can bring a general norm into a just relation with the concrete circumstances of the persons and cases affected by its application.

6.2 Phronesis (φρόνησις) as the Virtue of Practical Application

The Aristotelian concept of *phronesis*, or practical wisdom, is the intellectual virtue that makes *epikeia* operative in concrete decisions. Aristotle distinguishes φρόνησις (*phronesis*) from both ἐπιστήμη (*episteme*, scientific knowledge) and τέχνη (*techne*, technical skill) in the *Nicomachean Ethics*³⁵. *Phronesis* is the capacity to discern, in particular and unrepeatable circumstances, what the right course of action is. It is not the application of a universal rule to a case. It is the perception of what the situation demands, informed by experience, moral formation, and attention to the specific human being involved.

This distinction matters for the present argument because the assessment of a religious migrant's claim often requires precisely the kind of judgment that neither bureaucratic procedure nor abstract rule can supply. The question whether a person's conversion is sincere, whether the risk of persecution upon return is real, whether the religious community the applicant claims to belong to would in fact provide support, these are questions that demand *phronesis* on the part of the adjudicator. And they are questions on which religious institutions, by virtue of their formation and pastoral experience, are often better positioned to offer informed judgment than secular authorities.

The integration of *phronesis* into the canonical framework is not an innovation. It is a return to the classical structure of Aquinas's moral theology, in which the virtue of prudence (the Latin translation of φρόνησις *prudencia*) is the master virtue that governs the application of all other virtues and norms to particular cases. The Canon-International Humanitarian Law Collaborative Model proposes, in effect as will be shown in the following pages, that this Aristotelian-Thomistic structure be recognized as operative in the institutional cooperation between sovereign religious actors and state asylum authorities.

³⁴ Cf. especially *Henricus de Segusio (Hostiensis), Summa aurea*, lib. V, *De dispensationibus*, n. 1, *Basileae, apud Thomam Guarinum*, 1573, *Henrici de Segusio Cardinalis Hostiensis, summa aurea, Ad vetustissimos codices summa fide diligentiaque nunc primum collata, atque ab innumeris erroribus, quibus scatebat hactenus, repurgata Henricus*, Basilea, 1573 Universitätsbibliothek Basel, 1490-1491.

³⁵ Aristotle, *Ἠθικὰ Νικομάχεια*, book VI, 1139b15 - 1140b30, ed. I. Bywater, *Aristotelis Ethica Nicomachea*, Oxford, Clarendon Press, 1890.

6.3 *Salus Animarum*: The Supreme Law of the Church

Canon 1752 declares that "the salvation of souls, which must always be the supreme law in the Church, is to be kept before one's eyes". This is not a pious aspiration. It is a juridical norm with binding force.

The precise scope of *salus animarum* remains contested. Under one reading, the principle functions as an interpretive maxim that guides the application of other canons within the legal order³⁶. Under another reading, it operates as a metajuridical norm capable of suspending positive law when the salvation of a person is at stake³⁷. Either way, *salus animarum* functions as a legal principle of mercy, the foundational norm governing how canonical rules are applied in practice. Its supernatural τέλος, the salvation of souls, has no equivalent in secular constitutional orders, which renders it irreducible to any framework of human rights law alone.

For the present argument, the operative implication is straightforward: In instances where procedural requirements come into conflict with the concrete salvation of a human person, the latter prevails. When a bureaucratic assessment of an applicant's religious knowledge conflicts with the actual risk of persecution upon return, *salus animarum* requires the canonical actor to privilege the person. This principle, read together with *aequitas canonica* and guided by *phronesis*, provides the theological and canonical foundation for the collaborative model proposed here.

6.4 Positive Law: The Canonical Mandate

Three canons of the 1983 Code of Canon Law provide the specific juridical mandate. C. 222, § 2, imposes on the faithful the duty to promote social justice and aid the poor from their own resources. Canon 364, § 1, N° 5, mandates that papal legates foster peace and promote the Church's mission to the world. C. 590 places religious institutes, including the Order of Malta, under the special care of the Holy See³⁸.

These are not suggestions. They are binding canonical obligations that, read together with the core principles of international humanitarian law, create a normative framework independent of any state, operative across borders, and binding on both religious actors who operate within it.

7 The Canon-International Humanitarian Law (IHL) Collaborative Model

The model does not replace state asylum systems. It organizes the capacities of sovereign religious actors around a clear protection objective, making them legible and more efficient within existing international humanitarian law, working not in the international and European Union system, but with them. This section does not pretend to exhaust the theorisation of this model, but just gives a first panoramic view of it.

³⁶ Wijlens, Myriam, *Salus Animarum Suprema Lex: Mercy as a Legal Principle in the Application of Canon Law?*, in: *The Jurist* 54 (1994) 560-590, esp. 577, 580-581.

³⁷ Hahn, Judith, "Salus Animarum Suprema Lex". How Does This Principle of Canon Law Relate to the "End of Law"?, in: *Political Theology* 26 (2025) 548-563, 550-551.

