

Assemblies of Hierarchs and Conferences of Bishops: A Comparative Study

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A dissertation submitted to the Faculty of Canon Law,
Saint Paul University, Ottawa, Canada, in partial
fulfillment of the requirements for the degree of
Doctor of Canon Law

Ottawa, Canada
Saint Paul University
2016

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ACKNOWLEDGEMENTS

After first giving thanks to God for His many blessings in all that I have in my life, there remain many others who need to be thanked: my wife Olena and our beautiful child Osanna Seraphima, who have patiently and selflessly endured my frequent mental and physical absences during what little free time a cleric enjoys; Fr Jobe Abbass, OFM Conv., a scholar of international repute, who patiently and with a great eye for detail was an incredible master of studies; Dr Anne Asselin, Dean of the Faculty of Canon Law, and her fellow professors, whose friendship and guidance have been my constant encouragement; Bishop Stephen Chmilar, Eparchial Bishop of Toronto and Eastern Canada for Byzantine-Ukrainians, who blessed my desire for ordination as well as further studies; Rev. Dr Roman Lobay, Pastor of St Nicholas Parish, who has not only provided me with a spiritual home, but has also been a great friend with emotional support and helped make time available to write as well as provided necessary technological and canonical resources; Msgr Lawrence Bordonaro, CHH, Judicial Vicar of the Toronto Regional Tribunal, who has been my constant encouragement, along with its staff and its moderator His Eminence Thomas Cardinal Collins, who have made this work possible and provide daily inspiration; Bishop David Motiuk, who provided the original suggestion for this topic; the Sister Servants of Mary Immaculate, who not only provided friendship but also a constant gentle reminder of the need to sit down and write; and the Metropolitan Andrey Sheptytsky Institute of Eastern Christian Studies along with the Faculty of Theology, both its staff, and its students, for their friendship, encouragement, and constant faith in my capabilities. Finally, I wish to recognize the financial support of the Ministry of Education, through the Ontario Graduate Scholarship program, and the Oblates of Mary Immaculate, through the scholarship programs of Saint Paul University, without which this work would not have been possible.

δόξα τῷ θεῷ πάντων ἕνεκεν

ABBREVIATIONS

1980 <i>Schema</i>	PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, <i>Schema Codicis iuris canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, universitatem facultatumque ecclesiasticarum necnon Superiorum Institutum vitae consecratae recognitum</i>
1982 <i>Schema</i>	PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, <i>Codex iuris canonici: Schema novissimum iuxta placit Patrum Commissionis emendatum atque Summo Pontifici praesentatum</i>
1984 <i>Schema</i>	PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO, <i>Schema canonum de constitutione hierarchica Ecclesiarum orientalium</i>
1986 <i>SCICO</i>	PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO, <i>Schema Codicis iuris canonici orientalis</i>
<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>ApS</i>	JOHN PAUL II, motu proprio <i>Apostolos suos</i> , 21 May 1998
<i>AS</i>	<i>Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II</i> , 1970-1990
c.	canon
ca.	<i>circa</i>
cc.	canons
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium</i> (1990)
<i>CD</i>	SECOND VATICAN COUNCIL, decree <i>Christus Dominus</i>
cf.	<i>confer</i>
<i>CIC/17</i>	<i>Codex iuris canonici</i> (1917)
<i>CIC/83</i>	<i>Codex iuris canonici</i> (1983)
<i>CLSAComm2</i>	J.P. BEAL, J.A. CORIDEN, T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
<i>Comm.</i>	<i>Communicationes</i>

<i>CS</i>	PIUS XII, <i>motu proprio Cleri sanctitati</i> , 2 June 1957
<i>ExComm</i>	A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary on the Code of Canon Law</i> (8 vols.)
<i>LG</i>	SECOND VATICAN COUNCIL, decree <i>Lumen gentium</i>
<i>OE</i>	SECOND VATICAN COUNCIL, decree <i>Orientalium Ecclesiarum</i>
<i>PB</i>	JOHN PAUL II, Apostolic constitution on the Roman Curia <i>Pastor bonus</i> , 28 June 1988
PCCICOR	Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo
<i>Relatio</i>	PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, <i>Relatio complectens synthesim animadversionum ab Em. mis atque Exc. mis Patribus commissionis ad novissimum Schema Codicis iuris canonici exhibitarum, cum responsibus a secretaria et consultoribus datis</i>

GENERAL INTRODUCTION

At the twenty-eighth general congregation of the Synod of Bishops, John Paul II referred to the 1983 Code of Canon Law and the 1990 Code of Canons of the Eastern Churches, together with the 1988 constitution *Pastor bonus*, as integral parts of the one *Corpus iuris canonici* of the Catholic Church.¹ John Paul II also indicated that comparative studies of canon law are to be promoted, a call that he repeated in 1993.² This study follows this call with a comparative examination of one portion of the supra-diocesan (supra-eparchial) structure of the Church.

One of the major developments in the Catholic Church in the twentieth century was the establishment of regional bodies for members of the college of bishops to act collegially with one another. In Canada, the Canadian Catholic Conference was established in 1943. Existing today as the Canadian Conference of Catholic Bishops (CCCCB), it currently counts over eighty bishops amongst its members. The 1983 Latin Code indicates that an episcopal conference includes bishops of a nation or a region who are of the Latin Church. However, ordinaries of other Churches *sui iuris* can nevertheless be “invited” with a consultative vote, unless the statutes of the conference establish otherwise.³

In the Canadian context, CCCC membership includes both diocesan and eparchial bishops and their equivalents in law, coadjutor bishops, auxiliary bishops, as well as other

¹ See JOHN PAUL II, Allocution *Memori animo*, 25 October 1990, no. 8, in *AAS*, 83 (1991), pp. 486-493.

² See *Comm*, 25 (1993), pp. 13-14.

³ See *CIC/83*, c. 450, §1. All citations from the 1983 Code are taken from *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law: Latin-English Edition, New English Translation*, Washington, Canon Law Society of America, 1999. All references from the 1983 Latin Code are styled “*CIC/83*, c.” for canon and “*CIC/83*, cc.” for canons, followed by the canon numbers.

titular bishops who exercise a special office in Canada assigned by the Apostolic See of Rome or the Conference.⁴ Numerically, this means that of the eighty-six bishops that are currently members of the CCCB, fifteen are hierarchs of various Eastern Churches *sui iuris*. Thus, 20.7% of the members of this conference are not members of the Latin Church. Further, in the CCCB these Eastern hierarchs have a deliberative vote.⁵ The CCCB *Statutes* indicate that when votes on canonical, disciplinary, or liturgical matters involve a single Church *sui iuris* or its rite, deliberative vote is reserved to bishops of that Church.⁶

As a result, the CCCB has established itself as a forum for inter-ecclesial Church governance and activity for all Canadian bishops, regardless of their Church *sui iuris*. The CCCB is an episcopal conference, which is fundamentally a Latin body that can include Eastern ordinaries, as indicated by the 1983 Latin Code. However, how the CCCB practically functions is not in line with the understanding of the episcopal conference as primarily a Latin body. Eastern Catholic (especially Ukrainian Catholic, by simple fact of their greater numbers) hierarchs have taken active roles in the CCCB and continue to serve on its various commissions. The Latin bishops have used the CCCB as a venue to express support for the Eastern Churches before the Holy See, such as when it took a public stance in support of married presbyters for Eastern Catholics in Canada.⁷ The conference continues to exist as a venue for bishops of the Canadian Church to gather as a deliberative body,

⁴ CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, 1 September 2008, art. 3, http://www.cccb.ca/site/images/stories/pdf/statuts_cecc-statutes_cccb.pdf (May 13, 2012).

⁵ CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 5.

⁶ *Ibid.*

⁷ David MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, Ottawa, Metropolitan Andrey Sheptytsky Institute of Eastern Christian Studies and Faculty of Canon Law, Saint Paul University, 2005, pp. 127-129.

regardless of their Church *sui iuris*. In fact, this Canadian adaptation of the episcopal conference is a model that has much in common with the canonical structure of assemblies of hierarchs of several Churches *sui iuris*, presented in Title IX of the 1990 Eastern Code.

Canada is one of many countries that have developed episcopal conferences inclusive of inter-ecclesial activity. These adaptations are practical responses to the bonds of communion and reflect the 2001 call of John Paul II to develop structures which: “serve to ensure and safeguard communion.”⁸ The main question of this thesis is: what does the single *Corpus iuris canonici* offer with respect to a model of collegiality for the college of bishops, and what options are available in an inter-ecclesial environment such as Canada?

To answer this question, this study engages in a comparative analysis of the canons on assemblies of hierarchs and conferences of bishops as presented in the Eastern and Latin codes, respectively. The methodology for this study is to examine the canons in their formation and proper juridical understanding, followed by a comparative analysis of what is common to these structures as well as what is unique. This examination enables us to consider not only the juridical content of the canons on assemblies of hierarchs and conferences of bishops, but also their historical, theological, and juridical context. This is a unique study as there has been no previous comparative analysis of conferences of bishops and assemblies of hierarchs of several Churches *sui iuris*. In this study there are four chapters.

Chapter one examines the historical, theological, and canonical foundations for episcopal collegiality. This begins by examining the nature of collegiality, which places the

⁸ JOHN PAUL II, Apostolic letter *Novo millennio ineunte*, 6 January 2001, no. 44, in *Acta Apostolicae Sedis* (=AAS), 93 (2001), pp. 266-309. English translation JOHN PAUL II, Apostolic letter *Novo millennio ineunte*, 6 January 2001, Vatican City, Libreria editrice Vaticana, 2001, p. 60.

discussion within a proper theological context, especially in relation to the Second Vatican Council. The chapter continues with an examination of historical models of collegiality in the Church. Finally, the first chapter contains an overview of how these theological principles have been codified into the collegial structures present in the Church's current canon law.

Chapter two is a specific examination of the general canons on conferences of bishops as articulated in the 1983 Latin Code. This chapter focuses on the origins of these canons in the legislative and theological history of the Church, the formation of this legislation during the revision of the Latin Code, and their proper juridical meaning, especially in light of extra-codal legislation.

Chapter three studies the legislation governing assemblies of hierarchs as articulated in canon 322 of the Eastern Code. After examining the theological and historical phenomenon of overlapping ecclesiastical jurisdictions, the chapter follows a similar structure as chapter two by focusing on the sources of these canons as well as the issues discussed during codification, especially as recorded by the Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo (PCCICOR). Finally, the canons are analyzed so as to understand their proper juridical content.

Chapter four critically examines these two models as presented in the codes by means of comparative legal analysis. First, the chapter begins by defining comparative law, placing the comparative analysis within a specific methodology. The general canons on conferences and assemblies are then examined for their similarities and differences on numerous points. The concrete implementation of these structures is then examined by contrasting promulgated statutes of both conferences of bishops and assemblies of hierarchs. Finally, this study offers practical suggestions for collegial activity in inter-

ecclesial environments so as to achieve collegial activity while respecting both the juridical autonomy of the different Churches *sui iuris* and the *mens legislatoris*.

1 – FOUNDATIONS FOR EPISCOPAL COLLEGIALITY

Introduction

This chapter contains three sections. The first section begins with a theological discussion as to what is understood by the term “collegiality”. Since this concept was articulated at the Second Vatican Council, this will be the starting point for a magisterial understanding of collegiality. After establishing this theological foundation, the paper will then examine historical examples of collegiality in Church history. This is the second section. Examples will be studied from the histories of both the Christian East and West.

The third and final section analyzes the notion of collegial bodies within the current canonical structures of the Catholic Church. This section begins with an examination of collegial bodies as founded upon ecclesiastical provinces and regions. Following this, the individual forms of episcopal collegiality in the Church’s current canon law are observed. This examination is divided into three sub-sections. The first sub-section surveys collegial structures common to the Latin and Eastern codes, the second sub-section observes those structures only contained in the 1983 Latin Code, and the third sub-section examines those collegial bodies only contained in the Eastern Code.

1.1 Theological Foundations of Collegiality

What is collegiality? Sobański writes that: “Collegiality is one of the terms used to denote an ecclesial reality. It is therefore an ecclesiological – and thus a theological – term.”¹ In his opening allocution to the 1969 Synod of Bishops, Paul VI defined collegiality

¹ Remigiusz SOBAŃSKI, “Implications for Church Law of the Use of the Term ‘Collegiality’ in the Theological Context of Official Church Statements,” in *Concilium, New Series*, 4 (1990), p. 43.

as “a certain communion” (*quaedam communio*).² In this allocution Paul VI described collegiality with a variety of terms: an agreement of souls, fraternity, unity, and charity.³ Paul VI also indicated that episcopal collegiality is at the service of communion in the Church, following the model of the Apostles.⁴ In this study collegiality is understood as the various forms of common activity undertaken by members of the episcopate.

The college of bishops is a juridical reality because of two fundamental elements: first, the hierarchical communion that unites all members of the college with the head (*caput*), Peter’s successor, and second, the common mission regarding the Church’s pastoral care entrusted to all members of the college.⁵ This common responsibility for the care of the entire Church is understood to exist by divine institution since Jesus entrusted the office of binding and loosing to all of the apostles.⁶ Collegial bonds exist from the members’ joint participation both in the sacrament of the episcopacy and the single apostolic mission. These bonds are permanent and are manifested not only in extraordinary meetings, such as ecumenical councils, but also in interpersonal bonds resulting from mutual relations between bishops.⁷

² PAUL VI, Allocution of 11 October 1969, in *AAS*, 61 (1969), p. 717.

³ *Ibid.*, p. 718.

⁴ *Ibid.*, p. 719.

⁵ Juan Ignacio ARRIETA, *Governance Structures within the Catholic Church*, Montreal, Wilson and Lafleur Ltée, 2000, p. 45.

⁶ See Matthew 16:19, 18:18, and 28:16-20.

⁷ ARRIETA, *Governance Structures within the Catholic Church*, p. 48.

From a canonical perspective, collegial bonds have a permanent juridical dimension that include, but go beyond, the power of governance.⁸ Collegial bonds also involve fraternal charity and cooperation; the nature of the bonds translates also into a personal duty by which bishops have a duty to seek advice and listen; this is a “moral duty to accept the opinions and advice of other bishops in the exercise of the episcopal function.”⁹ As John Paul II observed in *Novo millennio ineunte*, harmonization of the local Church with both neighbouring communities and the universal church is: “facilitated by the collegial work which Bishops now regularly undertake in Episcopal Conferences and Synods.”¹⁰

At the Second Vatican Council, especially in the decrees *Lumen gentium* and *Christus Dominus*, an attempt was made to establish a doctrinal (and by extension juridical) foundation for the episcopacy. The Council accomplished this by addressing questions such as the sacramentality of the episcopate and the nature of relations between bishops.¹¹ Already during the pre-conciliar preparatory period submitted reports were calling for a greater definition of the episcopal college and the doctrine of collegiality.¹² As Rahner

⁸ Juan Ignacio ARRIETA, “Conferenze episcopali e vincolo di comunione,” in *Ius Ecclesiae*, 1 (1989), pp. 3-22. See also Luis NAVARRO, “Manifestazioni giuridiche della comunione fra vescovi,” in *Ius Ecclesiae*, 3 (1991), pp. 573-585.

⁹ ARRIETA, *Governance Structures within the Catholic Church*, p. 49.

¹⁰ JOHN PAUL II, Apostolic letter *Novo millennio ineunte*, no. 29.

¹¹ On the topic of the sacramentality of the episcopate, see: Karl RAHNER, “The Hierarchical Structure of the Church, with Special Reference to the Episcopate,” in Herbert VORGRIMMER (ed.), *Commentary on the Documents of Vatican II*, vol. 1, Freiburg, Herder and Herder, 1967, p. 193; Joseph LÉCUYER, “Orientations présentes de la théologie de l’épiscopat,” in Yves CONGAR and Bernard Dominique DUPUY (eds.), *L’Épiscopat et l’Église universelle*, Paris, Les Éditions du Cerf, 1962, pp. 781-811; Giuseppe NICOLUSSI, “La sacramentalità dell’episcopato nella ‘Lumen gentium,’ Cap. III,” in *Ephemerides theologiae Lovanienses*, 47 (1971), pp. 7-63; and Susan WOOD, “The Sacramentality of Episcopal Consecration,” in *Theological Studies*, 51 (1990), pp. 479-496.

¹² See George H. TAVARD, “Collegiality according to Vatican II,” in *The Jurist*, 64 (2004), pp. 82-90.

notes: “The general expectation of the future members of the council undoubtedly included a desire to complete the work of Vatican I by unfolding a doctrine of the episcopate.”¹³ As will be demonstrated, collegiality was a topic of polarized debate at the Council. This section will examine *Lumen gentium*, the *Nota explicativa praevia*, and *Christus Dominus* in relation to their teachings on the episcopal college’s power of governance. Finally, the question of whether episcopal conferences and assemblies of hierarchs fit within this discussion will be examined.

1.1.1 *Lumen gentium*

The topic of episcopal collegiality was primarily discussed in the dogmatic constitution on the Church *Lumen gentium*. Given the context of this study, the sections to be examined are those that discuss episcopal collegiality: numbers 21 to 23 in the promulgated text.

In the original 1962 *Draft on the Church*, prepared by the Preparatory Doctrinal Commission presided over by Cardinal Ottaviani, it was indicated clearly that bishops have power neither over the entire Church nor any other local church other than the one entrusted to their care. The only exceptions to this understanding were those involving participation in the Bishop of Rome’s ministry as universal pastor.¹⁴ It was also indicated that the college of bishops, as successors to the college of the apostles, is the subject of full and supreme power over the Church. This power is exercised in conjunction with the Bishop of Rome.

¹³ TAVARD, “Collegiality According to Vatican II,” p. 90.

¹⁴ PREPATORY THEOLOGICAL COMMISSION, *Schema constitutionis dogmaticae de Ecclesiae*, §15, in Francisco Gil HELLÍN (ed.), *Constitutio dogmatica de Ecclesia Lumen gentium*, Concilii Vaticani II Synopsis: In ordinem redigens schemata cum relationibus necnon patrum orationes atque animadversiones, no. 1, Vatican City, Libreria editrice Vaticana, 1995, pp. 230-238.

Further, in this conciliar draft the power of the college is legitimately exercised only in an extraordinary manner, that is, only in an ecumenical council. The *Draft* further indicated that bishops are constituted as members of the college by virtue of the Bishop of Rome granting them admission in either a tacit or explicit action.¹⁵ This text, however, met firm resistance and as a result in the following year a second document was presented to the Council.¹⁶

In the second draft the topic of the episcopal college was examined within the section on the hierarchical communion of the Church. This text identifies the episcopal college as a body including the Bishop of Rome as the successor of Peter and the bishops as successors of the apostles. Unlike the first draft that indicated that collegial power is only exercised by the college in an ecumenical council, this draft adds that the entire college can exercise collegial power outside an ecumenical council in situations where the Bishop of Rome either invites them to a collegial action or at least approves or receives their action.¹⁷ This text, again, was debated by the Council Fathers. Tabera Araoz, for example, was uncomfortable with the term college,¹⁸ Slipyj felt the text was too juridical,¹⁹ and De la

¹⁵ PREPATORY THEOLOGICAL COMMISSION, *Schema constitutionis dogmaticae de Ecclesiae*, §16, in HELLÍN, *Constitutio dogmatica de Ecclesia Lumen gentium*, pp. 244-246. It is important to note that in this draft text it is not episcopal ordination, but the action of the Bishop of Rome, which admits one to the college of bishops.

¹⁶ Not all Council Fathers felt the definition was too restrictive and for example Van Der Burgt submitted a written text that took the position that it was not possible to function collegially outside of an ecumenical council: “Extra Concilium ergo nullomodo exerceretur.” VAN DER BURGT, in *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II* (=AS), vol. I:4, Vatican City, Typis polyglottis Vaticanis, 1965, p. 591.

¹⁷ COMMISSIO DE DOCTRINA FIDEI ET MORUM, SUBCOMMITTEE DE ECCLESIA, *Schema constitutionis dogmaticae de Ecclesiae*, §16, in HELLÍN, *Constitutio dogmatica de Ecclesia Lumen gentium*, pp. 226-228.

¹⁸ This objection focused on the understanding that “college” implied the juridical notion of a *collegium* with equality between members, see TABERA ARAOZ, in AS, vol. II:1, p. 732.

¹⁹ SLIPYJ, no. 4, in AS, vol. II:2, p. 444.

Chanonie felt the original draft was superior in its description of the relations between the Holy See and individual bishops.²⁰

The debates over collegiality continued and in October 1963 the Council Fathers were asked five questions regarding their views on the episcopate in order to prepare the content.²¹ All five questions passed with majorities supporting some expression of episcopal collegiality.²² The resulting 1964 draft was longer than the previous texts and included additions regarding the bishop's role in the episcopal college, the place of the Bishop of Rome in the college, and historical foundations for collegiality.²³ However, this did not settle debate at the Council. Numerous Fathers submitted written comments to the text and in response to the deep divisions present it was decided that, unlike other votes at the Council that decided either entire chapters or sections, thirty-nine separate votes would occur on the third chapter of the draft.²⁴ The text was eventually approved with varying numbers of dissenting votes.²⁵ The final Dogmatic Constitution was approved 21 November 1964 and this text largely followed the revised 1964 draft.

The topic of episcopal collegiality is dealt with in numbers twenty-one to twenty-three of *Lumen gentium*. Number twenty-one indicates that the episcopal office is

²⁰ DE LA CHANONIE, no. 16, in *AS*, vol. II:1, p. 650.

²¹ *AS*, vol. II:3, p. 574.