³⁸ *Codex Iuris Canonici* (1983), can. 222 § 2, can. 364 § 1, 5°, and can. 590 § 1.

7.1 Division of Roles

The Holy See contributes moral authority, doctrinal coherence, and a global ecclesial network extending from Rome to local parishes³⁹. SMOM contributes operational capacity, humanitarian infrastructure, diplomatic access through its representations, and a long-standing human network tied to its institutional traditions⁴⁰. The institutionalised collaboration between them creates a supplementary layer of canonical obligation and sovereign religious identity that reinforces protections under international and EU law.

This arrangement rests on the Aristotelian insight from the *Politics*⁴¹ that the *πόλις* exists not merely for life but for the good life: actors oriented toward the common good – intended and adjusted to the Catholic theological vision – are legitimate participants in governance. The Holy See and SMOM do not compete with the state. They exercise sovereignty in service of a mission the state and supranational entities recognize but cannot always pursue independently.

7.2 Levels of Cooperation

The model operates at different levels of increasing operational specificity.

At the normative level, the Holy See's *Responding to refugees and migrants: 20 action points* provides a concrete example of institutional guidance. Prepared by the Migrants and Refugees Section in consultation with bishops' conferences and Catholic NGOs, and approved by Pope Francis, the document was transmitted as the Holy See's official input to the United Nations consultations and intergovernmental negotiations on the Global Compacts⁴². Integrating SMOM's diplomatic and humanitarian capacities into this existing normative framework could support the development of complementary access arrangements in settings where state or NGO access is constrained.

At the access level, humanitarian practice shows that cooperation between public authorities and faith-based actors can facilitate humanitarian access in settings where ordinary channels are constrained. A recent example involving the Holy See's ecclesial presence in the Holy Land is provided by Gaza: on 14 May 2024, the Latin Patriarchate of Jerusalem and the Sovereign Military Order of Malta signed a Memorandum of Understanding establishing a joint humanitarian mission, implemented with Malteser International, to deliver life-saving food and medical assistance to the population of Gaza. The mission's first operational stage took place on 16 May 2024, when Cardinal Pierbattista Pizzaballa entered Gaza accompanied by Fra' Alessandro de Franciscis, Grand Hospitaller of the Order, and brought humanitarian support to the Holy Family parish.

At the evidentiary level, the parish, as the basic territorial unit of diocesan administration, could be institutionalized as a locally embedded information node for the systematic collection, organization, and preservation of data generated through ordinary pastoral administration. It could help map where the faithful actually are, both numerically and geographically, rather than

³⁹ Boyle, Catholic Church (Anm. 1), 395, 397-398. Kelly, Bryan P., The Power Politics of the Holy See. The Church, the State, and its Citizens, in: *Politics and Religion* 16 (2023) 682-707, 692.

⁴⁰ de Fischer, The Sovereign Order of Malta Today (Anm. 16), 3-6. *Sovereign Military Order of Malta*, Diplomatic Activities (Anm. 21).

⁴¹ Aristotle, Πολιτικά, book III, ch. 9, 1280a31-32.

⁴² United Nations General Assembly, *Letter dated 6 October 2017 from the Permanent Observer of the Holy See to the United Nations addressed to the Secretary-General, A/72/528*, 13 October 2017, annex: *Responding to refugees and migrants: 20 action points* (Reissued for technical reasons on 27 October 2017).

relying on approximate figures, while also recording, on a continuous and purpose-specific basis, births, movements, family ties, and other relevant changes in the life of the communities it serves. In regions where no functioning civil registry exists, parish records could perform a supplementary evidentiary function for persons and families within the parish's pastoral reach, without acquiring the legal status of civil-status registers. Any such use would remain subject to purpose limitation, data minimisation, secure storage, defined retention periods, access controls, and the applicable rules governing sensitive religious and family data. Where such information later intersects with an asylum or immigration proceeding, it may constitute corroborative and usable evidence, not because it conclusively establishes the facts alleged, but because it was collected contemporaneously as part of ordinary pastoral administration rather than assembled retrospectively to support a claim.

It must be noted that parish records do not certify a person's current faith, as recently clarified by the Dicastery for Legislative Texts⁴³, but – in this specific context – may have meaningful corroborative value. In fact, ex c. 96 and c. 849, Baptism incorporates a person into the Church and leaves an indelible sacramental character⁴⁴; the baptismal register therefore records an ecclesial fact whose sacramental significance is not annulled by a later change in belief or practice. The Dicastery for Legislative Texts has clarified that baptismal entries may not be deleted and that an *actus formalis defectionis ab Ecclesia Catholica* may be annotated when a person formally expresses the intention to leave, while also specifying that the register is neither a general membership list nor a certificate of continuing faith. It is therefore reasonable, in this specific context, that where a person can demonstrate that a baptism was recorded, and no formal defection is annotated in the register, this information may be relevant to a protection claim involving religious identity or affiliation, since it may corroborate the person's recorded baptismal status, documented canonical history, or pastoral account. The proposal is thus to use ecclesial records, with the person's informed and voluntary participation and subject at all times to a valid legal basis and appropriate data-protection safeguards, to address defined factual questions such as baptismal status, recorded defection, family details contained in canonical acts, or documented pastoral contact. Their evidentiary weight would remain corroborative rather than determinative, particularly in claims based on religious conversion, where baptismal records may confirm that a ceremony occurred but cannot alone establish the sincerity of the underlying faith.

In practice, this means modernizing and making more efficient the Holy See's own capacity to gather and organize information, through digital tools and lay personnel operating in coordination with parish structures. The Order of Malta is well placed to provide the operational cover and institutional legitimacy such personnel would need in fragile or contested environments, given its own sovereign standing and its existing network of embassies.

Building this structure is neither free nor optional in these times. It requires the Holy See and the Order of Malta to invest, now, in an administrative and digital architecture that neither currently possesses at the scale the model requires. Absent that investment, both risk losing the

⁴³ Holy See, *Nota esplicativa del Dicastero per i Testi Legislativi sul divieto di cancellazioni nel Registro parrocchiale dei battesimi*, Bollettino n.0259 of 17.04.2025.

⁴⁴ Cf. also Catholic Church, *Catechism of the Catholic Church*, 2nd ed., revised in accordance with the official Latin text promulgated by Pope John Paul II, Vatican City: Libreria Editrice Vaticana; Washington, D.C.: United States Catholic Conference, 2000, §§ 1267, 1272.

influence and the competitive standing on which their contribution to migration governance depends, and with it, the practical capacity to carry out the mandate, the tasks, and the mission they claim as their own.

The first and most basic step toward making any of this operational is institutional. A standing joint commission between the Secretariat of State and the Order of Malta would serve as a liaison and coordination mechanism for action in the specific fields in which SMOM can contribute its distinctive combination of diplomatic, humanitarian, and operational capacities. Its involvement would be activated only in situations jointly identified and agreed by the two institutions, where coordinated action could extend the reach and practical impact of humanitarian initiatives. It would coordinate humanitarian corridors, protocols for documenting, verifying the provenance of, and transmitting corroborative information to the competent authorities, and crisis response, working in cooperation with bishops' conferences in states facing significant migration pressures.

The commission would operate within, and without prejudice to, the Holy See's and SMOM's respective international legal positions, diplomatic channels, institutional mandates, and any rights or privileges recognized under applicable law and practice. Its establishment would not create a new international legal person or extend to the commission privileges not otherwise recognized under applicable law. At the institutional level, the commission would provide the framework within which the parish-based pastoral records, the limited pastoral information system, and the documentation protocols described above could be coordinated. Without such a framework, the division of roles between the Holy See and SMOM would remain a statement of complementary competences rather than an organized working arrangement.

The commission would also have a specific strategic function in the field of migration governance and humanitarian emergencies. It would provide a recognizable channel of engagement with the relevant institutions and bodies of the European Union, including the European Commission, the European Parliament, and the Council of the European Union, while leaving the Holy See and SMOM free to act through their own diplomatic, institutional, and non-institutional channels. This arrangement would not alter the Holy See's wider diplomatic representation to the European Union, nor displace the work of the *Commissio episcopatum Communitatis Europaeae* (COMECE), the Jesuit Refugee Service, or other Catholic organizations. Its purpose would be limited to coordinating cooperation between the Holy See and SMOM in situations where their mandates and capacities intersect, thereby enabling them to put forward complementary proposals on humanitarian corridors, resettlement arrangements, humanitarian de-escalation measures, and emergency response mechanisms. The commission would give practical form to that cooperation while preserving each institution's distinct international role and existing channels.

8 Conclusion

The Canon-IHL Collaborative Model begins from a straightforward observation: the protection of religious migrants in Europe is too important to be left to territorial bureaucracy alone. The Holy See and the Sovereign Military Order of Malta already possess the legal personality, historical depth, and operational capacity to contribute to that protection in a structured way.

The model supplements the state where the state and European institutions are weakest. Canonical obligations translate into a cooperative framework legible within international law, and sovereignty itself becomes the resource to grant human dignity even more effectively.

This works because sovereignty need not be confined to the paradigm of the territorial state. The Holy See and the Order of Malta demonstrate that international authority may also be exercised through *sui generis* institutional forms, combining relational and functional dimensions with a mission ordered to service. Such authority is not diminished by its distance from conventional statehood. It derives its distinctive force from diplomatic standing, institutional trust, access, and humanitarian service, often where states and international institutions face consistent operational limits.

Europe does not lack norms. It lacks an institutional imagination equal to the principles it has already proclaimed. The question is whether European migration governance will have the courage to move beyond a state-centred understanding of protection, and to recognise in the Holy See and the Order of Malta not merely existing partners, but institutional capacities whose full potential has yet to be realised.