²² *AS*, vol. II:3, p. 670. This vote was not without controversy as Ottaviani considered the vote "illegal", while Bishop Luigi Carli said the void and illicit vote should be taken "*cum grano salis*". See TAVARD, "Collegiality According to Vatican II," pp. 101-102.

²³ COMMISSIO DE DOCTRINA FIDEI ET MORUM, SUBCOMMITTEE *DE ECCLESIA*, *Schema constitutionis de Ecclesia*, §23, in HELLÍN, *Constitutio dogmatica de Ecclesia Lumen gentium*, pp. 231-245.

²⁴ TAVARD, "Collegiality According to Vatican II," p. 109.

²⁵ The largest point of contention concerned the nature of episcopal consecration, yielding 328 *non placet*.

transferred by episcopal consecration. It is consecration that confers the functions of teaching, sanctifying, and ruling; these functions: “can only be exercised in hierarchical communion with the head of the college and its members.”²⁶ As a result, communion with other bishops is the normative factor in episcopal ministry. *Lumen gentium* continues and indicates that mirroring St Peter and the apostles, the Bishop of Rome and the bishops are united together in a unique college.²⁷ Consequently, there is a “collegial character and nature of the episcopal order.”²⁸ This collegial character was demonstrated throughout the history of the Church in the form of ecumenical councils and the participation of multiple bishops at episcopal ordinations. The episcopal college has no authority unless it is united with the Bishop of Rome. However, acting with its head, the college has supreme governing power for the universal Church, ordinarily exercised in the context of an ecumenical council. The bishops scattered throughout the world, provided the Bishop of Rome either calls them to a collegial action or approves of their action, can exercise collegial power.²⁹

It is, however, the twenty-third number of *Lumen gentium* that most directly deals with the topic of episcopal collegiality. This section indicates that collegial bonds are realized in the relations between a bishop and an individual diocese as well as between the bishop and the universal Church. Individual bishops exercise their pastoral office over the portion of the people of God entrusted to them and not over other churches or the universal

²⁶ SECOND VATICAN COUNCIL, Dogmatic constitution on the Church *Lumen gentium* (=LG), 21 November 1964, no. 21, in *AAS*, 57 (1965), pp. 5-67. All English translations of citations from ecumenical councils, unless otherwise indicated, are taken from Norman P. TANNER (ed.), *Decrees of the Ecumenical Councils*, 2 vols., Washington, Georgetown University Press, 1990.

²⁷ *Ibid.*, no. 22.

²⁸ *Ibid.*

²⁹ *Ibid.*

Church. However, as members of the episcopal college, bishops are to have care and solicitude for the entire Church, which is for the advantage of the universal Church.³⁰ As this section states: “Therefore the individual bishops, as far as the carrying out of their own task allows, are bound to collaborate among themselves and along with the successor of Peter.”³¹ Arrieta observes: “In the proper sense, the bond is called a ‘collegial bond’ because it flows from the members’ joint participation in the same sacrament and same mission.”³² An example of collegiality given in this section of *Lumen gentium* is that of individual bishops undertaking fraternal assistance and charitable outreach, especially when they provide assistance to dioceses in need.³³

This section of *Lumen gentium* continues in explaining that, historically, groups of bishops came together in corporate exercises of their episcopal ministry. Some of these groups “joined together” into groupings of groups, forming a unity of faith, discipline, liturgy, and theological and spiritual patrimony.³⁴ It was through this basic process that the patriarchal Churches emerged.³⁵ The decree continues: “The variety of local churches, in harmony among themselves, demonstrates with greater clarity the catholicity of the undivided church.”³⁶ Further, episcopal conferences “can today make a manifold and

³⁰ This is not a new concept to the Council; see, for example: PIUS XII, Encyclical letter *Fidei donum*, 21 April 1957, no. 38, in *AAS*, 49 (1957), pp. 225-248.

³¹ *LG*, no. 23.

³² ARRIETA, *Governance Structures within the Catholic Church*, pp. 47-48.

³³ *LG*, no. 23.

³⁴ *Ibid.*

³⁵ For more on the development of the patriarchal Churches, see 1.2.2.

³⁶ *LG*, no. 23.

fruitful contribution to the concrete application of the spirit of collegiality.”³⁷ In his commentary on *Lumen gentium*, Rahner admits that: “It is not easy to distinguish non-jurisdictional actions of the individual bishops” from “strictly collegial acts in which the individual bishops may share.”³⁸ Collegiality, while a real theological concept, is thus not always easily identified.

1.1.2 The 1964 *Nota explicativa praevia*

The Theological Commission issued the *Nota explicativa praevia* on 16 November 1964.³⁹ As Ratzinger explains, this document indicated the “profound disagreement that existed among the Council Fathers over the heart of the chapter – episcopal collegiality, and also the misunderstandings that accounted for a good deal of the disagreement.”⁴⁰ The *Nota* was not intended to amend the conciliar text, but instead to provide some clarifications. It was, as a result, published as an appendix to *Lumen gentium*. This document was distributed to the Council Fathers prior to their vote on the third chapter and they were instructed that it would be appended to the Constitution.⁴¹ This insertion was

³⁷ *LG*, no. 23.

³⁸ RAHNER, “The Hierarchical Structure of the Church, with Special Reference to the Episcopate,” p. 206.

³⁹ Published as an appendix to *Lumen gentium* as: *Nota explicativa praevia*, 16 November 1964, in *AAS*, 57 (1965), pp. 72-75.

⁴⁰ Joseph RATZINGER, “Announcements and Prefatory Notes of Explanation,” in VORGRIMLER, *Commentary on the Documents of Vatican II*, vol. 1, p. 297

⁴¹ *Ibid.*, pp. 297-298. Since the document did not emerge from the Council nor was it itself voted upon, and it is appended to *Lumen gentium* without insertion into the text, there is some difficulty in considering this document to be, strictly speaking, an act of the Second Vatican Council. The *Nota* is signed by the Secretary of the Council, Archbishop Felici. Rather than it being an act of the Council Fathers, perhaps it is better to say that the Second Vatican Council was the context in which this document emerged. Ratzinger called this manner of origin “peculiar”. See *ibid.*, p. 298.

meant to appease those Fathers opposed to a broader definition of collegiality. Philips estimates that eighty-five to ninety percent of the Council Fathers were opposed to the issuing of the *Nota* and they had, as a group, not been consulted prior to its distribution.⁴² Regardless, the text did reduce the number of votes opposing *Lumen gentium* to forty-six which, at a subsequent vote, further was reduced to zero.⁴³

The content of this document is brief. First, the *Nota* indicates that when describing the episcopal college, the word “college” is not to be understood in the Roman legal tradition of a group of members (*collegium*) with equal authority. This explanation was a response to the frequent objection of Roman theologians to the use of “college” when describing the episcopate on the grounds of both Roman law as well as seventeenth-century Protestant ecclesiology.⁴⁴ Ratzinger, in his commentary on this document, argues this first point adds nothing new to an already-clear text.⁴⁵ Second, episcopal consecration confers the three-fold *munera*. Collegiality clearly has its root in episcopal consecration. Third, and most relevant to this discussion, the college of bishops, to which the Bishop of Rome belongs, possesses supreme and universal authority in the Church. However, the head and members of the college have different functions.

Ratzinger says the basic problem that this third point addressed was to answer the question of whether there is one subject of universal power or two subjects.⁴⁶ This

⁴² Gerard PHILIPS, “Dogmatic Constitution on the Church: History of the Constitution,” in VORGRIMLER, *Commentary on the Documents of Vatican II*, vol. 1, p. 136.

⁴³ RATZINGER, “Announcements and Prefatory Notes of Explanation,” p. 298.

⁴⁴ *Ibid.*, p. 299.

⁴⁵ *Ibid.*, p. 300.

⁴⁶ *Ibid.*, p. 302.

explanation places the theology of an ecumenical council within that understanding which was previously defined. Ratzinger argues this explanation positions the collegial exercise of power at an ecumenical council as little more than an exception to the exercise of the universal power of governance possessed by the Bishop of Rome.⁴⁷ Philips contends that this third point “does not go beyond what is asserted” in the dogmatic constitution.⁴⁸ These commentators clearly understood continuity between the texts of *Lumen gentium* and the *Nota praevia*.

The final, fourth point explains that the assent of the Holy Father is required for collegial acts. Philips writes that the inclusion of this requirement is “perfectly justified” given its presence in the Constitution.⁴⁹ Ratzinger in fact argues that “the severe limitations marshalled in Parts 3 and 4 apply only to the exercise of the *plena et suprema potestas* that the universal college has over the whole Church.” This concept is described by Ratzinger as collegiality in the “strict sense”, a distinction that emerges in the aftermath of the Council.⁵⁰ Ratzinger states that these collegial acts in the “strict” sense are uncommon, and that the Church, as a *communio* where “centralization has its limits”, admits collegial acts at national, provincial, or diocesan levels that, while not *actus stricte collegiales*, are nonetheless collegial.⁵¹ Regarding the *Nota praevia* as a whole, Ratzinger writes: “Only

⁴⁷ RATZINGER, “Announcements and Prefatory Notes of Explanation,” p. 303.

⁴⁸ PHILIPS, “Dogmatic Constitution on the Church: History of the Constitution,” p. 136.

⁴⁹ Ibid.

⁵⁰ RATZINGER, “Announcements and Prefatory Notes of Explanation,” p. 304.

⁵¹ Ibid.

future developments will show whether too high price has been paid for this success; whether the doctrine [of collegiality] has been too much diminished.”⁵²

1.1.3 *Christus Dominus*

The Second Vatican Council’s decree on the ministry of bishops, *Christus Dominus*, discusses the collaborative ministry of bishops. This document discusses the historical foundations for inter-episcopal collaboration, with mention of councils and synods.⁵³ The decree then indicates that mutual understanding and cooperation between bishops is necessary for successful episcopal ministry.⁵⁴ This section of the decree is located within the third chapter: Concerning the Co-operation of Bishops for the Common Good of Many Churches.

Within the text of *Christus Dominus*, episcopal conferences are specifically commended as having “furnished striking evidence of a more fruitful apostolate.”⁵⁵ This document establishes parameters for the establishment and functioning of episcopal conferences.⁵⁶ The provisions of this decree are later cited as sources for the juridical establishment of episcopal conferences in the 1966 *motu proprio Ecclesiae sanctae*.⁵⁷ Six

⁵² RATZINGER, “Announcements and Prefatory Notes of Explanation,” p. 298.

⁵³ SECOND VATICAN COUNCIL, Decree on the pastoral office of bishops in the Church *Christus Dominus* (=CD), 28 October 1965, no. 36, in *AAS*, 58 (1966), pp. 673-696.

⁵⁴ *Ibid.*, no. 37

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, nn. 38-39.

⁵⁷ PAUL VI, *Motu proprio Ecclesiae Sanctae I*, 6 August 1966, in *AAS*, 58 (1966), pp. 757-787, no. 41, §1. English translation in T. Lincoln BOUSCAREN and James I. O’CONNOR (eds), *Canon Law Digest*, vol. 6, New York, Bruce Publishing Company, 1969, pp. 264-298. Prior to this time, while existing, episcopal conferences functioned without juridical structures in the universal law.

norms are provided in section thirty-eight, the final one providing a norm regarding the establishment of episcopal bodies including hierarchs of multiple Churches.⁵⁸ *Christus Dominus* thus provides conciliar foundation for both episcopal conferences and assemblies of hierarchs of several Churches *sui iuris*.

It is noticeable that the decree *Christus Dominus*, while providing detail on episcopal conferences, avoids any usage of the word collegiality and instead describes common activity as conjoint action (*coniunctum*). This is undoubtedly a response to the controversy over collegiality that emerged in the discussions surrounding *Lumen gentium*. Some Council Fathers, however, did feel that the reality of episcopal conferences having a collegial basis was a point upon which the majority of Fathers at the Council had agreed.⁵⁹ Others, however, were less supportive of any understanding of collegial activity within episcopal conferences.⁶⁰

Klaus Mörsdorf, in his seminal commentary on the text of *Christus Dominus*, argues the division among Council Fathers was a response to the reality of episcopal conferences existing within territorial and, as a result, political realities. While the episcopal college is a universal institution with dogmatic foundations, Mörsdorf argues that the conference is more influenced by practical considerations.⁶¹ He does, however, argue that conferences

⁵⁸ *CD*, no. 38.

⁵⁹ See, for example, FERNANDEZ-CONDE, in *AS*, vol. II:5, p. 304.

⁶⁰ See, for example, CARLI, in *AS*, vol. II:5, p. 73. CARLI made three arguments against the collegial nature of episcopal conferences. He argued they were not collegial since they lacked i) the totality of the college, ii) the enabling power of the head of the college, and iii) matters affecting the entire Church.

⁶¹ Karl MÖRSDORF, “Decree on the Bishop’s Pastoral Office in the Church,” in VORGRIMLER, *Commentary on the Documents of Vatican II*, vol. 2, p. 287.

have a “collegial element”.⁶² This position that conferences are not collegial, but instead have a collegial element, emerges out of a fear, expressed by some commentators, that any hierarchical level between the diocesan bishop and the Bishop of Rome results in a diminishment of proper power.⁶³

1.1.4 Regional Expressions of Collegiality

While other texts at the Second Vatican Council discuss the topic of episcopal conferences, those most related to the discussion of episcopal collegiality are the discussed sections of *Lumen gentium* and *Christus Dominus*.⁶⁴ Sobański observes: “‘It should not be concealed that the council did not elaborate a theology of conferences of bishops.’”⁶⁵ At the Council, some Fathers had no doubt that conferences were collegial, while others were vehemently opposed. What resulted were subtle texts that frequently avoided making any statements that would damage the consensus sought for the promulgation of conciliar

⁶² MÖRSDORF, “Decree on the Bishop’s Pastoral Office in the Church,” p. 288.

⁶³ See for example: MÖRSDORF, “Decree on the Bishop’s Pastoral Office in the Church,” p. 293; Paul GOUYON, “Les relations entre le diocèse et la Conférence Épiscopale,” in *L’Année Canonique*, 22 (1978), pp. 1-23; Henri DE LUBAC, *The Motherhood of the Church Followed by Particular Churches in the Universal Church*, San Francisco, Ignatius Press, 1983, pp. 267-269.

⁶⁴ Other sections of Vatican II documents that discuss episcopal conferences (generally providing areas of their competency) include: SECOND VATICAN COUNCIL, Decree on the missionary activity of the Church *Ad gentes divinitus*, 7 December 1965, nn. 16, 18, 20, 31, 32, 38, in *AAS*, 58 (1966), pp. 947-990; SECOND VATICAN COUNCIL, Declaration on Christian education *Gravissimum educationis*, 28 October 1965, Introduction, in *AAS*, 58 (1966), pp. 728-739; SECOND VATICAN COUNCIL, Decree on the training of priests *Optatam totius*, 28 October 1965, nn. 1, 22, in *AAS*, 58 (1966), pp. 713-727; SECOND VATICAN COUNCIL, Decree on the adaption and renewal of religious life *Perfectae caritatis*, no. 23, in *AAS*, 58 (1966), pp. 702-712; SECOND VATICAN COUNCIL, Decree on the ministry and life of priests *Presbyterium ordinis*, no. 21, in *AAS*, 58 (1966), pp. 991-1024; SECOND VATICAN COUNCIL, Constitution on the sacred liturgy *Sacrosanctum concilium*, nn. 36, 39, 40, 44, 54, 63, 73, 70, 107, 119, 120, 128, in *AAS*, 56 (1964), pp. 97-138; SECOND VATICAN COUNCIL, Decree on ecumenism, *Unitatis redintegratio*, no. 8, in *AAS*, 57 (1965), pp. 76-89.

⁶⁵ SOBAŃSKI, “Implications for Church Law of the Use of the Term ‘Collegiality’ in the Theological Context of Official Church Statements,” p. 103.

decrees. The Council did state there was a difference between the collegiality of the entire college and that of a regional body such as an episcopal conference or assembly of hierarchs. However, what is not answered is whether this is a difference of nature or a difference of degree.

Writing in Vorgrimler's *Commentary on the Documents of Vatican II*, Ratzinger indicates that the episcopal college always exists but does not always act in a strictly collegial fashion. Ratzinger argues that for the college, "apart from 'collegiate' acts in the strict sense - acts that bind the whole Church - other acts may also be collegiate in varying degrees (cf. Article 23 of the text)."⁶⁶

Mörsdorf indicates that the text shows that the collegial element of Church governance is "not a participation in the supreme power, but only a special form of the co-operation of the bishops for the common good of several Churches."⁶⁷ Is "co-operation" exclusive of collegiality? Mörsdorf would argue not; while this special cooperation "limited the collegiality of the bishops materially to the sphere of the whole Church," it nonetheless did this "without formally denying the collegiality of the bishops in the sphere of particular Churches."⁶⁸

In the years following the conclusion of the Second Vatican Council, numerous theologians began to question whether episcopal conferences were in fact collegial bodies.⁶⁹ Interestingly, some of these theologians were previously outspoken supporters of the notion

⁶⁶ RATZINGER, "Announcements and Prefatory Notes of Explanation," p. 304.

⁶⁷ MÖRSDORF, "Decree on the Bishop's Pastoral Office in the Church," p. 281.

⁶⁸ Ibid.

⁶⁹ See, for example, DE LUBAC, *The Motherhood of the Church Followed by Particular Churches in the Universal Church*, pp. 257-273.

of the exercise of collegiality by these institutions.⁷⁰ These criticisms had their basis largely within the distinctions seen between formal (direct) and indirect collegiality of bishops.⁷¹ These distinctions were largely related to a fear of a strong episcopal conference necessitating either the reduction of the authority of the local bishop or that of the Bishop of Rome.

In the midst of these discussions, in 1985, the extraordinary synod of bishops proposed a deeper study of the theological status of episcopal conferences and their teaching authority.⁷² This resulted in the 1988 *Instrumentorum Laboris* produced by the Congregation for the Bishops. After a decade of discussion, a document with juridical authority, *Apostolos suos*, was promulgated *motu proprio* by John Paul II. While these documents are not an exhaustive sampling of acts from the Holy See on the topic of regional episcopal bodies, they are certainly the most significant given both the controversy they provoked and the legislative authority of a papal apostolic constitution *motu proprio*.⁷³ The

⁷⁰ For example: i) Jérôme HAMER, “Esercizio del potere, unità nella libertà e servizio alle comunità locali: Il significato delle conferenze episcopali,” in *Crisi del potere nella Chiesa e risveglio comunitario*, Milan, 1969, pp. 190ff, as compared to his earlier writings, for example Jérôme HAMER, “Les conférences épiscopales, exercice de la collégialité,” in *Nouvelle revue théologique*, 85 (1963), pp. 966-969; ii) Joseph RATZINGER, *The Ratzinger Report*, trans. Salvator ATTANASIO and Graham HARRISON, San Francisco, Ignatius Press, 1985, pp. 59-60, as compared to his earlier writings such as Joseph RATZINGER, “The Pastoral Implications of Episcopal Collegiality,” in *The Church and Mankind, Concilium*, vol. 1, Glen Rock, NJ, Paulist Press, 1964, pp. 63-65.

⁷¹ This distinction between types of collegiality became a major theme in ecclesiological writings, especially those emerging from Rome. It is first discussed in Willy ONCLIN, “Collegiality and the Individual Bishop,” in *Pastoral Reform in the Church, Concilium*, vol. 8, New York, Paulist Press, 1965, pp. 81-91.

⁷² *The Final Report of the 1985 Extraordinary Synod*, Washington, DC, National Conference of Catholic Bishops, 1986, C, §8.

⁷³ With respect to other documents discussing norms for episcopal conferences, one could also mention, among others: the 1973 Pastoral Directory for Bishops which said: “the episcopal conference is established to provide many-sided and fruitful assistance in our times so that this collegial sense may produce its results (LG 23)” (SACRED CONGREGATION FOR BISHOPS, Pastoral Directory on the Ministry of Bishops *Ecclesiae imago*, 31 May 1973, English translation in *Directory on the Pastoral Ministry of Bishops*, Ottawa, Canadian Catholic Conference, 1974, no. 210.) In the 2004 revision, this text was updated to “In manifold and fruitful ways, the Conference contributes to the realization and development of the spirit of collegiality (*affectus collegialis*) among members of the same Episcopate” (CONGREGATION FOR BISHOPS, Pastoral

two documents are in reality two manifestations of one project: the *Instrumentorum Laboris* was the working document that, ten years later, yielded *Apostolos suos*.

In January 1988, the Prefect of the Congregation for Bishops, Bernard Cardinal Gantin, sent a working paper to the bishops of the world entitled “Theological and Juridical Status of Episcopal Conferences.”⁷⁴ This document was a response to the request from the synod of bishops for a theological foundation for episcopal conferences. This document is divided into two sections: the first section establishes the theological status of episcopal conferences, focusing on the notions of *communio* and collegiality, and the second section deals with the juridical status of episcopal conferences, examining their legislative and pastoral authority. For the purposes of this discussion on the theological nature of collegiality, only the first section will be examined.

The 1988 text clearly assumes the primacy of the universal Church over the local.⁷⁵ The document then goes on to draw distinctions between the *effectus* and *affectus* forms of collegiality. In this understanding *affectus collegialis* involves the college as a portion and is collegial in an analogical, theologically improper sense while *effectus collegialis* involves the entire college and is collegial in the “strict” sense. This establishes that collegiality is, strictly speaking, only exercised in an ecumenical council or in a united action of all the bishops either called for or recognized by the Bishop of Rome.⁷⁶

Directory on the Ministry of Bishops *Apostolorum successores*, 9 March 2004, English translation *Directory for the Pastoral Ministry of Bishops*, “Apostolorum Successores,” Ottawa, CCCB, 2004, no. 28.)

⁷⁴ Published as: CONGREGATION FOR BISHOPS, “Draft Statement on Episcopal Conferences,” in *Origins*, 17 (1987-1988), pp. 731-737. This English translation was recognized as inadequate and the original Italian was later published in *Il Regno-documenti*, 23 (1988), pp. 390-396.

⁷⁵ “Draft Statement on Episcopal Conferences,” p. 735.

⁷⁶ *Ibid.*, p. 733.

This letter is at times contradictory on the topic of episcopal conferences being collegial bodies, as has been observed by other commentators.⁷⁷ For example, episcopal conferences are called “partial collegiality” and then at a later time “analogous[ly]” collegial.⁷⁸ The document points out that “collegiality” does not appear in the texts of Vatican II, but, as commentators have noticed, neither do the descriptions “affective” or “effective” which arose from commentators trying to harmonize the norms of *Lumen gentium* nos. 22-23 and the *Nota praevia*.⁷⁹ Regardless, the covering letter indicated that the text was not definitive and that feedback was to be received before the Bishop of Rome would prepare a final text. This process would take some time and the final text, *Apostolos suos*, was not promulgated until May 1998.

Apostolos suos specifically addresses the theological and juridical nature of episcopal conferences. The first note of this document indicates that this also applies to assemblies of hierarchs of several Churches *sui iuris*, in as much as they are comparable structures.⁸⁰ As a result, a level of common theological and juridical foundation exists between assemblies and conferences, giving a level of similarity, while not understating the differences, between these two models of episcopal collaboration.⁸¹ *Apostolos suos*

⁷⁷ See, for example, Joseph KOMONCHAK, “The Roman Working Paper,” in Thomas J. REESE (ed.), *Episcopal Conferences: Historical, Canonical and Theological Studies*, Washington, DC, Georgetown University Press, 1989, pp. 188-189.

⁷⁸ “Draft Statement on Episcopal Conferences,” p. 734.

⁷⁹ Ibid., pp. 731-732.

⁸⁰ JOHN PAUL II, Apostolic letter *Apostolos suos* (=ApS), 21 May 1998, note 1, in *AAS*, 90 (1998), pp. 641-658. The document always refers to conferences and not to assemblies. As a result, in discussing ApS references will be made to conferences, with the understanding that it also applies to assemblies “to the extent that these Assemblies are comparable to Episcopal Conferences” in virtue of ApS, note 1. The extent of this comparability is not defined in ApS.

⁸¹ This comparison was made by the drafters of the CCEO themselves; see *Nuntia*, 23 (1986), p. 103.

positions itself as the result of the study called for by the 1985 Synod.⁸² This document begins by examining the historical foundations for activities of the episcopal college, examining ecumenical councils, particular councils, and episcopal conferences.⁸³ Episcopal conferences are described both as a “means of contributing in a varied and fruitful way to the practice of collegiality” as well as a model “inspired” by “the collegial spirit”.⁸⁴ *Apostolos suos* is divided into four sections: i) introduction, ii) collegial union, iii) episcopal conferences, and iv) complementary norms. Given the parameters of this study, the second and third sections will be examined.

In the second section, “Collegial Union among Bishops,” *Apostolos suos* explains the notion of collegiality. Drawing on *Lumen gentium*, the document describes the college as a subject of supreme power in the Church, a power that is exercised collegially with the Bishop of Rome.⁸⁵ The document then goes on to say that: “equivalent collegial actions cannot be carried out at the level of individual particular Churches or gatherings of such Churches called together by their respective Bishops.”⁸⁶ Additionally, “at the level of particular Churches grouped together by geographic areas (by countries, regions, etc.), the Bishops in charge do not exercise pastoral care jointly with collegial acts equal to those of the College of Bishops.”⁸⁷ Thus, according to *Apostolos suos*, particular councils are not

⁸² *ApS*, no. 7.

⁸³ *Ibid.*, nn. 3-4.

⁸⁴ *Ibid.*, no. 5.

⁸⁵ *Ibid.*, no. 9. When the *Nota explicativa praevia* is cited it is interestingly cited as a section of *LG* and not as an appendix.

⁸⁶ *Ibid.*, no. 10.

⁸⁷ *Ibid.*

“equivalent collegial actions” nor are episcopal conferences “collegial acts equal” to those exercised by the entire college, that is, an ecumenical council or an action of the dispersed worldwide episcopate recognized as collegial or approved by the Bishop of Rome.⁸⁸

Apostolos suos indicates that joint exercises of pastoral functions by local bishops are “a concrete application of the collegial spirit (*affectus collegialis*)”.⁸⁹ This phrase introduces into official Catholic teaching the distinction between affective and effective collegiality, citing *Lumen gentium*, no. 23 which speaks of the “collegial spirit”. What John Paul II’s *Apostolos suos* does, therefore, is define the “collegial spirit” of *Lumen gentium*, no. 23 as *affectus collegialis*. While this is certainly within the teaching office assigned to the Bishop of Rome, it is not presented as a novel teaching in *Apostolos suos*. The section also explains that the “territorially based exercise of the episcopal ministry never takes on the collegial nature proper to the actions of the College of Bishops.”⁹⁰ In this phrase *Apostolos suos* again affirmed that there is a difference between the collegiality exercised by the groups of local churches and that of the universal college of bishops. However, the question is not answered whether this is a difference of degree or of nature.

In the third section, “Episcopal Conferences,” conferences are again called “a concrete application of the collegial spirit.”⁹¹ In this section it is indicated that: “for the exercise [of episcopal conferences] to be legitimate and binding on the individual Bishops, there is needed the intervention of the supreme authority of the Church which, through

⁸⁸ While this position is attacked, it is unclear whether any advocates of greater strength for episcopal conferences have actually advocated this position (or whether it is simply a “straw man”).

⁸⁹ *ApS*, no. 12.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, no. 14.

universal law or particular mandates, entrusts determined questions to the deliberation of the Episcopal Conference.”⁹² In this understanding the conference of bishops makes its decisions because it has been given its authority by the Bishop of Rome.

As a result, the following question is drawn: do conferences make these decisions by means of delegated power of the Bishop of Rome or do they make them on their own authority in a corporate action which has received his approval? That is, is the power of an episcopal conference power delegated power of the Bishop of Rome or is it ordinary power of the episcopal conference? The latter seems to be the reasonable conclusion, especially in virtue of clarifications regarding the juridical nature of the required *recognitio*.⁹³ As a result these local actions could be understood as bordering upon those actions within the strict definition of collegiality, which are actions of the college dispersed throughout the world when approved by the Bishop of Rome.

With respect to *Apostolos suos*, some commentators such as Legrand have concluded that the document indicates episcopal conferences are not exercises of collegiality.⁹⁴ An examination of the document, though, shows that this position seems to be an overly narrow reading. Arrieta writes that: “in fact, since the college has an intrinsically juridic nature, from a juridical perspective, it is not technically correct to speak of ‘effective collegiality’ and ‘affective collegiality’ to describe the relationships between

⁹² *ApS*, no. 20.

⁹³ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Explanatory Note on the Juridical Nature and Extension of the *Recognitio* of the Holy See, 26 April 2006, in *Communicationes* (=Comm.), 38 (2006), pp. 10-17, English translation in John RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, Ottawa, Faculty of Canon Law, Saint Paul University, 2012, pp. 283-290.

⁹⁴ See, for example, Bernard SESBOÛE, “La réception officielle des énoncés de Vatican II sur l’épiscopat dans les documents du Saint-Siège depuis le nouveau Code (1983-1999),” in Hervé LEGRAND and Christoph THEOBALD (eds.), *Le ministère des évêques au concile Vatican II et depuis: Hommage à Mgr Guy Herbulot*, Paris, Les Éditions du Cerf, 2001, p. 140.

the bishops.”⁹⁵ *Apostolos suos* also indicates that episcopal conferences are not “equivalent collegial actions” nor are episcopal conferences “collegial acts equal” to those exercised by the universal college. However, if one takes the position that these are differences of degree, and not of nature, the opinion that conferences of bishops are, in fact, exercises of collegiality is perfectly reasonable.⁹⁶

Lumen gentium indicates that there is a difference between the acts of the universal college and that of the particular groupings of local churches, described as in the “collegial spirit”. There must necessarily be some difference in these actions, given that one action involves an entirety of a group and the other action involves only a portion. By this difference alone, one applies to the entire Church and another to only a grouping of local churches. These localized actions lack the solemnity and applications of acts of the universal college and in that sense are less perfect or complete in terms of universal authority and applicability. Yet, this reality does not exclude a collegial reality in terms of groupings of local Churches.

1.1.5 Conclusions

Episcopal conferences and assemblies of hierarchs are both structures for groupings of the episcopate to gather together and make decisions. Conference decisions are made with the explicit approval of the Bishop of Rome in virtue of his role as Supreme Legislator. The legislative decisions they make in areas for which they are competent are binding upon

⁹⁵ ARRIETA, “Governance Structures within the Catholic Church,” p. 48.

⁹⁶ This concept of nature of degree and not of nature was proposed by Joseph Ratzinger; see RATZINGER, “Announcements and Prefatory Notes of Explanation,” p. 304. This conclusion could, again, be extended by degree to assemblies of hierarchs.

members in accord with their statutes. Further, the indication that they are not equivalently collegial to that of an action of the universal college should be obvious by their very nature. Since conferences and assemblies are only a portion of the episcopate, these groupings would not and do not have jurisdiction over the universal Church.

That fact does not change their authority as actions of a portion of the college showing solicitude for a portion of the Church. While some commentators assume *Apostolos suos* excludes this action, this is a narrow reading of the documents that is also inconsistent with a reading of *Lumen gentium*. The *Nota explicativa praevia* is an appendix and must be read within the context of the Dogmatic Constitution.

Based upon this understanding, it can reasonably be concluded that episcopal conferences and assemblies of hierarchs are exercises of collegiality. These structures follow the exhortation of *Lumen gentium*, which instructs that: “individual bishops, as far as the carrying out of their particular task allows, are bound to collaborate among themselves.”⁹⁷ The Second Vatican Council provided a clear preference for episcopal collaboration in venues that the Holy See has approved. This is a participation in the divinely instituted task of the college to govern the Church and to be concerned for its solicitude.⁹⁸ Conferences and assemblies both provide venues for this collaborative activity, in a fashion that is collegial, albeit of a different degree than that of the activity of the universal college, and in line with the understanding proposed by the Second Vatican Council. While not identical structures, John Paul II in *Apostolos suos* indicated that

⁹⁷ *LG*, no. 23.

⁹⁸ On the local bishop’s solicitude for the universal Church, see, for example, PIUS XII, Encyclical *Fidei donum*, 21 April 1957, no. 40, in *AAS*, 49 (1957), pp. 225-248.

assemblies and conferences are theologically and juridically similar, making them structures appropriate for comparative legal examination.⁹⁹

1.2 Historical Foundations for Collegiality in the Church

Lumen gentium mentions that individual bishops are to have solicitude for the universal Church. As a result, they are to enter into collaboration both with each other and with the Bishop of Rome.¹⁰⁰ This communal responsibility has its source in both Sacred Scripture as well as the early writings of the Church.¹⁰¹ *Lumen gentium* does not list any historical models for episcopal collegiality. These are, however, mentioned in *Christus Dominus*, which indicates two precedents: synods and councils, both provincial and plenary.¹⁰² The existence of these collegial bodies permitted bishops to “have pooled their resources and coordinated their plans to promote the common good and also the good of individual churches.”¹⁰³ Historical bodies of collegiality will now be examined: first local councils, then the synod of bishops of the patriarchal Church followed by the ecumenical council.

⁹⁹ *ApS*, note 1.

¹⁰⁰ *LG*, no. 23.

¹⁰¹ *LG* cites Mt 21:42, see also Acts 4:11; 1 Pt. 2:7; Ps. 117:22; it also makes reference to the letter of Pope Celestine to the Council of Ephesus, see CELESTINE, *Epistolae*, 18, nn. 1-2, in J.P. MIGNE (ed.) *Patrologiae cursus completus (series Latina)*, vol. 50, Paris, 1854, cols. 505-506.

¹⁰² *CD*, no. 36.

¹⁰³ *Ibid.*

1.2.1 Local Councils

The Second Vatican Council testified to the antiquity of the local ecclesiastical council:

From the earliest centuries of the church, bishops, while in authority over particular churches, have drawn inspiration from the bond of fraternal love and zeal for the mission to all people which was given to the apostles. [...] To this end synods, provincial councils and finally plenary councils were established in which the bishops drew up for the different churches a uniform procedure to be followed both in the teaching of the truths of the faith and in the regulation of ecclesiastical discipline.¹⁰⁴

Councils, in their simplest forms, were gatherings of local bishops. These gatherings were originally local, whether of a metropolitan province or of neighbouring dioceses or provinces within the Roman Empire. They are distinct from ecumenical councils as they were not gatherings of the universal episcopacy or representatives thereof, but instead those of a region.

As L'Hullier observes, in the early Church provincial councils were: "the normal vehicle for bishops to manifest their collegiality."¹⁰⁵ These periodic councils developed on the ecclesiastical province as the foundation for Church organization and governance, forming what Daley has termed a "horizontal authority" where bishops of a region jointly exercised pastoral governance. This "horizontal" form of governance was a complement to the "vertical authority" where primate sees enjoyed supradiocesan authority.¹⁰⁶ In this structure, as Daley explains: "...[p]rimate authority, genuine jurisdiction in well-defined

¹⁰⁴ CD, no. 36.

¹⁰⁵ Peter L'HULLIER, *The Church of the Ancient Councils: The Disciplinary Work of the First Four Ecumenical Councils*, Crestwood, NY, St Vladimir's Seminary Press, 1996, p. 44.

¹⁰⁶ Brian E. DALEY, "Primacy and Collegiality in the Fourth Century: A Note on Apostolic Canon 34," in *The Jurist*, 68 (2008), p. 20.

situations such as disputed ordinations or conflicts in the exercise of pastoral responsibility, is to be held in constant tension with communion.”¹⁰⁷ As a result, it was the tradition of neighbouring Churches to meet when difficult situations arose, such as heresies or disciplinary problems. Already in the apostolic era the Church at Jerusalem met to deal with the question of the incorporation of the Gentiles into the Church.¹⁰⁸

In the third-century, Tertulian praised local councils as a form of governance.¹⁰⁹ While Tertulian referred to councils (*concilium*), other Christian literature used the Greek term synod (*συνδοχος*).¹¹⁰ This is the case of early canonical literature, such as the *Apostolic Canons*.¹¹¹ Later, Eusebius testified that ecclesiastical councils occurred in the second century to deal with the rise of Montanism.¹¹² He also recounted Pope Victor calling

¹⁰⁷ DALEY, “Primacy and Collegiality in the Fourth Century: A Note on Apostolic Canon 34,” p. 20. This recognizes the supradiocesan authority of several sees, foremost that of the See of Rome, which dates to the earliest traditions of the Church. See, for example, the recognition of supradiocesan authority of certain primatial sees at Nicaea I, cc. 6-7, Constantinople, c. 3, Chalcedon, c. 28, and Trullo, c. 36; also, on early examples of the universal authority of the Bishop of Rome as a venue of appeal, see Sardica, cc. 3, 5 and Carthage, c. 106.

¹⁰⁸ See Acts 15:7-11.

¹⁰⁹ TERTULLIAN, *De ieiunio adversus psychicos*, §13, in *Corpus scriptorum Ecclesiasticorum Latinorum*, Vindobonae, 1866, vol. 20(1), col. 292.

¹¹⁰ The use of the term synod versus the term council has varied. At times the words are understood as distinct (such as in the *CIC/83* and *CCEO*), at other times they are considered interchangeable. The Second Vatican Council did use these terms interchangeably in how it referred to itself, see, for example, *LG*, no. 1 versus *CD*, no. 3. For more on the synonymic nature of synod and council, see i) Raoul NAZ, “Synod,” *Dictionnaire du droit-canonique*, vol. 7, Paris, Librairie Letouzey et Ané, 1965, col. 1134; ii) Klaus MÖRS DORF, *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici*, vol. 1, Paderborn, Schöningh, 1964, p. 386; iii) Winfried AYMANS, *Das Synodale Element der Kirchenverfassung*, Munich, Max Huber, 1970, pp. 7-8. Distinguishing synod and council as separate and distinct realities, as is the case in the *ius vigens* of the Catholic Church, is a very modern phenomenon; see Norman TANNER, *Conciles et synodes*, Paris, Les Éditions du Cerf, 2000, pp. 10-20.

¹¹¹ *Apostolic Canons*, c. 36.

¹¹² See EUSEBIUS, *Historia Ecclesiastica*, §19, English translation C.F. CRUISE (trans.), *Eusebius' Ecclesiastical History*, Grand Rapids, MI, Hendrickson Publishers, 2004.

councils in Asia, Pontus, Gaul, and Rome to deal with the quartodeciman controversy.¹¹³ These councils grew in frequency and their common occurrence is well documented by the mid-third century.¹¹⁴ After the legalization of Christianity provincial councils gave rise to the development of the ecumenical councils. However, the occurrence of ecumenical councils did not result in the extinction of the provincial council. In fact, several ecumenical councils promulgated the requirement of holding provincial councils frequently and at certain times.¹¹⁵ Local councils, too, legislated the requirement to hold these councils.¹¹⁶

Local councils issued theological statements and provided answers to disciplinary questions, especially concerning the reconciliation of heretics. They also issued legislation in the form of canons. Given the nature of these decisions, these councils exercised different types of power that today would be defined as executive, legislative, and judicial. Executive power was exercised when, for example, the council urged discipline through exhortations, legislative power when the council issued canons, and judicial power when individuals were found guilty of heresy. Provincial councils, which are councils of a metropolitan province, were the most frequently encountered form of these councils.¹¹⁷ While these were

¹¹³ Ibid., §23-24.

¹¹⁴ See, for example, FIRMILIAN, *Letter to Cyprian*, in MIGNE, vol. 4, col. 413.

¹¹⁵ See Nicaea I, c. 5, Chalcedon, c. 19, Nicaea II, c. 6; also Trullo, c. 6, Lateran IV, c. 6.

¹¹⁶ See, for example, Council of Antioch (341), c. 20, Council of Sardica (342), cc. 15-16, Council of Carthage (419), c. 90, Council of Braga (572), c. 18.

¹¹⁷ Mary Pierre Jean WILSON and Mary Judith O'BRIEN, "Provincial and Plenary Councils: Renewed Interest in an Ancient Institution," in *The Jurist*, 65 (2005), p. 249.

ecclesiastical gatherings generally under the direction of a senior prelate who was usually the metropolitan, many councils frequently involved secular authorities.¹¹⁸

Gallagher observed that in the early Church: "...[t]he normal way of going about solving problems, healing disunity, or promoting Christian reform was to call a council of the bishops of the region."¹¹⁹ Local councils began to fall into disuse already in the sixth century, however.¹²⁰ Legislation began to reflect this reality, at first in the West, where councils promulgated legislation no longer requiring the annual celebration of councils.¹²¹ In the Latin West, local councils completely fell into disuse by the fifteenth century.¹²² In the East, in the larger patriarchal Churches, they gave way to the exercise of authority by the synod of bishops of a patriarchal Church, and were also not used widely.¹²³ However, in smaller Churches, local gatherings of bishops continued to be held into the modern era.

¹¹⁸ For example, the Council of Antioch (341) attended by Emperor Constantius, see DALEY, "Primacy and Collegiality in the Fourth Century: A Note on Apostolic Canon 34," pp. 11-12.

¹¹⁹ Clarence GALLAGHER, "Collegiality in the East and the West in the First Millennium: A Study Based on the Canonical Collections," in *The Jurist*, 64 (2004), p. 65.

¹²⁰ Gregory the Great wrote to the bishops of Sicily as well as the King of the Gauls to urge the holding of councils, see GREGORY THE GREAT, *Lib. I, ep. I*, in Ludwig Moritz HARTMANN and Paul EWALD (eds.), *Monumenta germaniae historica, Gregorii I Papae registrum epistolarum*, vol. 1(2), Berlin, 1891, I, ii, §§1-2.

¹²¹ See Council of Constance (1414), Lateran V, sess. 10, and LEO X, *Regimini universalis*, 4 May 1515, no. 12.

¹²² See the list of councils provided in Charles-Joseph HEFELE, *Histoire des Conciles*, Paris, Librairie Letouzey et Ané, 1907, vol. 6:2, pp. 1553-1559 (years 1250-1400) and vol. 7:2, pp. 1363-1366 (first half of fifteenth century). There was a revival in the West during the nineteenth century, see WILSON and O'BRIEN, "Provincial and Plenary Councils: Renewed Interest in an Ancient Institution," p. 245.

¹²³ On the wide non-observance of the canonical regulations to hold annual or biannual provincial councils in the Christian East, see, for example, the medieval commentaries of Zonaras and Balsamon on the ecumenical councils in the *Syntagma XIV titulorum*, such as Vladimir BENESHEVICH (ed.), *Syntagma XIV titulorum sine scholiis secundum versionem Palaeo-Slovenicam*, St. Petersburg, 1906, pp. 126, 150-151, 213-214.

One example of a Church continuing the practice of holding local councils is that of the metropolia of Kyiv. The metropolia of Kyiv, established as a metropolitan see *ca.* 988, was a metropolitan province within the Patriarchate of Constantinople. This vast province was originally all of the lands of Rus', extending from the Black Sea north to Novgorod. Its bishops regularly met, including for the election of a metropolitan.¹²⁴ The territory of the metropolitan province was reduced with the erection of new metropolitan sees, pre-eminently Moscow in 1461.¹²⁵ The bishops of the Kyivan province continued to meet, especially to respond to periods of ecclesiastical crisis or, again, for the election of bishops.¹²⁶ The provincial council was the venue for the reestablishment of communion with the Bishop of Rome at the Union of Brest in 1596.¹²⁷

Ecclesiastical discipline was a frequent topic for local synods and all members of the Kyivan metropolitan province gathered for a major synod in 1720 at Zamosc where a major revision of ecclesiastical legislation occurred.¹²⁸ While the metropolitan province of

¹²⁴ Sophia SENYK, *A History of the Church in Ukraine: Volume I: To the End of the Thirteenth Century*, Orientalia Christiana Analecta, no. 243, Rome, Pontifical Oriental Institute, 1993, p. 98.

¹²⁵ Sophia SENYK, *A History of the Church in Ukraine: Volume II: 1300 to the Union of Brest*, Orientalia Christiana Analecta, no. 289, Rome, Pontifical Oriental Institute, 2011, pp. 107-126.

¹²⁶ Records of the Metropolitanate of Kyiv generally describe several facts regarding canonical elections including the names of those present at the election, the names of the candidates, and the elected individual. See, for example, the description of these elections in the 14th century in Ivan CHOMA, "Ridkysniy dokument pro vybir episcopiv na Rusi v XIV c.," in *Bohosloviya*, 39 (1975), pp. 199-203; for the 16th-17th centuries, see V. ZAIKYN, "Vyborne nachalo i sobornost v kiyevskoyi mytropoliyi v XVI i XVII vv.," in *Uchastije syvetskoho elementa v tserkovnom upravleni*, Warsaw, 1930, pp. 133-134.

¹²⁷ See Borys A. GUDZIAK, *Crisis and Reform: The Kyivan Metropolitanate, the Patriarchate of Constantinople, and the Genesis of the Union of Brest*, Cambridge, MA, Harvard University Press, 1998, pp. 210-215, 239-244.

¹²⁸ This synod received papal confirmation on 5 December 1722. See Charles CLERCQ, *Histoire des conciles d'après les documents originaux*, Tome XI : Conciles des orientaux Catholiques, Paris: Letouzey et Ané, 1949, pp. 159-181; also *Synodus provincialis Ruthenorum habita in civitate Zamosciae anno MDCCXX*, Rome, Typis Sacrae Congregationis de Propaganda Fide, 1858.

Kyiv was suppressed in 1838, the erected metropolitan province of Lviv (established 1807) continued to meet in councils, the most significant being the Synod of Lviv in 1891, again with the view of standardizing ecclesiastical discipline.¹²⁹ These gatherings all occurred in an ecclesiastical province that lacked a patriarchal structure. As the Ukrainian Catholic Church began to disperse in its diaspora, bishops outside Ukraine began to meet in local gatherings. One of these local gatherings, the Ukrainian Catholic Conference in Canada, began meeting in 1960. This body, still in existence, is a body for non-legislative collaboration for the Ukrainian Catholic bishops of Canada.¹³⁰ Its members continue to meet alongside the synodal structure which exists for the Ukrainian Catholic Church.¹³¹

1.2.2 The Synod of Bishops of a Patriarchal Church

The term patriarch is a Greek cognate, coming from *pater* (πατήρ, father) and *arkhe* (αρχή, rule). The term was used in many different contexts in early Christianity.¹³² One of these usages described senior bishops. In the early Church several preeminent sees emerged

¹²⁹ This synod never received papal confirmation. See *Chynosty i rishenya rus'koho provintsiyal'noho Sobora v Halychyni, otbyvshohosya vo L'vovi v' rotsi 1891*, Lviv, 1898.

¹³⁰ For more on the Ukrainian Catholic Conference of Canada, see MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, pp. 62-63.

¹³¹ Following the Second Vatican Council, the bishops of the Ukrainian Catholic Church met in quasi-synodal gatherings. However, the Holy See did not recognize these gatherings as having any juridical authority nor was the major archbishop understood to have any authority beyond his archeparchy of Lviv. This created a fifteen-year conflict between the Ukrainian Catholic hierarchy and the Holy See that was solved with a compromise in 1980 when John Paul II permitted synods to be called outside the patriarchal territory with prior papal approval. When the Church was re-established in Ukraine following the collapse of the USSR much of the canonical structure was regularized, as the major archepiscopal see was no longer canonically impeded. See MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, pp. 87-107.

¹³² For example, patriarch could refer to a head of a philosophical school, the Jewish ethnarch, the Old Testament patriarchs, a Church Father, or a senior hierarchy; see George NEDUNGATT, "Patriarchal Ministry of the Church in the Third Millennium," in *The Jurist*, 61 (2001), pp. 3-6.

having supra-diocesan authority.¹³³ These sees had special privileges based on their historical and/or political situation. Already at Nicaea I the supra-diocesan privileges of five sees were recognized in the law:

The ancient customs of Egypt, Libya and Pentapolis shall be maintained, according to which the bishop of Alexandria has authority over all these places, since a similar custom exists with reference to the bishop of Rome. Similarly in Antioch and the other provinces the prerogatives of the churches are to be preserved.

In general the following principle is evident: if anyone is made a bishop without the consent of the metropolitan, this great synod determines that such a one shall not be a bishop. If however two or three by reason of personal rivalry dissent from the common vote of all, provided it is reasonable and in accordance with the church's canon, the vote of the majority shall prevail.¹³⁴

In this canon the supradiocesan authority enjoyed by Alexandria was confirmed as existing for Egypt, Libya, and the Pentapolis. Mention is also made of similar privileges existing for Rome and Antioch. This canon establishes a balance whereby a head of a particular Church exercises his leadership in conjunction with the authority of other bishops of the region.

This same balance was attempted further east, and the fourth century *Apostolic Canons* instructed that:

The bishop of each national group (*ethnos*) should recognize the one who has first place among them, and consider him as head, and do nothing out of the ordinary without his agreement; but each one should do only those things which pertain to his own particular Church (*paroikia*) and the rural

¹³³ This is a difference between the See of Rome and the Eastern Patriarchates, as compared to the other Latin "patriarchates", the title to which "confers a prerogative of honour, but in the Latin Church it does not carry with it any power of governance, except in certain instances where an apostolic privilege or approved custom establishes otherwise" (*CIC/83*, c. 438).

¹³⁴ Nicaea I, c. 6. This canon emerged out of a conflict whereby one bishop (Meletius of Lycopolis) refused to submit to the authority of his patriarch in Alexandria.

regions that belong to do it. But neither should [i.e. the “one who has first place”] do anything without the agreement of all.¹³⁵

This canon emerged in Antioch *ca.* 380, just prior to the ecumenical council at Constantinople in 381. This council not only reiterated the supradiocesan rights of certain Churches, it also indicated that they were limited to their respective supradiocesan territories and were not able to interfere in other regions.¹³⁶ In this model a major see existed in a territory that was able to intervene in the local churches of a given region, but not in those of another region. This is the foundation of the modern patriarchates. The First Council of Constantinople further added that, like Rome, Constantinople had “privileges of honour”.¹³⁷ Constantinople became a venue of appeal for those who had disputes with their metropolitans.¹³⁸ These bishops with supradiocesan status had rights such as serving as a venue for appeal, confirming the decisions of metropolitans, and prerogatives regarding the appointment and/or ordination of bishops or metropolitans.

By the fourth century, some of these senior bishops with supra-diocesan authority began to be described with the term patriarch. At the Council of Chalcedon Leo was called ecumenical bishop and patriarch.¹³⁹ At this same council Constantinople was given supra-diocesan authority over Thrace, Pontus, and Asia.¹⁴⁰ This emerged from the simple fact of

¹³⁵ *Apostolic Canons*, c. 34, English translation from DALEY, “Primacy and Collegiality in the Fourth Century: A Note on Apostolic Canon 34,” p. 5.

¹³⁶ Constantinople I, c. 2.

¹³⁷ *Ibid.*, c. 3.

¹³⁸ Chalcedon, cc. 9, 17.

¹³⁹ Council of Chalcedon, Session III. Chalcedon also used the term “patriarch” in a broader ecclesiastical sense, for example the council’s second session which refers to the patriarch of each province.

¹⁴⁰ *Ibid.*, c. 28.

a multiplicity of local churches receiving direction from a historically or politically important see. In this system one local church gained precedence over the other metropolitan sees, and a principal local church became a patriarchal see.¹⁴¹ By the sixth century, Justinian provided civil legislation that dictated the order of precedence of the patriarchal sees.¹⁴² Later ecumenical councils confirmed these privileges of precedence.¹⁴³

The development of the synod of bishops is an extension around the powers and prerogatives of the episcopal college within an autocephalous Church and emerged as an extension of the local council.¹⁴⁴ However, instead of bishops meeting regularly at the level of the metropolitan province, the bishops began to meet at the level of the patriarchal Church. Already at the Council of Antioch (341) mention is made of appealing a decision of one's synod to the "greater synod".¹⁴⁵ These bishops met at regular intervals, just as provincial councils were intended to meet. Metropolitans had a special obligation to attend these meetings when convoked by the patriarch.¹⁴⁶

In some regions, however, synodal gatherings primarily took the form of the permanent synod (Συνδοδος Ενδημούσα), which emerged in the ninth century. The permanent synod is a structure in which the gathering of bishops is not of the entire

¹⁴¹ Adriano GARUTI, "Origine e natura dei patriarcati: Considerazioni storico-dogmatiche e canonistiche," in *Folia canonica*, 5 (2002), p. 251.

¹⁴² Justinian refers to the patriarchal sees of Rome and Constantinople (New Rome), see his *Novellae* in the *Corpus iuris civilis*: N. 3, 9, and 131.2.

¹⁴³ See Trullo, c. 36.

¹⁴⁴ Recalling that synod is a synonym for council.

¹⁴⁵ Antioch, c. 12.

¹⁴⁶ Constantinople IV, c. 17.

episcopate but instead of the patriarch and a smaller group of bishops.¹⁴⁷ The permanent synod assists the patriarch in his duties and made possible greater centralization of the Churches. It also allowed the patriarch to issue more frequent statements involving questions of discipline and dogma.¹⁴⁸ The permanent synod was also instrumental in limiting the collegial activity of bishops from several regions. As De Vries notes, this structure developed into an organ of central government for the whole Constantinopolitan Church.¹⁴⁹ The situation of the permanent synod providing for Church governance remains the case throughout much of Eastern Orthodoxy. This practice is not universal, however, and in the Eastern Catholic Churches broad gatherings of the hierarchy continue to be practiced.¹⁵⁰

1.2.3 Ecumenical Councils

Already in the fourth century councils were called involving a more universal representation from the episcopacy. While councils generally dealt with situations on the level of a metropolitan province, this changed in 314. Constantine, facing the Donatist

¹⁴⁷ Given the difficulty of travel in the ancient world, and the frequency of needing to hold these gatherings, this was an understandable development. For example, the Patriarchate of Constantinople extended from Novgorod south to the Middle East; requiring travel from the extremities would have been both time consuming and dangerous.

¹⁴⁸ Wilhem DE VRIES, “Le ‘Collegium Patriarchum’,” in *Concilium*, 8 (1965), p. 76. Examples of this occurring in Orthodoxy are the Synods of the Patriarch of Constantinople and that of the Patriarchate of Antioch, neither of which includes all the bishops of the Church.

¹⁴⁹ Ibid.

¹⁵⁰ See, for example, the meetings of the Ukrainian Catholic Church hierarchy described in MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, pp. 80-107. The CCEO does include the permanent synod but, while leaving some competency for the permanent synod, gives preference to the synod of bishops of a patriarchal Church which involves a wider (or total) membership of a Church’s episcopate, following the earlier model of Eastern Church governance. See CCEO c. 102, and section 1.3.3.2 of this work.

controversy, felt a universal approach was necessary and assembled forty-seven Latin bishops at the Synod of Arles. It was hoped their common judgement would provide a uniform response and solution to the damage caused by Donatism.¹⁵¹ Constantine repeated this action again in 325 when he assembled fifty-six bishops from the Christian East in Antioch to deal with Arianism.¹⁵² The success of these expanded councils gave rise to the idea of gathering not just the bishops of an ecclesiastical region, such as Asia Minor, Africa, or Southern Europe, but all the bishops of the *oikoumene*.¹⁵³ This action was only made possible by the legalization of Christianity. The gathering of the universal college resulted in the first ecumenical council in Nicaea in 325.¹⁵⁴ In the first millennium all of these councils occurred in the Christian East.

What are the defining characteristics of an ecumenical council? At times the Bishop of Rome convoked councils, such as Vatican I. At other times civil authorities convoked these councils, such as the Roman Emperor calling the first seven ecumenical councils. The size of ecumenical councils varied greatly: approximately twelve bishops participated in Constantinople IV, while 2,540 bishops were present at the first session of Vatican II. The length of councils also greatly varies and some councils lasted a week, such as Lateran II,

¹⁵¹ See EUSEBIUS, *Historia Ecclesiastica*, §§23-24.

¹⁵² See Luise ABRAMOWSKI, "Die Synode von Antiochien 324/25 und ihr Symbol," in *Zeitschrift für Kirchengeschichte*, 86 (1975), pp. 356-366.

¹⁵³ From ἡ οἰκουμένη γῆ, the inhabited world.

¹⁵⁴ Church history has never considered the Council in Jerusalem (Acts 15) as ecumenical, despite there being representation from the Apostles and thus the local Churches. Tanner argues this is simply the historical reality that three centuries passed between Jerusalem and Nicaea I, see TANNER, *Conciles et synodes*, pp. 21-22.

and others lasted several years, such as Lateran V.¹⁵⁵ While some western theologians argue it is acceptance by the Bishop of Rome which made an ecumenical council, others argue it was acceptance by the pentarchy.¹⁵⁶ As a result, the reckoning of the number of ecumenical councils varies among the Churches.¹⁵⁷

The ecumenical councils were exercises in applying civil governance procedures to the Church. In these councils bishops gave speeches or circulated documents that were debated by those present. The councils were responses to definite challenges faced by the Church, but were called for extremely diverse reasons.¹⁵⁸ There were councils called to settle theological questions, such as Nicaea I. These theological disputes were resolved

¹⁵⁵ Christopher BELLITTO, *The General Councils: A History of the Twenty-One Church Councils from Nicaea to Vatican II*, New York, Paulist Press, 2002, pp. 10-11.

¹⁵⁶ With respect to the latter, see for example: THEODORE THE STUDITE, Letter 72, in J.P. MIGNE (ed.), *Patrologiae cursus completes (series Graeca)*, Paris, 1844, vol. 99, col. 1306.

¹⁵⁷ The non-Catholic Eastern Churches generally list between two and nine ecumenical councils. Those that are non-Ephesian (i.e. Assyrian Church of the East) or non-Chalcedonian (i.e. Oriental Orthodox) would recognize two or three councils as ecumenical, respectively. Byzantines generally recognize seven, but the pro-Photian and pro-Palamite councils (9th and 14th centuries, respectively) are occasionally listed as ecumenical. The Latin-recognized Photian councils (i.e. “Constantinople IV” by the modern Roman reckoning) are not considered in the East as ecumenical and, for that matter, were considered spurious in the West itself until after Ivo of Chartres, see Clarence GALLAGHER, “Patriarch Photius and Pope Nicholas I and the Council of 879,” in *The Jurist*, 67 (2007), pp. 82-84. The West (and by extension the Catholic Church), however, lists twenty-one councils: beyond the eight previously mentioned: Lateran I-IV, Lyons I-II, Vienne, Constance, Basil-Ferrara-Florence-Rome, Lateran V, Trent, and Vatican I-II. This leads to a question as to what extent some of the Latin councils can be truly considered “ecumenical” as opposed to general councils of the Latin Church; on this topic see: briefly BELLITTO, p. 9, and more expansively Norman TANNER, “Reception of the First Seven Ecumenical Councils by Medieval and Later General Councils of the Western Church,” in Elizabeth A. LIVINGSTONE (ed.), *Studia patristica*, vol. 39, Leuven, Peeters, 1996, pp. 148-157. Recognizing this is a dissertation in canon law, the operative definition of an ecumenical council contained in the *ius vigens* is assumed as normative and debates regarding this definition are considered as beyond the scope of this paper. Therefore, while the debate regarding and limitations of this term is recognized, for the sake of clarity and following current canonical interpretation the later councils are considered as ecumenical following *CIC* cc. 327-331 and *CCEO* cc. 50-54.

¹⁵⁸ Numerous works exposit the motivations leading to each of the ecumenical councils; see, for example, Philip HUGHES, *The Church in Crisis*, London, Burns and Oates, 1961.

with the issuance of dogmatic statements and/or anathemas.¹⁵⁹ Other councils were political in motivation, such as Constantinople IV. Still other councils were primarily disciplinary in nature, such as the Lateran councils.

While theologically the decisions of the ecumenical councils flow from the collegial power of governance proper to the college of bishops (see *CCEO* c. 50, §1; *CIC/83* c. 337, §1), practically it was civil authority that made possible the implementation of conciliar decrees. As a result, the question of the limits of the power of civil authority greatly impacted reception of councils. Consequently, the acceptance of conciliar statements was always an issue, especially outside the territory of the Roman Empire. For example, major schisms resulted in the Christian East due to the rejection of Ephesus and Chalcedon, the former primarily in Persia, the latter primarily in North Africa and Syria. As has been demonstrated, the ecumenical councils are diverse and therefore challenging to describe in categorical terms. They do, however, have the common element of invoking the power of the college of bishops for universal Church governance. They provide the historical framework for the modern ecumenical councils that follow precise norms and procedures under the leadership of the Bishop of Rome for universal Church governance.

1.2.4 Conclusions

Christus Dominus, no. 36, establishes that historical models of collegiality, most especially councils and synods, provide the foundation for modern forms of the exercise of the power of governance by the episcopal college. Local councils, the first of these historical

¹⁵⁹ See, for example, Ralph PERSON, *The Mode of Theological Decision Making at the Early Ecumenical Councils: An Inquiry into the Function of Scripture and Tradition at the Councils of Nicaea and Ephesus*, Theologischen Dissertationen, no. 14, Basel, F. Reinhardt Kommissionsverlag, 1978.

bodies to emerge, provided a structure where challenges facing the Christian community were addressed by the common counsel of the hierarchs of a region. This model was taken up by the Roman emperors and used uniformly at ecumenical councils to address matters of great importance facing the entire Church. These councils involved representation of the college of bishops. These historical gatherings also led to the development of the synod of bishops of the patriarchal Church, whereby the patriarch jointly exercises the power of governance over a patriarchal Church in conjunction with other bishops.

While these models of collegiality are all diverse, they all commonly involve the exercise of the power of governance by bishops in a collegial fashion, whether as the entire college or as a grouping thereof. They thus provide the historical foundation for the forms of collegiality that exist in the *ius vigens*. It is within this historical context that assemblies of hierarchs and conferences of bishops emerged and find their place in the collegial bodies in the current canonical system of the Church.

1.3 Collegial Structures in the *ius vigens*

For the purpose of this discussion, collegial structures will be understood as those canonical structures that permit the common activity of members of the episcopacy. These groups are distinct bodies that are based on the canonical structures of ecclesiastical provinces and ecclesiastical regions.¹⁶⁰ An ecclesiastical province is an historic structure in the Church, present throughout Church history and based on the concept of neighbouring

¹⁶⁰ On the historical and juridical realities of these structures, see, for example: Juan Ignacio ARRIETA, “Organismi episcopali a livello continentale, nazionale, regionale e provincial,” in *Ius Ecclesiae*, 10 (1998), pp. 531-557, José Luis GUTIÉRREZ, “I raggruppamenti di Chiese particolari,” in *Monitor ecclesiasticus*, 116 (1991), pp. 437-455, and Marcello COSTALUNGA, “L’organizzazione in provincie e regioni ecclesiastiche,” in *Ius canonicum*, 44 (1982), pp. 749-762.

dioceses organized under the leadership of a metropolitan see, generally the major city of a region. The ecclesiastical province is a basic structure of canon law and in the Latin Church the Holy See is responsible for the erection, suppression, and alteration of ecclesiastical provinces.¹⁶¹ For Latin dioceses the Congregation for Bishops and, for missionary territories, the Congregation for the Evangelization of Peoples exercise this function.¹⁶² For Eastern patriarchal and major archiepiscopal Churches *sui iuris*, when the ecclesiastical province is within the patriarchal territory the decision to modify ecclesiastical provinces is made by the patriarch or major archbishop with the consent of the synod of bishops, a decision which requires consulting the Apostolic See of Rome.¹⁶³ This would, reasonably, occur through the Congregation for the Eastern Churches. In all other situations the decision to modify ecclesiastical provinces is the exclusive competence of the Apostolic See of Rome.¹⁶⁴

CIC canon 431, §2 stipulates: “As a rule, exempt dioceses are no longer to exist. Therefore, individual dioceses and other particular churches within the territory of some ecclesiastical province must be joined to this ecclesiastical province.” This means that there

¹⁶¹ *CIC/83*, c. 431, §3.

¹⁶² JOHN PAUL II, Apostolic constitution on the Roman Curia *Pastor bonus*, 28 June 1988, in *AAS*, 80 (1988), pp. 841-930, arts. 76, 89 (=PB). All citations from the *CCEO* are taken from *Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP.II promulgatus, fontium annotatione auctus*, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, Washington, Canon Law Society of America, 2001. All references from the Eastern Code are styled “*CCEO*, c.” for canon and “*CCEO*, cc.” for canons, followed by the canon numbers. All citations from *Pastor bonus* are taken from the English translation in *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, Washington, Canon Law Society of America, 2001, pp. 771-843. There are some exceptions to this rule in certain territories where the Eastern Churches are predominantly involved, when the Secretariat of State – Section for Relations with States has competency; see SECRETARIAT OF STATE, *Rescriptum ex audientia*, 4 January 2006, in *AAS*, 98 (2006), pp. 65-66, English translation in RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, pp. 32-33.

¹⁶³ *CCEO*, c. 85, §1.

¹⁶⁴ *CCEO*, c. 177, §2.

are to be no new dioceses that are immediately subject to the Holy See, and those that already existed outside the structure of a metropolitan province were to be integrated within this structure.¹⁶⁵ This norm finds its basis in the decree *Christus Dominus* that decreed the need to join exempt dioceses within metropolitan provinces.¹⁶⁶ An ecclesiastical province is a juridical person by law.¹⁶⁷

The ecclesiastical region is a canonical structure that originated at the Second Vatican Council. *Christus Dominus*, no. 40, states: “Wherever it seems advantageous, ecclesiastical provinces should be organized into ecclesiastical regions. This organization is to be determined by law.”¹⁶⁸ Thus, while the ecclesiastical province is a mandatory structure, the ecclesiastical region is not. In the Latin Code, these regions are groupings of ecclesiastical provinces that exist on a regional, national, or international level. Regions are constituted by means of erection by the Holy See and are not necessarily juridical persons.¹⁶⁹

The structure of ecclesiastical regions underwent several changes during the drafting of the 1983 Latin Code. The region was in fact originally mandatory and under the

¹⁶⁵ In Canada there every Latin diocese is part of an ecclesiastical province which includes a metropolitan see. All particular churches immediately subject to the Holy See can be found in the *Annuario Pontificio* and are also listed in RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, pp. 303-304.

¹⁶⁶ *CD*, no. 40.

¹⁶⁷ *CIC/83*, c. 432, §2; *CCEO*, c. 921, §2.

¹⁶⁸ *CD*, no. 40.

¹⁶⁹ *CIC/83*, c. 433. The dicastery competent for the erection, alteration, or suppression of these regions is the same as for ecclesiastical provinces, that is, the Congregation for Bishops, the Congregation for the Evangelization of Peoples, the Congregation for Eastern Churches, or the Secretariat of State –Section for Relations with States, as the case demands. See *PB*, arts. 47, 76, 89 and SECRETARIAT OF STATE, *Rescriptum ex audientia*, pp. 65-66.

jurisdiction of the conference of bishops, instead of the current structure where the Holy See erects a region when it seems necessary and beneficial to do so.¹⁷⁰ Ecclesiastical regions as a canonical category do not exist in the Eastern Code. In the Eastern law, the only structure above the ecclesiastical province is the Church *sui iuris*. Churches *sui iuris* are also juridical persons by law and there is no provision for regions based exclusively on geographic situation as exist in the Latin Code, instead relying on the principle of common membership within a Church *sui iuris*.¹⁷¹

The structures of ecclesiastical provinces, regions, and their groupings have yielded collegial bodies within the Church. The following exist in both the Eastern and Latin codes: ecumenical councils and extra-conciliar collegial activity. Restricted to the Latin Code are particular councils (plenary and provincial) and episcopal conferences, while restricted to the Eastern Code are the synod of bishops, the council of hierarchs, and assemblies of hierarchs of several Churches *sui iuris*. Each of these structures will now be individually examined. Since the conference and assembly will be dealt with at length in chapters two and three, this section only provides a cursory overview of the canons in order to provide an introduction to the topic within the context of the other collegial bodies present in Church law.

¹⁷⁰ See *Comm.*, 12 (1980), pp. 244-249, 253; also Juan Ignacio ARRIETA, "Provincia y región eclesiásticas," in Michel THÉRIAULT and Jean THORN (eds.), *Le nouveau Code de droit canonique: acts du I^{er} Congrès international de droit canonique, Ottawa, 19-24 août, 1984*, Ottawa, Saint Paul University, 1986, pp. 607-625.

¹⁷¹ *CCEO*, c. 921, §2.

1.3.1 Collegial Structures Common to the *CIC* and *CCEO*

There are two structures of episcopal collegiality common to both the Latin and Eastern codes: ecumenical councils and the broadly defined “other forms” of collegial action. Both these forms of collegiality involve universal Church governance. The canons on both of these forms are nearly identical in the Latin and Eastern codes. Considering that these canons describe governance of the universal Church, it would be concerning if these canons were not common to both codes of canon law. Each will be examined so as to understand the nature of these collegial bodies.

1.3.1.1 Ecumenical Councils¹⁷²

The ecumenical council is the collegial structure *par excellence*. While norms for the ecumenical council are contained in both codes, there is no explicit definition of the ecumenical council in the *ius vigens*. The ecumenical council is a gathering of the college of bishops in its entirety in a single place, as compared to extra-conciliar forms of collegiality that involve the episcopal college acting as a universal college while dispersed in several locations.¹⁷³ Arrieta defines the purpose of an ecumenical council to be the: “promotion and guarantee of unity in the profession of faith, in the sacraments and in governance.”¹⁷⁴ The canons on ecumenical councils in the Latin and Eastern codes are substantially identical.

¹⁷² *CCEO*, cc. 50, §1, 52-54, §1; *CIC*/83, cc. 337, §1, 338-341, §1.

¹⁷³ See 1.3.1.2

¹⁷⁴ ARRIETA, *Governance Structures within the Catholic Church*, p. 119.

The college of bishops ordinarily exercises its universal authority by means of the ecumenical council. While the power of an ecumenical council was previously called “supreme” in the 1917 Latin Code (c. 228, §1), it is now described as power exercised “in a solemn manner,” a phrase which repeats the terminology of *Lumen gentium*, no. 22.¹⁷⁵ This power is proper to the council and is not a delegated power from the Bishop of Rome. The nature of this power is legislative, executive, and judicial.¹⁷⁶ The teaching authority enjoyed by the college of bishops gathered in an ecumenical council is infallible.¹⁷⁷ This teaching authority is known as the Church’s “solemn magisterium” as opposed to the ongoing, ordinary magisterium.¹⁷⁸

In the current law of the Church, it is for the Bishop of Rome alone to call an ecumenical council. It is also his exclusive right personally, or through a delegate, to transfer, suspend, or dissolve a council.¹⁷⁹ He alone approves any decrees produced by a council as well as determines its agenda in both content and order.¹⁸⁰ This right of the Bishop of Rome was described as a “prerogative” by *Lumen gentium*.¹⁸¹ This is an issue of positive ecclesiastical law as the only essential condition for an ecumenical council to be

¹⁷⁵ *CCEO*, c. 50, §1; *CIC/83*, c. 337, §1. The power exercised by the College of Bishops over the Church is still considered to be supreme as *CIC/83*, c. 336 and *CCEO*, c. 49 both indicate that the College of Bishops possesses “supreme and full power over the entire Church.”

¹⁷⁶ ARRIETA, *Governance Structures within the Catholic Church*, p. 118.

¹⁷⁷ *CCEO*, c. 597, §2; *CIC/83*, c. 749, §2.

¹⁷⁸ See *CCEO*, c. 598 §1; *CIC/83*, c. 750 §1.

¹⁷⁹ *CCEO*, c. 51, §1; *CIC/83*, c. 338, §1.

¹⁸⁰ *CCEO*, c. 51, §§1-2; *CIC/83*, c. 338, §§1-2. A modern example of the Bishop of Rome setting the agenda of a council is the exclusion of clerical celibacy and birth control from the agenda of Vatican II by decision of Paul VI.

¹⁸¹ *LG*, no. 22.

binding is its acceptance by the successor of Peter.¹⁸² This requirement of the Bishop of Rome to at least accept a council for validity is considered by commentators to be of divine institution.¹⁸³

The approval of conciliar decrees involves the Bishop of Rome taking the council's collegially approved text and then confirming and promulgating the text under his authority.¹⁸⁴ This approval is required for validity.¹⁸⁵ The action is a collegial action as the role of the college in preparing the text makes it an action of the college of bishops and not of the Bishop of Rome alone.¹⁸⁶ The other bishops of the world can propose additional questions to be considered, but these are subject to the approval of the Bishop of Rome.¹⁸⁷ This follows the norms from the *Nota explicativa praevia*, which requires the consent of the *caput* for the college to perform a collegial action.¹⁸⁸

Membership in an ecumenical council is restricted to bishops. These bishops have both the right and duty to attend a council with deliberative vote. This vote is deliberative

¹⁸² See *LG*, no. 22.

¹⁸³ See Eduardo MOLANO, "The College of Bishops," in Angel MARZOA, Jorge MIRAS, Rafael RODRÍGUEZ-OCAÑA (eds.) and Ernest CAPARROS (gen. ed. of English translation), *Exegetical Commentary on the Code of Canon Law (=ExComm)*, vol. 2(1), p. 614.

¹⁸⁴ *CCEO*, c. 54, §1; *CIC/83*, c. 341, §1. At the Second Vatican Council Paul VI confirmed using the following formula: "What is expressed in this constitution (decree, declaration) in whole and in part, has been approved by the fathers. And we, by virtue of the apostolic authority granted us by Christ, approve, decide, and decree it, together with the venerable fathers in the Holy Spirit, and inasmuch as it has been so ordered by the council, we command that it be promulgated for the glory of God." (English translation in Knut WALF, "The Hierarchical Constitution of the Church [cc. 330-572]: Section I: The Supreme Authority of the Church [cc. 330-367]," trans. Ronny JENKINS, in John P. BEAL, James A. CORIDEN, and Thomas J. GREEN (eds.), *New Commentary on the Code of Canon Law (=CLSA Comm2)*, New York, Paulist Press, 2000, p. 453.)

¹⁸⁵ MOLANO, "The College of Bishops," p. 616.

¹⁸⁶ ARRIETA, *Governance Structures within the Catholic Church*, p. 122.

¹⁸⁷ *CCEO*, c. 51, §2; *CIC/83*, c. 338, §2.

¹⁸⁸ *Nota explicativa praevia*, no. 4.

so that the bishops may fully participate in the pastoral care of the universal Church. All bishops have this right of participation, not just bishops with residential sees.¹⁸⁹ There is no longer any possibility for a bishop to send a proxy, as was the case in the previous law.¹⁹⁰ Further, there are no presbyters who have the right to attend an ecumenical council, as was the case in both the 1917 Latin Code and *Cleri sanctitati*.¹⁹¹ This is based on the Second Vatican Council's decree *Christus Dominus* that established the right of attendance as an extension of episcopal consecration and insertion into the college of bishops.¹⁹² This was a change from the previous discipline, as titular bishops could have been excluded from an ecumenical council in cases where this action was done expressly.¹⁹³ In the current law it is episcopal consecration, not ecclesiastical office, which determines one's presence at an ecumenical council.

Other individuals can be invited to participate in a council and these individuals are to be invited by the Church's supreme authority. This same authority also has the function of determining their role in the council.¹⁹⁴ This is a change from the previous discipline which specified who was to be invited and what vote (i.e. deliberative or consultative) they were to receive.¹⁹⁵ While hierarchical communion is a requirement for the college of bishops (and by extension participation in an ecumenical council), and despite canon 339,

¹⁸⁹ *CCEO*, c. 52, §1; *CIC/83*, c. 339, §1.

¹⁹⁰ *CS*, c. 169; *CIC/17*, c. 224.

¹⁹¹ *CS*, c. 168; *CIC/17*, c. 223.

¹⁹² *CD*, no. 4.

¹⁹³ *CS*, c. 168, §2; *CIC/17*, c. 223, §2.

¹⁹⁴ *CCEO*, c. 52, §2; *CIC/83*, c. 339, §2.

¹⁹⁵ *CS*, c. 168; *CIC/17*, c. 223.

§2 referring only to “non-bishops”, those bishops not in full communion with the Roman See are free to be called as observers.¹⁹⁶

Given the Bishop of Rome’s special role in an ecumenical council, a vacancy in the See of Rome requires an interruption of the council. This interruption occurs by law. The new Bishop of Rome then has the responsibility to continue or dissolve the council, something which a council could not do itself without the head of the college, as that action in itself would be collegial in nature.¹⁹⁷ This is an expansion of the norm in the 1917 Latin Code that only required cessation of a council when the See became vacant due to death. As a result, in the old law there was previously no norm requiring interruption of a council if the Bishop of Rome resigned his office.¹⁹⁸ Theologically the council cannot proceed *sede vacante* because, as the *Nota praevia* indicates, the college of bishops requires its head in order to function.¹⁹⁹ The interruption in the council continues until the election of a new Bishop of Rome. This also reflects the canonical principle of *sede vacante, nihil innovetur*.

Decrees of an ecumenical council bind under three conditions: i) both the Bishop of Rome and the bishops present at the council approve them, ii) they are subsequently confirmed by the Holy Father, and iii) they are finally promulgated under his authority.²⁰⁰ It is only approval by the Bishop of Rome that is required by divine law. History has

¹⁹⁶ *Comm.*, 9 (1977), p. 88

¹⁹⁷ *CCEO*, c. 53; *CIC/83*, c. 340. For more on the Bishop of Rome’s role in an ecumenical council, see Ludger MÜLLER, “Papst und Ökumenisches Konzil,” in *Archiv für katholisches Kirchenrecht*, 167 (1998), pp. 22-48.

¹⁹⁸ *CIC/17*, c. 229.

¹⁹⁹ *Nota explicativa praevia*, no. 4.

²⁰⁰ *CCEO*, c. 54, §1; *CIC/83*, c. 341, §1.

examples of ecumenical councils that have varying levels of participation by the Bishop of Rome.²⁰¹ One question is whether there is a distinction between approval and confirmation. In fact, the formula adopted at the Second Vatican Council for approval of texts states simply, “we approve, prescribe, and establish it and command that what has thus been decided in the synod be promulgated for the glory of God.”²⁰² Some commentators have established that this notion of confirmation is new, since the Second Vatican Council, and it involves verification that the acts have occurred licitly. In this understanding confirmation is similar in its juridical nature to the *recognitio*.²⁰³ After promulgation by the Bishop of Rome the decisions become an act of the college and the council. These norms are extended to other collegial acts that are not in the context of an ecumenical council.

1.3.1.2 Other Collegial Acts²⁰⁴

Both the Latin and Eastern codes contain new norms on other universal forms of the exercise of collegial power by the episcopate. This is the form of universal Church governance that occurs while the college is dispersed throughout the world.²⁰⁵ *Lumen gentium* states: “This same collegial power can be exercised by the bishops throughout the world in conjunction with the pope, provided that the head of the college calls them to collegial action, or at least approves of; or willingly accepts the united action of the

²⁰¹ For example, the ancient councils were all convened not by the Bishop of Rome but by the Roman Emperor.

²⁰² *Comm.*, 9 (1977), p. 90. English translation from MOLANO, “The College of Bishops,” p. 624.

²⁰³ MOLANO, “The College of Bishops,” p. 624.

²⁰⁴ *CCEO*, cc. 50, §§2,3, 54, §2; *CIC/83*, cc. 337, §§2, 3, 341, §2.

²⁰⁵ *CCEO*, c. 50, §2; *CIC/83*, c. 337, §2.

dispersed bishops in such a way that the result is a truly collegial act.”²⁰⁶ The Bishop of Rome alone is competent to determine how these actions occur, according to the needs of the Church. It is his right to promote these forms of activity.²⁰⁷ The Bishop of Rome also is required to confirm and promulgate these decrees produced, just as he is required to do so for an ecumenical council.²⁰⁸

The inclusion of these norms was controversial given their extraordinarily rare frequency of occurrence. Some drafters of the Latin Code felt the law should only discuss that which frequently occurs, not that which rarely occurs.²⁰⁹ In reality, as Molano observes, the norms presuppose: “minimal necessary requirements and basic procedural regulations for a collegial action that has been rarely experienced and whose factual circumstances are still hard to identify.”²¹⁰

It is difficult to find strict examples of this collegial action in Church history. There was a consultation of the college of bishops by Pius IX before he promulgated his apostolic constitution on the Immaculate Conception *Ineffabilis Deus* on 8 December 1854. In this case Pius IX consulted 603 bishops, with 546 responding in support of the doctrine and 57 responding in the negative, either due to opposition, doubts about the timing, or preferring an indirect definition.²¹¹ A similar consultation occurred before Pius XII’s apostolic

²⁰⁶ *LG*, no. 22. See also *CD*, no. 4.

²⁰⁷ *CCEO*, c. 50, §3; *CIC/83*, c. 337, §3.

²⁰⁸ *CCEO*, c. 54, §2; *CIC/83*, c. 341, §2.

²⁰⁹ MOLANO, “The College of Bishops,” p. 613.

²¹⁰ MOLANO, “The College of Bishops,” p. 625.

²¹¹ Juan Luis BASTERO, “La Inmaculada Concepción en los siglos XIX y XX,” in *Anuario de historia de la Iglesia*, 13 (2004), p. 81.

constitution on the Assumption *Munificentissimus Deus* (1 November 1950).²¹² However, neither of these actions was an act of the episcopal college and both documents were acts of the Bishop of Rome. Thus, this largely undeveloped topic must await concrete application in order to understand better its norms and nature.

1.3.1.3 Conclusions

The single *Corpus iuris canonici* has two collegial structures common to both the 1983 Latin Code and the 1990 Eastern Code. The first of these, ecumenical councils, is rooted in Christian history as the form of episcopal collegiality *par excellence*. The “other forms” of collegial activity as approved by the Bishop of Rome are a second common structure that, while not clearly defined, is nonetheless present in the *ius vigens*. These structures are both actions of the entire episcopal college whereby it exercises its power of governance over the universal Church and thus logically they are present in both the Latin and Eastern codes of canon law.

1.3.2 Collegial Structures Restricted to the *CIC*

There are two collegial structures for the episcopate that are absent from the Eastern Code and restricted to the Latin Code: Particular Councils and Conferences of Bishops.²¹³ These institutions involve not the governance of the universal Church, nor even of the entire

²¹² See William J. DOHENY and Joseph P. KELLY (eds.), *Papal Documents on Mary*, Milwaukee, Bruce Publishing Co., 1954, pp. 215-219.

²¹³ The patriarchal assembly (*CCEO* cc. 140-150) is not an equivalent structure to the particular council. While particular councils enjoy legislative power, the patriarchal assembly is a form of “consultative collaboration” of which the patriarch and his synod can make use. See JOHN PAUL II, Post-synodal apostolic exhortation *Pastores gregis*, 16 October 2003, §61, in *AAS*, 96 (2004), pp. 825-924.

Latin Church, but of ecclesiastical groupings (whether provinces or regions). Each will now be examined.

1.3.2.1 Particular Councils (Plenary and Provincial)²¹⁴

Particular councils in the 1983 Latin Code are of two forms: plenary and provincial.²¹⁵ A provincial council is a gathering of “the different particular churches of the same ecclesiastical province.”²¹⁶ A plenary council, on the other hand, is a council called for “all of the particular churches of the same conferences of bishops.”²¹⁷ The Second Vatican Council specifically called for the revitalization of these historic forms of collegiality.²¹⁸ These gatherings emerged in the early Church to assist bishops “in the fulfilment of their mission, means, structures and ways of communicating which express their communion and solicitude for all the Churches, and prolong the very life of the College of the Apostles: pastoral cooperation, consultation, mutual assistance, etc.”²¹⁹ Councils combine two basic characteristics: common deliberation leading to *communis consensio* and *communis comminatio per decreta*.²²⁰

²¹⁴ *CIC/83*, cc. 439-446.

²¹⁵ Plenary councils were also called national councils, especially in the nineteenth century. However, language was consistent in the *CIC/17* and the *CIC/83* in calling these gatherings plenary councils. See René METZ, “Concile national, concile plénier, concile régional,” in Giovanni BARBERINI (ed.), *Raccolta di scritti in onore di Pio Fedele*, vol. 1, Assisi, Tipografia Porziuncola, 1984, pp. 533-534.

²¹⁶ *CIC/83*, c. 440, §1.

²¹⁷ *CIC/83*, c. 439, §1.

²¹⁸ *CD*, no. 36.

²¹⁹ *ApS*, no. 3.

²²⁰ Eloy TEJERO, “Particular Councils,” in *ExComm*, vol. 2(1), p. 963.

In the Latin Code, a particular church is defined as: “first of all dioceses, to which, unless it is otherwise evident, are likened a territorial prelature and territorial abbacy, an apostolic vicariate and an apostolic prefecture, and an apostolic administration erected in a stable manner.”²²¹ A provincial council is a gathering of the particular churches within an ecclesiastical province. This description of a provincial council has its foundation within the 1917 Latin Code, which required the celebration of a provincial council at least once every twenty years.²²² In the current law there is no mandated requirement for a council’s occurrence within defined intervals. The norm in the 1917 Latin Code was the final version of a long-tradition of (unobserved) mandated provincial councils.²²³ Instead, the current law requires that a provincial council be called “whenever it seems opportune in the judgement of the majority of the diocesan bishops of the province.”²²⁴ The only exception to this rule would be when an ecclesiastical province corresponds with the territory of a political nation, in which case the norms for a plenary council are followed.²²⁵

²²¹ *CIC/83*, c. 368. This is not necessarily the same definition of particular church contained in the *CCEO*. In *CCEO* c. 177, §1 an Eparchy is defined as a particular church. However, in c. 759, §1 particular church refers to an *Ecclesia sui iuris*, following the use of particular church in *OE*. This was a debated issue during the drafting of the “Guidelines for the Revision of the Code of Oriental Canon Law,” where it was decided that the term *ecclesia sui iuris* would be adopted *pro bono pacis*. See Sunny KOKKARAVAYIL, *The Guidelines for the Revision of the Eastern Code: Their Impact on CCEO*, Kanonika, no. 15, Rome, Pontifical Oriental Institute, 2009, pp. 300-362.

²²² *CIC/17*, c. 283.

²²³ On the requirement for provincial councils, see, for example, Nicaea I, c. 5, Chalcedon, c. 19, Nicaea II, c. 6, Lateran IV, *Constitutiones*, §6, Council of Basel, *Sessio xv*, 26 November 1433, Council of Trent, “Decree on Reform,” *Sessio xxiv*, 11 November 1563, c. 2, PIUS IX, *Cum nuper*, 20 January 1858.

²²⁴ *CIC/83*, c. 440, §1. There is debate amongst canonists as to whether an absolute majority (following c. 119, §2) or a two-thirds majority (c. 455, §2) is required for the decision to convoke a plenary council, see TEJERO, “Particular Councils,” p. 974.

²²⁵ *CIC/83*, c. 439, §2.

A provincial council is called by the metropolitan with the consent of an absolute majority of his suffragan bishops.²²⁶ Tejero argues that the metropolitan does not require the consent of his suffragan bishops as their juridical superior (in which case he does not vote, following the norms of c. 127, §1), but that instead the metropolitan is part of a group of bishops in the province and, as a result, the metropolitan votes along with the other bishops (following the norms of c. 119, §2).²²⁷ The metropolitan further selects the place of celebration of this council, determines its agenda, sets its opening and duration, transfers, extends, or dissolves it. Further, the metropolitan is the one who presides over a provincial council, unless he is legitimately impeded.²²⁸ For these reasons, a provincial council cannot be called during a vacancy in the metropolitan see.²²⁹

As mentioned, a plenary council is a council called for “all of the particular churches of the same conferences of bishops.”²³⁰ This is a change from the 1917 Latin Code that identified a plenary council as any council involving the leadership of particular churches from multiple ecclesiastical provinces (which may not necessarily correspond to the same territory as the current canon).²³¹ In the Latin Code plenary councils are called in the judgement of the episcopal conference, which should thus have its own norms for making this decision as this is not defined by the canon. Further, the Holy See must confirm a

²²⁶ *CIC/83*, cc. 119, §2, 442, §1.

²²⁷ TEJERO, “Particular Councils,” p. 976.

²²⁸ *CIC/83*, c. 442.

²²⁹ *CIC/83*, c. 440, §2.

²³⁰ *CIC/83*, c. 439, §1.

²³¹ *CIC/17*, c. 281.

decision to call a council.²³² Before confirming this decision the Holy See requires that it be informed both of the motives for the council and the subjects to be discussed.²³³ However, it is the episcopal conference that convokes the council, selects its place of celebration, selects the president of the council from amongst the diocesan bishops (the appointment of which requires approval from the Apostolic See), determines its agenda, sets its opening and duration, transfers, extends, and dissolves it.²³⁴

The membership of these councils is defined within canon law. For both plenary and provincial councils, the following individuals have deliberative vote: diocesan bishops, coadjutor and auxiliary bishops, other titular bishops performing a function in the territory, and other titular bishops, even retired ones, if they are called to the council.²³⁵ All other individuals who are invited only have consultative votes.²³⁶ Following this membership, the council is itself an act of the bishops in attendance. The number of optional invitees was intended by the canon drafters to be limited in number, so as to avoid “certain pressure groups” using the council as an instrument for their own agenda.²³⁷ This is why canon 443,

²³² *CIC/83*, c. 439, §1.

²³³ CONGREGATION FOR BISHOPS, Pastoral directory on the ministry of bishops *Apostolorum successores*, §25.

²³⁴ *CIC/83*, c. 441.

²³⁵ *CIC/83*, c. 443, §§1-2.

²³⁶ *CIC/83*, c. 443, §§3-5. This includes: vicars general, episcopal vicars, major superiors of the institutes and societies which have a seat in the territory, rectors of ecclesiastical and Catholic universities and deans of faculties of theology and canon law in the territory, rectors of major seminaries as elected by rectors of seminaries located in the territory, and presbyters and members of the Christian faithful who are elected. Further, for provincial councils cathedral chapters, the presbyteral council, and the pastoral council are to each send a pair of representatives.

²³⁷ *Comm.*, 14 (1982), p. 191.

§4 was inserted into the Latin Code, requiring the number of presbyters and other members of the Christian faithful to be less than half of the attendees.²³⁸

The council itself possesses the power of governance, especially legislative power.²³⁹ These bodies possess the legislative power to promulgate decrees that bind subjects within its territory.²⁴⁰ While a *recognitio* is required for all particular councils, this is only an approval and it does not change the reality of the act being an act of the council.²⁴¹ The *recognitio* ensures that any laws to be promulgated are in conformity with both universal law and the Catholic faith.²⁴² Granting this *recognitio* falls under the competency of the Congregation for Bishops or the Congregation for the Evangelization of Peoples.²⁴³

1.3.2.2 Episcopal Conferences²⁴⁴

Conferences of bishops emerged from gatherings of bishops in mid-nineteenth century Europe.²⁴⁵ These gatherings, while lacking canonical structures at the time,

²³⁸ *Comm.*, 14 (1982), pp. 191, 194.

²³⁹ *CIC/83*, c. 445.

²⁴⁰ *CIC/83*, c. 446.

²⁴¹ *CIC/83*, c. 446. On the nature of the *recognitio*, see Julio MANZANARES, “Papal Reservation and *Recognitio*: Considerations and Proposals,” in *The Jurist*, 52 (1992), pp. 228-254; and PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Explanatory Note on the Juridical Nature and Extension of the *Recognitio* of the Holy See. in *Comm.*, 38 (2006), pp. 10-17, English translation in RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, pp. 283-290.

²⁴² *Ibid.*

²⁴³ *PB*, arts. 82, 89.

²⁴⁴ *CIC/83*, cc. 447-459.

²⁴⁵ On the historical emergence of episcopal conferences, see Peter HUIZING, “The Structure of Episcopal Conferences,” in *The Jurist*, 28 (1968), pp. 163-176; Raymond W. KUTNER, *The Development, Structure, and Competence of the Episcopal Conference*, Washington, DC, Catholic University of America

provided venues for mutual collaboration between bishops without the canonical weight (and required involvement of the Holy See) of a plenary council. The need to provide some canonical framework for these meetings existed, especially after these structures increased in popularity after the Second World War. As a result, at the Second Vatican Council, episcopal conferences were the subject of clear requirements, leading to the emergence of universal legislation defining their structures.²⁴⁶ This was further developed at first in Paul VI's *motu proprio Ecclesiae sanctae*, which lead to the current norms in the Latin Code.

These canons provide for general aspects of conference organization, competence, and decision-making. The definition of an episcopal conference is provided in canon 447:

A Conference of bishops, a permanent institution, is a group of bishops of some nation or certain territory who jointly exercise certain pastoral functions for the Christian faithful of their territory in order to promote the greater good which the Church offers to humanity, especially through forms and programs of the apostolate fittingly adapted to the circumstances of time and place, according to the norm of law.²⁴⁷

This territory of a conference is generally defined as a political nation, but there are some exceptions to this situation where, in the judgement of the Holy See, it is necessary to have a conference for a territory either larger or smaller than a political nation.²⁴⁸

Press, 1972, esp. pp. 1-64; and Elizabeth MCKEOWN, "The National Bishops' Conference: An Analysis of Its Origins," in *Catholic Historical Review*, 66 (1980), pp. 565-583

²⁴⁶ See, for example, *CD*, no. 37.

²⁴⁷ *CIC/83*, c. 447.

²⁴⁸ *CIC/83*, c. 448. An example of the former is the Scandinavian conference; an example of the latter is the conference of Scotland.

Conferences are erected by the Holy See alone and possess juridical personality by law.²⁴⁹ These structures are public juridical persons.²⁵⁰ The membership of a conference of bishops includes diocesan bishops and their equivalents in law, coadjutor bishops, auxiliary bishops, and other titular bishops who, in the same territory of the conference, perform a function entrusted to them by the Holy See or the episcopal conference. Ordinaries of another rite (that is, of another Church *sui iuris*) can be invited with consultative vote, unless the conference statutes dictate otherwise.²⁵¹ The conference is thus clearly envisioned as a structure within the hierarchical consultation of the Latin Church and, as a result, a body primarily for Latin bishops. Bishops emeriti are also able to be invited and are encouraged to be given consultative vote in the statutes.²⁵² Other titular bishops as well as the Pontiff's legate are not members of the conference by law.²⁵³

Episcopal conferences are required to have statutes approved by the Holy See. These statutes govern their meetings and provide requirements for the permanent council, general secretariat, and other offices and commissions.²⁵⁴ Statutes would also cover topics such as methods of convening and developing the plenary assembly, the election of officers, and financial regulations.²⁵⁵ Each conference is to elect its own president, designate one who will function as a pro-president in cases of an impeded president, and designate its own

²⁴⁹ *CIC/83*, c. 449.

²⁵⁰ *CIC/83*, c. 116, §2.

²⁵¹ *CIC/83*, c. 450, §1.

²⁵² *ApS*, no. 17.

²⁵³ *CIC/83*, c. 450, §2.

²⁵⁴ *CIC/83*, c. 451.

²⁵⁵ Giorgio FELICIANI, "Bishops' Conferences," in *ExComm*, vol. 2(1), p. 1003.

secretary according to the norm of law.²⁵⁶ The president of a conference cannot be an auxiliary bishop.²⁵⁷ The president (or, when impeded, the pro-president) presides over both the general conference meetings as well as the permanent council.²⁵⁸

A conference is required by law to hold a plenary meeting at least once annually, as well as when circumstances require.²⁵⁹ There is no definition provided for the term plenary, but *Pastor bonus* does distinguish between plenary (to which all are invited) and ordinary (to which some are invited) sessions of Roman dicasteries.²⁶⁰ Following this logic plenary has been interpreted in this fashion, that is, as a meeting to which the entire membership of the episcopal conference has been invited.²⁶¹ Diocesan bishops, their equivalents in law, and coadjutor bishops all possess a deliberative vote in plenary meetings.²⁶² The statutes of the conference must indicate whether auxiliary bishops and other titular bishops who are members have deliberative or consultative vote.²⁶³

The conference of bishops only issues general decrees in cases prescribed by universal law or when given a mandate to do so by the Holy See.²⁶⁴ Decrees can either be

²⁵⁶ *CIC/83*, c. 452, §1.

²⁵⁷ PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, Authentic interpretation, 23 May 1988, in *AAS*, 81 (1989), p. 388.

²⁵⁸ *CIC/83*, c. 452, §2.

²⁵⁹ *CIC/83*, c. 453.

²⁶⁰ *PB*, art. 11.

²⁶¹ John G. JOHNSON, "Title II: Groupings of Particular Churches," in *CLSAComm2*, p. 596.

²⁶² *CIC/83*, c. 454, §1.

²⁶³ *CIC/83*, c. 454, §2. Consultative vote is the ability to discuss items at sessions, while deliberative vote is the ability to vote on decisions, see JOHNSON, "Title II: Groupings of Particular Churches," p. 596.

²⁶⁴ *CIC/83*, c. 455, §1.

legislative or executive, and the ability for the plenary assembly of the conference to issue general executory decrees is subject to the same limitations of canon 455.²⁶⁵ In order for these decrees to be enacted validly they must be passed by a two-thirds majority of those members with deliberative vote, which can only be promulgated after receiving a *recognitio* from the Roman Apostolic See.²⁶⁶ The conference itself is able to determine the manner of promulgation and the period of the *vacatio legis*.²⁶⁷

When the norms of canon 455, §1 have not been followed (i.e. a general decree has not been validly issued), the competence of each bishop remains intact.²⁶⁸ There are other extra-codal norms in place for dogmatic statements, which can be approved by either the unanimous approval of all member bishops, or else a two-thirds majority with the *recognitio* of the Holy See.²⁶⁹ After each plenary session occurs, the president must send a report of the acts and decrees to the Holy See for review.²⁷⁰ This action should occur via the papal legate in the territory.²⁷¹

The permanent council is responsible for preparing the agenda of the plenary session and ensuring its decisions are enacted. Further, the permanent council can have other

²⁶⁵ PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, Authentic interpretation, 5 July 1985, in *AAS*, 77 (1985), p. 771.

²⁶⁶ *CIC/83*, c. 455, §2.

²⁶⁷ *CIC/83*, c. 455, §3.

²⁶⁸ *CIC/83*, c. 455, §4.

²⁶⁹ *ApS*, Complementary Norms, art. 1.

²⁷⁰ *CIC/83*, c. 456.

²⁷¹ FELICIANI, "Bishops' Conferences," p. 1023.

functions entrusted to it by the statutes of the conference.²⁷² These functions should be such so that the permanent council can guarantee continuity in the conference's activities, prepare for the plenary assembly, ensure decisions are executed, direct the secretariat, coordinate the commissions, and supervise the administration of the temporal goods of the conference. The statutes should also ensure that the permanent council does not exceed its competency.²⁷³

The general secretariat of the episcopal conference is responsible for preparing a report of both the decrees of the plenary meetings as well as the acts of the plenary meetings and the permanent council, to communicate these reports to all conference members, and to draw up other acts that have been entrusted to the secretary.²⁷⁴ Further, the general secretary is responsible for communicating acts and documents to neighbouring episcopal conferences when necessary.²⁷⁵

Episcopal conferences are encouraged to foster relations between neighbouring conferences.²⁷⁶ Feliciani notes: "Collaboration between the Conferences, since they constitute a subsequent and broader manifestation of the communion between churches, fosters the overcoming, on the part of the episcopates, of possible temptation to particularism."²⁷⁷ In order to promote this collaboration, the conference should have stable

²⁷² *CIC/83*, c. 457.

²⁷³ FELICIANI, "Bishops' Conferences," p. 1025.

²⁷⁴ *CIC/83*, c. 458.

²⁷⁵ *CIC/83*, c. 458, 2°.

²⁷⁶ *CIC/83*, c. 459, §1.

²⁷⁷ FELICIANI, "Bishops' Conferences," p. 1029.

structures for sharing of information, and examples of this are regional assemblies of episcopal conferences, such as *the Consilium conferentiarum episcoporum Europae*.²⁷⁸ Any concrete programs having an international character, however, require the approval of the Holy See.²⁷⁹

1.3.2.3 Conclusions

There are three forms of collegiality that are part of the hierarchical constitution of the Latin Church. The first two of these, plenary and provincial councils, are gatherings of bishops from one or more ecclesiastical provinces which are not permanent institutions. The third form, the episcopal conference, is a gathering of the bishops in a region generally corresponding to a political nation, and is a permanent institution. Neither of these structures has a corresponding structure within the Eastern Code.

1.3.3 Collegial Structures Restricted to the CCEO

The Eastern Code, undoubtedly, has implemented the notion of collegiality on a wide-scale. This is a practical application of the principle of subsidiarity, one of the principles of revision of the Eastern Code.²⁸⁰ This was reflected by John Paul II in his promulgation of the Eastern Code where he writes: “This [preservation of Eastern patrimony] is also evident in the various forms of the hierarchical constitution of the Eastern

²⁷⁸ On this topic see, for example, Myriam WILLENS, “Structures for Episcopal Leadership for Europe, the CCEE and the ComECE,” in *The Jurist*, 61 (2001), pp. 190-212.

²⁷⁹ *CIC/83*, c. 459, §2.

²⁸⁰ See KOKKARAVAYIL, *The Guidelines for the Revision of the Eastern Code: Their Impact on CCEO*, pp. 265-299.

Churches: the patriarchal Churches are preeminent among these, in which the patriarchs and synods are sharers in the supreme authority of the Church by canon law.”²⁸¹ The Eastern Code thus contains collegial models that are varied from the Latin Code, bringing about broader forms of collegiality at the level of the Churches *sui iuris*.²⁸² This important distinction between Latin and Eastern codes requires a discussion of the nature of the power of governance in the Eastern Code.

As in the 1983 Latin Code, the Eastern Code distinguishes between three forms of the power of governance: legislative, executive, and judicial.²⁸³ While the general norms regarding the nature of the power of governance are substantially similar between these two bodies of law (*CIC/83*, cc. 129-144 and *CCEO* cc. 979-995), there are, however, important distinctions to be made regarding the exercise of these various powers in the Eastern Code as compared to the 1983 Latin Code. These differences relate to the exercise of power in a collegial fashion in the Eastern Code in a much broader fashion as compared to the Latin Code, mainly through a broader application of the principle of subsidiarity. The traditional structures of the Churches *sui iuris*, especially in their synods, have resulted in an “intermediate” level of Church governance at the level between the eparchial bishop and the Holy See. This intermediate level of Church governance does not exist in the Latin Code.

²⁸¹ JOHN PAUL II, Apostolic constitution *Sacri canones*, 18 October 1990, in *AAS*, 82 (1990), pp. 1033-1044, English translation in *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, pp. xxi-xxvii.

²⁸² On the juridical notion of the *Ecclesia sui iuris*, see 3.1.1.

²⁸³ *CIC/83*, c. 135, §1; *CCEO* c. 985, §1.

In this Eastern structure of the synod of bishops, the head of the Church (whether a patriarch or major archbishop) exercises legislative and judicial power as a member of the synod of bishops. John Paul II stated clearly that the Eastern synod of bishops exercises “true power of governance”.²⁸⁴ The patriarch can exercise executive power of governance, although frequently he requires the consent of the synod of bishops.²⁸⁵ This power exercised by the synod is proper and takes all three forms of the power of governance.²⁸⁶ The council of hierarchs exercises these powers to a lesser degree, with a lesser ability to exercise legislative and executive power and no ability to exercise judicial power. However, there is an important limitation placed upon this power: the exercise of judicial and legislative power by the synod is restricted to the patriarchal territory, with few exceptions.²⁸⁷

The assembly of hierarchs exercises power of governance to an even lesser degree than the two previously discussed structures. It does not enjoy personal jurisdiction over the faithful of a Church *sui iuris* as is the case for the synod of bishops and the council of hierarchs. The synod of bishops (not to be confused with the radically different Latin structure of the synod of bishops), the council of hierarchs, and assemblies of hierarchs of several Churches *sui iuris* will now briefly be examined in turn.

²⁸⁴ JOHN PAUL II, *Pastores gregis*, §61.

²⁸⁵ For example, see *CCEO*, cc. 85-86, 110, §4. See George NEDUNGATT, “Synodality in the Eastern Catholic Churches according to the New Code,” in *Concilium, New Series*, 5 (1992), pp. 67-72.

²⁸⁶ See 1.3.3.2.

²⁸⁷ See *CCEO* cc. 150, §2, 1062, §1

1.3.3.1 Synod of Bishops²⁸⁸

The patriarchal Churches *sui iuris* as well as the major archiepiscopal Churches *sui iuris* both have the governing organ of the synod of bishops. In order to avoid confusion with the synod of bishops in the Latin Church, these governing bodies are described as *synodus episcoporum Ecclesiae patriarchalis*, as opposed to the *synodus episcoporum universae Ecclesiae*.²⁸⁹ The synod of bishops is composed of all (and only) ordained bishops that belong to the major archiepiscopal or patriarchal Church *sui iuris* that have not been excluded by norm of law.²⁹⁰ The patriarch or the major archbishop convokes the synod of bishops and all bishops convoked are bound by the obligation to attend, unless they are excused by reason of an accepted impediment.²⁹¹ A majority of bishops with the obligation to attend must be present in order to have a quorum, unless particular law has determined otherwise.²⁹² No bishop can absent themselves after a synod's opening without a just reason approved by the synod members.²⁹³

The synod must be convoked on four occasions: when business is to be transacted that pertains to the competence of the synod or requires its consent, when the patriarch or major archbishop deems it necessary, when at least one-third of the bishops so request it,

²⁸⁸ *CCEO*, cc. 102-113

²⁸⁹ On the naming of the synod of bishops, see Cyril VASIL', "Le principe de la synodalité dans les Églises patriarcales selon le *CCEO*," in *L'Année canonique*, 40 (1998), pp. 92-94.

²⁹⁰ *CCEO*, c. 102.

²⁹¹ *CCEO*, cc. 103-104. There is no possibility for a bishop sending a proxy, see *CCEO*, c. 105.

²⁹² *CCEO*, c. 107.

²⁹³ *CCEO*, c. 109.

and at those periods of time (ex. annually) required by particular law.²⁹⁴ The right of opening the synod of bishops belongs to the patriarch or the major archbishop and he is to prepare its agenda, which the synod approves or modifies. Further, the patriarch has the right, with the consent of the synod, to transfer, prorogue, suspend, or dissolve the synod.²⁹⁵

With respect to the executive power of governance, synodal decisions are to be promulgated according to the norm of law.²⁹⁶ The synod of bishops has the responsibility of electing the patriarch in a patriarchal Church or the major archbishop in a major archiepiscopal Church, according to the norm of law.²⁹⁷ It elects candidates for the offices of eparchial bishop, coadjutor bishop, and auxiliary bishop within the territory of the Church.²⁹⁸ It also elects members to the permanent synod.²⁹⁹ There are numerous other instances in the Code that provide situations in which the synod is required to give its approval or where the synod has certain powers.³⁰⁰

²⁹⁴ *CCEO*, c. 106.

²⁹⁵ *CCEO*, c. 108.

²⁹⁶ *CCEO*, cc. 111-112.

²⁹⁷ *CCEO*, cc. 63-77, 110, §3, 153.

²⁹⁸ *CCEO*, cc. 149, 180-189. On the topic of the difference of the appointment of hierarchs between the Catholic West and the Catholic East, see Dimitrios SALACHAS, "Ecclesial Communion and the Exercise of Primacy in *Codex Canonum Ecclesiarum Orientalium*," in *Studies in Church Law*, 1 (2005), pp. 173-183.

²⁹⁹ *CCEO*, c. 115, §§2-3.

³⁰⁰ For other examples of the executive power of governance possessed by the synod of bishops, see cc. 121, 122, §§2, 4, 125, 137, 138, 141, 144, 145, 146, §2, 211, §2, 585, §2, 621, §1, 652, §2, 664, §1, 709, 760, §1, 1036, §§1-3, 1062, §2, 1063, §2. These examples clearly establish the synod as having functions throughout the three-fold *munera* of the Church. A summary of the interrelationship between the synod and the patriarch (which does discuss the numerous situations where the patriarch requires synodal consent for administrative actions) is available in Cyril VASIL', "Modificazione nell'estensione della potestà dei patriarchi: Identificazione dei limiti della loro competenza amministrativa secondo il *CCEO*," in *Folia canonica*, 5 (2002), pp. 296-299.

With respect to legislative power, the synod has legislative competency for the entire Church *sui iuris*.³⁰¹ However, legislation that is promulgated by the synod has universal force of law only when it is liturgical law. Non-liturgical legislation only has force of law in the patriarchal territory. Otherwise, these laws require promulgation by the eparchial bishop (within the realm of his competence) or the approval of the Holy See.³⁰² The synod designates the manner and time for the promulgation of laws.³⁰³ These laws are to be sent to the Bishop of Rome and, at times, to the other patriarchs and major archbishops. However, the communication of laws to the Holy See is not a request for approval or *recognitio* but a method of strengthening the bonds of communion through communication.³⁰⁴ While these are acts of the synod the patriarch himself promulgates these laws and decisions.³⁰⁵ The permanent synod exercises the authentic interpretation of these laws.³⁰⁶ The synod is also responsible for establishing its own statutes.³⁰⁷

Judicial power is exercised by the synod of bishops. The synod is its own tribunal, constituted as the superior tribunal in the patriarchal territory according to the norm of law.³⁰⁸ This was a decision of the drafters of the Eastern Code, who placed this judicial

³⁰¹ *CCEO*, c. 110, §1.

³⁰² *CCEO*, c. 150.

³⁰³ *CCEO*, c. 111, §§1-2.

³⁰⁴ *CCEO*, c. 111, §3.

³⁰⁵ *CCEO*, c. 112, §1. This situation is analogous to when an ecumenical council's decisions are promulgated by the Bishop of Rome, see *CCEO*, c. 54, §1; *CIC/83*, c. 341, §1.

³⁰⁶ *CCEO*, c. 112, §2.

³⁰⁷ *CCEO*, c. 113.

³⁰⁸ *CCEO*, cc. 110, §2, 1062, §1.

power in the organization of the synod and not the patriarch along with his permanent synod.³⁰⁹ Practically, the synod must establish a tribunal whose three members are elected by the synod by secret ballot for a five-year term. One bishop is elected general moderator and the other two, along with the moderator, constitute the *ternus*.³¹⁰ This tribunal is competent to judge contentious cases of either eparchies or bishops, including titular bishops.³¹¹ The synod itself hears appeals from this tribunal.³¹² This appeal is final, notwithstanding the right of the faithful of appealing to the Bishop of Rome.³¹³

1.3.3.2 Council of Hierarchs³¹⁴

The metropolitan Churches *sui iuris* rely more closely upon the Supreme Authority of the Church as compared to the patriarchal and major archiepiscopal Churches *sui iuris*. While the metropolitan Church does not have a patriarchal or major archiepiscopal synod of bishops, it does have a collegial organ called the council of hierarchs. This should be distinguished from the metropolitan synod, which is for metropolitan provinces located within patriarchal and major archiepiscopal churches.³¹⁵ This body is similar to the synod

³⁰⁹ Ivan ŽUŽEK, “Canons *De synodo Ecclesiae patriarchalis* et *De conventu patriarchali*,” in *Nuntia*, 7 (1978), p. 34.

³¹⁰ *CCEO*, c. 1062, §2.

³¹¹ *CCEO*, c. 1062, §3.

³¹² *CCEO*, c. 1062, §4.

³¹³ *CCEO*, cc. 1059, 1062.

³¹⁴ *CCEO*, cc. 164-173.

³¹⁵ See *CCEO*, cc. 133, §1, 2°, 137 for mention of the metropolitan synod.

of bishops in the patriarchal Churches but the council of hierarchs has fewer powers and prerogatives. Regardless, the council of hierarchs does still exercise power of governance.

This body is composed of all the ordained bishops that belong to the metropolitan Church *sui iuris*, unless they are legitimately excluded.³¹⁶ These bishops who are convoked to the council of hierarchs have an obligation to attend, unless they are legitimately excused. Sending proxies is not permitted and a hierarch may not leave the council once it has begun.³¹⁷ The quorum required is a majority of the bishops who are members of the council with obligation to attend the council. Particular law can require a higher majority.³¹⁸

While eparchial bishops and coadjutor bishops have deliberative vote by law, other bishops can also be given this vote according to the Church's particular law.³¹⁹ Votes require an absolute majority of those who are present with deliberative vote.³²⁰ The council has an obligation to convoke at least once annually.³²¹ The metropolitan has the right to convoke the council, as well as to prepare its agenda, preside, transfer, suspend, or dissolve it.³²²

Like the synod of bishops, the council of hierarchs exercises the power of governance. The council possesses legislative power of governance for those case indicated

³¹⁶ *CCEO*, c. 164, §1.

³¹⁷ *CCEO*, c. 165.

³¹⁸ *CCEO*, c. 166, §1.

³¹⁹ *CCEO*, c. 164, §2.

³²⁰ *CCEO*, c. 166, §2.

³²¹ *CCEO*, c. 170.

³²² *CCEO*, c. 158, 2°.

by the norm of law.³²³ Further, the council of hierarchs is able to promulgate particular law.³²⁴ The council has the obligation of drawing up its own statutes.³²⁵ However, any legislation requires the *recognitio* of the Holy See.³²⁶ Any laws and norms must be communicated to the Holy See. The metropolitan has the obligation of seeing that laws are promulgated and published.³²⁷

The council of hierarchs also possesses executive power of governance. For example, the council of hierarchs is able to establish ordinances for pastoral activity, the observation of their rite, and ecclesiastical discipline.³²⁸ Further, whenever the Eastern Code indicates that an activity is to be executed by the superior authority of a Church *sui iuris*, the metropolitan who is the head of a metropolitan Church *sui iuris* is competent to do this, with the consent of the council of hierarchs.³²⁹ The council of hierarchs possesses legislative power of governance and is able to issue laws.³³⁰ The council, however, does not possess judicial power and does not compose its own tribunal, as is the case of the synod of bishops.

³²³ On the legislative power of the council of hierarchs, see Péter SZABÓ, “La questione della competenza legislativa del consiglio dei gerarchi,” in *Apollinaris*, 69 (1996), pp. 485-515.

³²⁴ *CCEO*, c. 167, §1.

³²⁵ *CCEO*, c. 171; *cf.* *CIC*/83, c. 94, §3.

³²⁶ *CCEO*, c. 167, §2.

³²⁷ *CCEO*, c. 167, §3.

³²⁸ *CCEO*, c. 169.

³²⁹ *CCEO*, c. 167, §4.

³³⁰ *CCEO* c. 167.

1.3.3.3 Assemblies of Hierarchs³³¹

The canonical concept of assemblies of hierarchs of several Churches *sui iuris*, while only one canon in length, canon 322 is an entire title (Title IX) of the Eastern Code. These are collaborative structures that date prior to the Second Vatican Council. A form of this structure was mentioned generally in *Cleri sanctitati*, which indicated that bishops and other hierarchs of different rites could form a synod. This structure required the permission of the Bishop of Rome who would designate his legate as its president.³³² The notion of inter-ecclesial assemblies was also discussed at the Council, and both *Orientalium Ecclesiarum* and *Christus Dominus* called for collaborative structures that would permit inter-ecclesial cooperation within the same territory.³³³ These structures were first erected shortly after the Council, in the 1970s. The 2015 *Annuario Pontificio* lists six canonically established assemblies of hierarchs.³³⁴

Paragraph one of canon 322 indicates that assemblies are to be erected when the Holy See judges it opportune to gather hierarchs of various Churches *sui iuris*, as well as hierarchs of the Latin Church, for mutual collaboration. This is to make possible the communication of insights and experience, the taking of mutual counsel, and the undertaking of common work for the good of the Church in a specified region. There are several examples in the Eastern Code where hierarchs are to consult other Churches in the same territory. These consultations would be assisted by a structure in which these meetings

³³¹ CCEO, c. 322.

³³² CS, c. 340, §3.

³³³ OE, no. 4; CD, no. 38, §6.

³³⁴ SECRETARIAT OF STATE, *Annuario Pontificio per l'anno 2015*, Vatican City, Libreria editrice Vaticana, 2015, p. 1093.

could occur.³³⁵ These meetings and their membership are to be defined both by common law and the statutes of the assembly. The canon indicates that while patriarchs (and by extension major archbishops, see *CCEO* c. 152), metropolitans, and eparchial bishops would be members by law, other local hierarchs can be granted membership if the statutes indicate. The statutes would also specify which Churches *sui iuris* would be involved. If a patriarch does not preside at this assembly, the Holy See will designate “another authority” to be the president of the assembly.³³⁶ This could be the case in territories where several patriarchs reside.³³⁷

Paragraph two of this canon defines when the decrees of this assembly are juridically binding. This is only the case when they are passed with a two-thirds majority of those with deliberative vote, receive a *recognitio* from the Holy See, and do not prejudice the rites of each Church or the power of the patriarch, the synod, the metropolitan, or the council of hierarchs.³³⁸ Thus, it is possible for assemblies to issue decrees with juridical force and this is clearly a body that possesses the power of governance.

The third paragraph of this canon indicates that assemblies are strictly required to adhere to their competence, since any decisions, even if unanimous, in areas of non-competence lack all force until personally approved by the Bishop of Rome.

The final, fourth, paragraph of this canon requires that each assembly draw up its own statutes that require the approval of the Holy See. As much as possible, the

³³⁵ See *CCEO*, cc. 202, 330, 622, 720, §2, 784, 904, §2, 1013, §2, 1068.

³³⁶ *CCEO*, c. 322, §1.

³³⁷ Jobe ABBASS, “Assemblies of Hierarchs for Eastern Catholic Bishops in the Diaspora,” in *Studia canonica*, 40 (2006), p. 383.

³³⁸ *CCEO*, c. 322, §2.

participation of those from Churches that are not in the Catholic communion is to be included.³³⁹ This means, for example, that an assembly in the Middle East could involve the participation of Eastern Orthodox, Oriental Orthodox, and Assyrian hierarchs. This permits common pastoral action for the faithful who are frequently facing similar pastoral situations.

1.3.3.4 Conclusions

The Eastern Code, following the principle of subsidiarity, has a variety of forms of collegiality that are not present in the Latin Code. The synod of bishops, present in the patriarchal and major-archepiscopal Churches *sui iuris*, exercises all three forms of the power of governance. The council of hierarchs, present in the metropolitan Churches *sui iuris*, exercises a more limited, but none the less real, power of governance that is not judicial. Finally, the assembly of hierarchs of several Churches *sui iuris* exercises the most limited collegiality, taking a form that is comparable to the inter-ritual activity of conferences of bishops, with the important distinction of being intrinsically inclusive of multiple Churches *sui iuris*.

1.3.4 Conclusions

Collegial bodies are present in both the Latin and Eastern codes, reflecting the teachings of the Second Vatican Council. Those bodies that pertain to the universal governance of the Church, collegial acts of the universal college, are reflected uniformly in both the Latin and Eastern codes. However, there are forms of collegiality that are distinct

³³⁹ CCEO, c. 322, §4.

to both the Latin and Eastern codes. Local councils, an ancient institution, currently exist in that form only in the Latin Code. However, the patriarchal synod of bishops, another ancient institution, only finds expression in the Eastern Code. In each of these codes of canon law there is one modern institution of collegiality: the Latin Code has the episcopal conference while the Eastern Code has the assembly of hierarchs. Both of these bodies are models for limited collegiality, focused more upon communication with some competence over specified spheres at a regional level. The episcopal conference is intended to be for Latin hierarchs, with provision for members from other Churches *sui iuris* to be included. The assembly of hierarchs, on the other hand, is inter-ecclesial by its nature. These models are two modern forms of episcopal collegiality that find their expression within the *ius vigens* of the Church.

Conclusions

Collegiality, the collaborative activity undertaken by groupings of the episcopacy, has its origins in the earliest traditions of the Church. Historically, bishops responded to ecclesiastical challenges by taking common counsel together in meetings of ecclesiastical provinces or ecclesiastical regions. The local council was the original form of these gatherings, generally following the structure of the ecclesiastical region. The ecclesiastical region's importance reflected the growing power of the metropolitan over his suffragan dioceses. However, with the legalization of Christianity the ecumenical council began to be employed by the Roman emperors so as to respond to specific situations in a uniform fashion. While in the West these councils gradually gave way to the powers and prerogatives of the Bishop of Rome, in the East, the patriarch, along with his synod, came to regularly exercise supra-diocesan power of governance over defined territories.

The Second Vatican Council emphasized the obligation of the local bishops to work both with each other and with the successor of Peter: “Therefore the individual bishops, as far as the carrying out of their own task allows, are bound to collaborate among themselves and along with the successor of Peter.”³⁴⁰ This is based on the divinely instituted episcopal college, which possesses the power of governance over the entire Church. This collegial power is rarely fully and perfectly exercised, such as in an ecumenical council or in other approved collegial actions of the universal episcopacy. The norms on these universal acts of governance are common to both the Latin and Eastern codes.

However, a lesser degree of the power of governance is also exercised by localized groupings of bishops. The hierarchs of a Church *sui iuris* exercise the power of governance over their particular Church in the form of the synod of bishops of a patriarchal church or the council of hierarchs, two ancient institutions maintained in the Eastern Code. Also, in modern times bishops and other local hierarchs of a region can come together for fraternal action and collegial activity in the form of conferences of bishops and assemblies of hierarchs of several Churches *sui iuris*. These latter two structures are indicated in *Apostolos suos* as being, to an extent, comparable to each other.³⁴¹ As a result, these two collegial bodies are appropriate for comparative analysis.

³⁴⁰ *LG*, no. 23.

³⁴¹ *ApS*, note 1.

2 – CONFERENCES OF BISHOPS IN THE 1983 *CODEX IURIS CANONICI*

Introduction

Conferences of bishops are “a kind of assembly in which the bishops of some nation or region discharge their pastoral office in collaboration.”¹ As discussed in chapter one, while conferences originally developed in the nineteenth century, they received conciliar foundation in the decree *Christus Dominus*. The juridical foundation of these structures occurred later: first in the *motu proprio Ecclesiae Sanctae*, followed by the 1983 Latin Code. In this second chapter we will examine the juridical nature of episcopal conferences by first exploring the legislative history of these canons during the drafting process of the Latin Code and then examining the current law in the Latin Code, namely, the fourth chapter of Book II (The People of God), Part II (The Hierarchical Constitution of the Church), Section II (Particular Churches and Their Groupings), Title II (Groupings of Particular Churches).

Canons 447-459 of the Latin Code on episcopal conferences provide common norms regarding the general structure of these bodies. There are numerous other canons pertaining to conferences of bishops located outside this section, generally regarding specific areas of legislative and administrative competence. Since there are no canons on conferences of bishops in the Eastern Code, there are no parallel passages.

As this is a comparative study and the Eastern Code offers no norms on the competency of assemblies of hierarchs, only those regarding their juridical structure, the specific competencies of episcopal conferences are of less relevance to the discussion at hand. As a result, the specific competencies of episcopal conferences will not be examined

¹ *CD*, no. 38, §1; *CIC*, c. 447.

and this discussion will be limited to those general canons that outline the juridical structure of conferences. However, during this exploration of the nature of episcopal conferences, mention will be made of competency when appropriate to do so.

2.1 Legislative History of Canons 447-459 of the 1983 CIC

Conferences of bishops were inspired by the principles for the revision of the Latin Code. The fifth of these ten principles, approved at the general session of the Synod of Bishops in 1967, indicated that on the basis of subsidiarity: “the new Code entrusts either to particular laws or to executive power whatever is not necessary for the unity of the discipline of the universal Church so that appropriate provision is made for a healthy ‘decentralization’ while avoiding the danger of division into or the establishment of national churches.”² The challenge of granting supradiocesan authority while ensuring the proper autonomy of the local Church is evident in the revision of the canons concerning conferences of bishops. This section will examine the legislative history of the canons on conferences of bishops, focusing on the 1977 *Schema de populo Dei*, the 1980 *Schema Codicis iuris canonici*, and finally the 1982 *Codicis iuris canonici: Schema novissimum*.

2.1.1 1977 *Schema de populo Dei*

In November 1968, the cardinal members of the Pontifical Commission for the Revision of the Code of Canon Law established various topics to be examined by the

² “Preface to the Latin Edition,” in *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law: Latin-English Edition, New English Translation*, Washington, Canon Law Society of America, 1999, p. xxxvii.

individual study groups. A sixteen-year revision process followed, where consultants of the individual groups, numbering between eight and fourteen members, prepared written observations on the drafts that were submitted to the secretariat, discussed issues at meetings in Rome, and focused on all the observations submitted. In 1977, the *Schema populo Dei* was completed and, like all the *schemata*, was distributed to the various consultative bodies, that is, the universal episcopate, the dicasteries of the Roman Curia, ecclesiastical universities and faculties, and the Union of Superior Generals.³ Each body was given not less than six months to respond with observations. The cardinal members of the commission were also given the various drafts in order to make both general and particular observations. Conferences of bishops were the subject of canons 199-210 of the *Schema de populo Dei*.

This *Schema* contained a norm regarding the nature and territory of conferences of bishops, indicating in canon 199 that:

§ 1. An Episcopal Conference, which is a permanent institution, is constituted in a single ecclesiastical region, is legitimately erected among regional districts within an ecclesiastical region, along with ecclesiastical provinces not ascribed to an ecclesiastical region.

§ 2. Conferences of Bishops for multiple ecclesiastical regions or supraregions are not to be erected without (*nisi*) the approval of the Apostolic See, whose [competency] it is to establish special norms for each.⁴

The discussions of the *coetus* indicate that in February 1980 there was concern expressed regarding a possible increase of ecclesiastical bureaucracy, as well as some questioning of the permanence of this new institution. However, Castillo Lara responded that a conference

³ “Preface to the Latin Edition,” pp. xxxix-xl.

⁴ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum Libri II De populo Dei* (= *Schema Populo Dei*), Vatican City, Libreria editrice Vaticana, 1977, c. 199. Translations from draft legislation are the author’s own.

has a permanent secretariat and stable commissions and is, as a result, a juridical person and the subject of rights and obligations. All members of the *coetus* agreed to maintain the term “permanent institution”. Additionally, all members of the *coetus* expressed concern that the conference would become overly bureaucratic, forming a curia in addition to the diocesan curia and the Roman curia. In response, the decision was made to develop a canon that was a closer parallel to the conciliar decree *Christus Dominus*, no. 38.⁵

Canon 200 of the 1977 *Schema de populo Dei* provided a norm for the membership of an episcopal conference:

§ 1. To a Conference of Bishops belong by law itself all local Ordinaries of a territorial region or province, Vicars generals and episcopal Vicars excluded, and likewise coadjutor Bishops, auxiliary Bishops, and other titular Bishops who perform a special function entrusted to them by the Apostolic See or Conference of Bishops in the same territory; Ordinaries of another rite can also be invited through in such a way that they have only a consultative vote.

§ 2. Other titular Bishops and the Legate of the Roman Pontiff are not by law members of the Conference of Bishops.⁶

In this canon, membership is described as including all local ordinaries, excluding vicars general and episcopal vicars, in addition to the aforementioned other groups. This closely follows *Christus Dominus*, no. 38, §2. No provision existed in this first draft whereby ordinaries of other rites (i.e. of other Churches *sui iuris*) could be given deliberative vote. During the revision of this canon, Castillo Lara proposed that statutes could assign either a deliberative or consultative vote to both bishops of another Church *sui iuris* as well as bishops emeriti. Monsignor Onclin, the *coetus*’s relator, expressed difficulty with bishops

⁵ *Comm.*, 12 (1980), pp. 262-264; also PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus commissionis ad novissimum Schema Codicis iuris canonici exhibitarum, cum responsibus a secretaria et consultoribus datis (=Relatio)*, Vatican City, Typis polyglottis Vaticanis, 1981, p. 93.

⁶ *Schema Populo Dei*, c. 200.

emeriti having this ability as in some nations bishops emeriti outnumber those with sees. Further, the concept of giving hierarchs of other Churches *sui iuris* deliberative vote was called “not logical” as conferences have a place in the hierarchical constitution of the Latin Church. Regardless, the majority of the *coetus* agreed that the statutes of the conference could assign deliberative vote to ordinaries of another Church *sui iuris*.⁷

Canon 201 of the *Schema de populo Dei* requires conferences to issue their own statutes:

Each Conference of Bishops is to prepare its own statutes which must be reviewed by the Apostolic See and which are to organize, among other things, the plenary meetings of the Conference which are to be held and to provide for a permanent Council of Bishops, a general Secretariat of the Conference, and also other offices and Commissions which, in the judgement of the Conference, more effectively help it to achieve its purpose.⁸

Conferences of bishops had a firm requirement for statutes already from the stage of the *primae versiones*. One member proposed that permanent councils should only be required for larger conferences while in smaller conferences the general secretariat could perform these functions. The response to this proposal was that the permanent council, according to *Christus Dominus*, has the responsibility for continuing the work of the episcopal conference. This text was then approved unanimously.⁹

Conferences of bishops are required to have specific officers. Canon 202 of the draft provides this norm:

§ 1. Each Conference of Bishops is to elect a President for itself, is to determine who is to perform the function of Pro-president when the

⁷ *Comm.*, 12 (1980), p. 265.

⁸ *Schema Populo Dei*, c. 201.

⁹ *Comm.*, 12 (1980), p. 266.

President is legitimately impeded, and is to designate a general Secretary of the Conference, according to the norm of the statutes of the Conference.
 § 2. The President of a Conference, and, when he is legitimately impeded, the Pro-president, presides not only over the general meetings of the Conference of Bishops but also the permanent council.¹⁰

Both these paragraphs were substantially maintained throughout the process of revision and were not the subject of discussion or debate. The *coetus de populo Dei* felt the use of the word “conference” three times in a single paragraph was superfluous and should be simplified; the text was correspondingly approved.¹¹

The conference of bishops is required to have annual plenary meetings. This was contained within canon 203 of the *Schema de populo Dei*: “Plenary meetings of the Conference of Bishops are to be held at least once each year and, in addition, whenever particular circumstances require it, according to the prescripts of the statutes.”¹² This text was not redacted and the *coetus* simply indicated, “the text is approved.”¹³

At plenary meetings there are members who have deliberative and those who have consultative vote, as indicated by canon 204 of this same *schema*:

§ 1. By the law itself, diocesan Bishops, those who are equivalent to them in law, and coadjutor Bishops who belong to the Conference according to the norm of canon 200, § 1 have a deliberative vote in plenary meetings of a Conference of Bishops.

§ 2. Auxiliary Bishops and other titular Bishops who belong to the Conference of Bishops have a deliberate or consultative vote according to the prescripts of the Conference statutes.¹⁴

¹⁰ *Schema Populo Dei*, c. 202.

¹¹ *Comm.*, 12 (1980), p. 266.

¹² *Schema Populo Dei*, c. 203.

¹³ *Comm.*, 12 (1980), p. 267.

¹⁴ *Schema Populo Dei*, c. 204.

Proposals to include a consultative organ of priests, religious, and laity were received during the review of this norm but were rejected by the commission.¹⁵

The ability of conferences of bishops to issue general decrees was contained in canon 205 of the *Schema*:

§ 1. Decrees from the Conference of Bishops in a plenary session can only become binding when, in cases where common law or the particular mandate of the Apostolic See has prescribed it, or if through the granted request of the same Conference, legitimately passed by at least a two thirds vote of the prelates possessing a deliberative vote.

§ 2. The decrees mentioned in § 1 do not obtain binding force unless (*nisi*) they have been legitimately promulgated after having been reviewed by the Apostolic See; the Conference of Bishops itself determines the manner of promulgation and the time when the decrees take effect.

§ 3. In cases in which neither the common law nor a particular mandate of the Apostolic See has conceded the power discussed in § 1 to the Conference of Bishops, each diocesan Bishop, for his own diocese, is competent to decide, nor is the Conference of Bishops or its President able to act in the name of all the Bishops present, unless every and each Bishop has given consent.¹⁶

There was concern, however, that the conference had too broad an ability to promulgate general decrees. While the decrees would not be binding when the conditions in canon 205 were not met, the secretary noted that the canon implies decrees could, regardless, be issued without legislative force.¹⁷ As a result, this norm would be substantially revised. However, already in the *primae versiones* conference decisions required a *recognitio* from the Holy See.

Several canons in the *Schema de populo Dei* provide general responsibilities for conference officers. The first of these, canon 206, provides responsibilities for conference

¹⁵ See *Comm.*, 12 (1980), p. 267.

¹⁶ *Schema Populo Dei*, c. 205.

¹⁷ See *Comm.*, 12 (1980), pp. 267-268.

presidents: “When a plenary meeting of a conference of bishops has ended, a *libellus* of the acts is to be transmitted by the president to the Apostolic See, so that the acts are brought to its notice and it will be able to review the decrees, if any.”¹⁸ The term “*libellus actorum*” was felt to be imprecise by the *coetus*, however, and the decision was made to replace it with “a report of the acts of the conference and its decrees.”¹⁹

Canon 207 of *Populo Dei* identifies the power of the local ordinary to dispense from conference decrees: “Edicts and decrees promulgated by the Episcopal Conference lawfully bind throughout its own territory; the local Ordinary can dispense from them for a just cause, and in particular cases only.”²⁰ This canon, however, was suppressed by the *coetus* without explanation, only indicating it was a unanimous conclusion.²¹ The norm was ultimately unnecessary as general norms already address the limits of the bishop’s dispensing powers.

Populo Dei canon 208 describes the responsibilities of the permanent council of the conference of bishops:

In each Conference of Bishops a permanent Council of Bishops is to be erected, whose function it is to take care that the agenda for a plenary session of a Conference is prepared and that decrees made in plenary session are properly executed. It is also to execute other affairs which are entrusted to it according to the norm of the statutes.²²

¹⁸ *Schema Populo Dei*, c. 206.

¹⁹ *Comm.*, 12 (1980), p. 268.

²⁰ *Schema Populo Dei*, c. 207.

²¹ *Comm.*, 12 (1980), p. 269.

²² *Schema Populo Dei*, c. 208.

During the process of revision Castillo Lara noted that decisions of the conference are frequently not decrees but instead decisions of a different nature. To avoid any confusion the *Coetus de populo Dei* made the decision to replace “decrees” with “decisions”.²³

The general secretariat’s responsibilities are described in canon 209 of the *Schema populo Dei*:

In each Conference of Bishops, a General Secretariat is constituted, which is:

1° to prepare a report of all acts and decrees of a plenary meeting of a Conference and the acts of the permanent Council of Bishops, to communicate the same to all the members of the Conference, and to draw up other acts whose preparation the president of the Conference or the permanent council entrusts to it.

2° to communicate with Conferences of Bishops of bordering regions the acts and comments which the Conference in a plenary meeting or the permanent Council of Bishops decides must be sent to them.²⁴

These norms were substantially unaltered during the revision process.

Inter-conference collaboration is the subject of canon 210 of *Populo Dei*:

§ 1. Relations between different Conferences of Bishops, especially between ones bordering, are to be fostered in order to promote and protect the greater good of a region.

§ 2. Whenever Conferences enter into actions or programs having an international character, however, the Apostolic See must be advised.²⁵

In this case, again, only minor redactions occurred to the original draft, such as the decision to replace episcopal conference with conference of bishops.²⁶

²³ *Comm.*, 12 (1980), pp. 269-270.

²⁴ *Schema Populo Dei*, c. 209.

²⁵ *Schema Populo Dei*, c. 210.

²⁶ *Comm.*, 12 (1980), p. 271.

2.1.2 1980 *Schema Codicis iuris canonici*

The responses submitted to the *Coetus de populo Dei* and discussed by this *coetus* in February 1980 yielded several revised canons that were submitted to the Secretariat of the Pontifical Commission, which then combined the revised texts from the ten study groups into a single text: the 1980 *Schema Codicis iuris canonici*. This text also required minor stylistic revisions as combining various *schemata* from different study groups required applying a consistent style. This text was organized into the structure of seven books that was maintained in the final revised Latin Code.²⁷ The canons on conferences of bishops, canons 322-334 of this revised *schema*, are contained in Book II: The People of God.

This new draft text, published on June 29, 1980, was forwarded to the cardinal members of the Pontifical Commission along with other bishops and study groups, numbering seventy-four members, designated by episcopal conferences for further examination. These responses were submitted to the commission for examination in 1981. All of these interventions, along with responses, were distributed to commission members in August 1981. In October 1981 a plenary session of the Pontifical Commission occurred where the changes to the text were approved.²⁸

In response to concerns regarding the possible increase of ecclesiastical bureaucracy, canon 199, §1 of the *Schema de populo Dei* was revised to more closely follow *Christus Dominus*, resulting in canon 322 of the 1980 *Schema Codicis*:

An Episcopal Conference, which is a permanent institution, is a group of Bishops of some nation or a certain territory, exercising certain pastoral

²⁷ “Preface to the Latin Edition,” pp. xli-xlii.

²⁸ *Ibid.*, pp. xlii-xliii.

functions conjointly for the Christian faithful of its territory, in order to promote the greater good which the Church offers to humanity, especially through forms and programs of the apostolate fittingly ordered to the circumstances of time and place, according to the norm of law.²⁹

This revised norm was subjected to only minor redactions in further drafts. In reviewing this canon, Cardinal Willebrands questioned the relationship between the conference of bishops and the provincial council. The Secretariat of the Pontifical Commission responded that the episcopal conference is a permanent institution, while the provincial council is constituted for a period of time.³⁰

Canon 323 of the 1980 *Schema Codicis* did not exist in the previous 1977 *Schema populo Dei*:

§ 1. As a general rule, a Conference of Bishops includes those who preside over all the particular Churches of the same nation, according to the norm of can. 325.

§ 2. If, however, in the judgement of the Apostolic See, having heard the diocesan Bishops concerned, the circumstances of persons or things suggest it, a Conference of Bishops can be erected for a territory of a lesser or greater area, so that it only includes either Bishops of some particular Churches constituted in a certain territory or those who preside over particular Churches in different nations. It is for the Apostolic See to establish special norms for each of them.³¹

Paragraph two of this canon was transferred from the draft previous canon in the 1977 *Schema de populo Dei*.³² This previous draft was substantially revised in order to follow

²⁹ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Codicis iuris canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, universitatem facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum* (=1980 *Schema*), Vatican City, Libreria editrice Vaticana, 1980, c. 322.

³⁰ *Relatio*, p. 97.

³¹ 1980 *Schema*, c. 322.

³² *Comm.*, 12 (1980), p. 264.

the decree *Christus Dominus* and permit conferences at the national, international, or subnational level.³³

The question of the manner of establishment of the episcopal conference was not dealt with in the *Schema populo Dei* and first emerged in the 1980 *Schema Codicis*:

§ 1. It is only for the supreme authority of the Church to erect, suppress, or alter Conferences of Bishops, after having heard the bishops concerned.
 § 2. A legitimately erected Conference of Bishops possesses juridic personality by the law itself.³⁴

This canon was a response to a question that was raised concerning whether or not conferences were juridical persons.³⁵ Reviewing this draft canon in the 1980 *Schema Codicis*, Archbishop Bernardin expressed that perhaps conferences should have a juridical personality and be erected by law as well, without the involvement of any hierarchical authority.³⁶ This was arguably the position presented in the conciliar documents, where mention was made of obtaining permission from the Holy See only in cases of multinational conferences.³⁷ However, this position was rejected since in the Latin Code the territory of an episcopal conference is not necessarily a political nation-state (*cf.* *CIC/83*, c. 448, §2) and thus the Holy See's intervention was seen as necessary in order not only to order, suppress, and renew conferences, but also to erect these bodies in individual cases, based on the particular circumstances of the local church.³⁸

³³ *Comm.*, 12 (1980), p. 263.

³⁴ 1980 *Schema*, c. 324.

³⁵ *Comm.*, 12 (1980), p. 263.

³⁶ See *Relatio*, p. 94; also *Comm.*, 14 (1982), p. 196.

³⁷ See *CD*, no. 38, §5. Interestingly this paragraph of *CD* is cited as the source for c. 448, §1, despite the lack of congruency between the content of the paragraph and the content of the canon.

³⁸ *Relatio*, p. 94.

Canon 200 of the 1977 *Schema de populo Dei* regarding the membership of an episcopal conference was revised into canon 325 of the 1980 *Schema Codicis*:

§ 1. To a Conference of Bishops belong by law itself all diocesan Bishops in the territory, those equivalent to them in law, coadjutor Bishops, auxiliary Bishops, and other titular Bishops who perform in the same territory a special function entrusted to them by the Apostolic See or Conference of Bishops. Ordinaries of another rite can also be invited though in such a way that they have only a consultative vote unless the statutes of the Conference of Bishops decree otherwise.

§ 2. Other titular Bishops and the legate of the Roman Pontiff are not by law members of the Conference of Bishops.³⁹

This canon reformulated the previous draft, referring not to local ordinaries excluding vicars but instead to diocesan bishops.⁴⁰ During the revision of the 1980 *Schema Codicis* Cardinal Siri proposed the removal of auxiliary bishops as members by law and leaving their membership to the statutes.⁴¹ This suggestion was dismissed by the Secretariat as contrary to *Christus Dominus*.⁴² Further, Cardinal Bafile's suggestion to include explicit mention of the diocesan administrator was determined by the Secretariat to be superfluous as it was already implied by other canons.⁴³ The possibility of ordinaries of other rites being given deliberative vote, where the statutes so provided, was added in this same *schema* with the included phrase "unless the statutes of the conference of bishops decree

³⁹ 1980 *Schema*, c. 325.

⁴⁰ *Schema Populo Dei*, c. 200, §1.

⁴¹ *Relatio*, p. 95.

⁴² *Ibid.*

⁴³ *Ibid.*, p. 94; also *Comm.*, 14 (1982), p. 197.

otherwise.⁴⁴ It is noticeable that while the term “ordinary” was dropped when referring to the Latin Church, this term was at the same time added to describe members of other rites.

Canon 326 of the 1980 *Schema* maintained the previous canon 201 from the *Schema de populo Dei*:

Each Conference of Bishops is to prepare its own statutes which must be reviewed by the Apostolic See and which are to organize, among other things, the plenary meetings of the Conference which are to be held and to provide for a permanent Council of Bishops, a general Secretariat of the Conference, and also other offices and commissions which, in the judgement of the Conference, help it to achieve its purpose more effectively.⁴⁵

Cardinal Bafile had two proposals regarding this draft canon. First, the proposal was made that only members and the general secretariat be present at plenary sessions, with others only being admitted when necessary. This proposal was found to be unnecessary for the universal law as such a restriction could be included in the conference’s rules of order.⁴⁶ Second, he proposed that any experts used by the conference be named by the conference itself in order to avoid pressure from other organizations. The Secretariat again found that the statutes of the conference would more appropriately answer this question.⁴⁷

The offices of president, pro-president, and general secretary, are described in canon 327 of the 1980 *Schema*:

§ 1. Each Conference of Bishops is to elect a President for itself, is to determine who is to perform the function of Pro-president when the president is legitimately impeded, and is to place a general secretary, according to the norm of the statutes.

⁴⁴ 1980 *Schema*, c. 325, §1.

⁴⁵ *Ibid.*, c. 326.

⁴⁶ *Relatio*, p. 96.

⁴⁷ *Ibid.*, p. 95.

§ 2. The President of a Conference, and, when he is legitimately impeded, the Pro-president, presides not only over the general meetings of the Conference of Bishops but also the Permanent council.⁴⁸

This draft canon is substantially the same as the norm in the *Schema de populo Dei*.

Canon 328 of the 1980 *Schema* maintained the text of canon 203 of the *Schema de populo Dei*: “Plenary meetings of the Conference of Bishops are to be held at least once each year and, in addition, whenever particular circumstances require it, according to the prescripts of the statutes.”⁴⁹ Cardinal Siri proposed the removal of the requirement for annual meetings. The Secretariat disagreed with this proposal, indicating that such a change would result in the voiding of its discipline.⁵⁰

Members of the conference have either deliberative or consultative vote in plenary meetings. Canon 329 of the 1980 *Schema* had a significantly revised second paragraph:

§ 1. By the law itself, diocesan Bishops, those who are equivalent to them in law, and coadjutor Bishops who belong to the Conference according to the norm of canon 325, § 1 have a deliberative vote in plenary meetings of a Conference of Bishops.

§ 2. Auxiliary Bishops and other titular Bishops who belong to the Conference of Bishops have a deliberate or consultative vote according to the prescripts of the Conference statutes. Notwithstanding, only those who are mentioned in § 1 have a deliberative vote with preparing or changing the statutes.⁵¹

This second phrase, restricting deliberative vote with respect to changing conference statutes, emerged during the revision of the *Schema de populo Dei*.⁵²

⁴⁸ 1980 *Schema*, c. 327.

⁴⁹ 1980 *Schema*, c. 328.

⁵⁰ *Relatio*, p. 95.

⁵¹ 1980 *Schema*, c. 329.

⁵² *Comm.*, 12 (1980), p. 267.

Canon 330 of the 1980 *Schema* substantially reorganized the previous canon 205

of the *Schema populo Dei*:

§ 1. The decrees of a Conference of Bishops have binding force only in cases in which the common law or the particular mandate of the Apostolic See prescribes it, either *motu proprio* or in response to a petition of the Conference itself.

§ 2. The decrees mentioned in § 1, in order to be enacted validly in a plenary meeting, must be passed by at least a two-thirds vote of the Prelates who possess a deliberative vote and do not obtain binding force unless they have been legitimately promulgated after having been reviewed by the Apostolic See.

§ 3. The Conference of Bishops itself determines the manner of promulgation and the time when the decrees take effect.

§ 4. In cases in which neither the common law nor a particular mandate of the Apostolic See has conceded the power discussed in § 1 to the Conference of Bishops, each diocesan Bishop, for his own diocese, is competent to decide, nor is the Conference of Bishops or its President able to act in the name of all the Bishops, unless every and each Bishop has given consent.⁵³

In the 1980 *Schema Codicis* there were several organizational changes made to the structure of the canon: the requirement for a two-thirds majority was moved from the first to the second paragraph and the instruction on the manner of promulgation now formed its own paragraph, §3.

Despite the revision to the first paragraph of this canon, a concern remained regarding the episcopal conference encroaching on the rights of the diocesan bishop and a decision was made, despite objections from some members, to reduce further the competencies of the conference.⁵⁴ These concerns resulted in passionate exchanges during the plenary meeting of October 1981, such as one Cardinal responding to a proposed

⁵³ 1980 *Schema*, c. 330.

⁵⁴ See *Relatio*, pp. 9, 11, 96-97.

revision with: “Oh, Sancte Deus!”⁵⁵ At this meeting one member found the competencies were too broad while another found that they were too limited.⁵⁶ As a result of these continued concerns this paragraph was further shortened. This canon attempts to balance both positions by maintaining the competence of the diocesan bishop to function as shepherd of his own diocese. The reorganized second paragraph now contained the invalidating clause *ut valide* for the first time in the context of this canon.⁵⁷ This clause removes any doubt as to whether this *recognitio* was required for validity or liceity. The third paragraph, determining promulgation of conference decisions, first emerged in this *schema*.⁵⁸ The fourth paragraph was preserved unaltered from the 1977 *Schema de populo Dei*.⁵⁹

Canon 331 of the 1980 *Schema* incorporated the decision to replace the term *libellus actorum*: “When a plenary meeting of a Conference of Bishops has ended, a report of the acts of the Conference and its decrees is to be transmitted by the President to the Apostolic See, so that the acts are brought to its notice and it will be able to review the decrees, if any.”⁶⁰ Cardinal Wyszyński proposed to remove this useless (*inutilis*) norm as any decrees already required a *recognitio*. This proposal was dismissed by the Secretariat.⁶¹

⁵⁵ See PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, *Acta et documenta Pontificiae commissionis Codici iuris canonici recognoscendo: Congregatio Plenaria, Diebus 20-29 octobris 1981 habita*, Vatican City, Typis polyglottis Vaticanis, 1991, p. 523.

⁵⁶ *Relatio*, pp. 96-97.

⁵⁷ 1980 *Schema*, c. 330, §2.

⁵⁸ 1980 *Schema*, c. 330, §3.

⁵⁹ 1980 *Schema*, c. 330, §4; *Schema Populo Dei*, c. 205, §4.

⁶⁰ 1980 *Schema*, c. 331.

⁶¹ *Relatio*, p. 98; also *Comm.*, 14 (1982), p. 200.

Canon 332 of the 1980 *Schema Codicis* incorporated changes recognizing that many of the decisions of an episcopal conference are not, strictly speaking, decrees:

In each Conference of Bishops a permanent council of Bishops is to be erected, whose function it is to take care that the agenda for a plenary session of a Conference is prepared and that decisions made in plenary session are properly executed. It is also for the council to execute other affairs that are entrusted to it according to the norm of the statutes.⁶²

In this draft “decrees” was replaced with “decisions” and the introduction “in each conference of bishops” was removed, as this was already implicit. Other minor redactions were included in this *schema*.⁶³

The general secretariat’s responsibilities are described in canon 333 of the 1980 *Schema Codicis*:

It is for the General Secretariat:

- 1) to prepare a report of all acts and decrees of a plenary meeting of a Conference and the acts of the permanent Council of Bishops, to communicate the same to all the members of the conference, and to draw up other acts whose preparation the president of the Conference or the permanent council entrusts to it.
- 2) to communicate with Conferences of Bishops of bordering regions the acts and comments which the Conference in a plenary meeting or the permanent Council of Bishops decides must be sent to them.⁶⁴

This canon included a simplified introduction along with other minor modifications.⁶⁵

These norms were substantially unaltered during the remainder of the revision process.

Inter-conference collaboration is the subject of canon 210 of *Populo Dei*:

⁶² *Schema Populo Dei*, c. 208.

⁶³ *Permanens* was replaced with *permanentis*, *statuta* was made plural, and *perficere* was replaced with *negotia peragere*.

⁶⁴ 1980 *Schema*, c. 333.

⁶⁵ That is, the deletion of the word *omnium* and replacement of *eandem* with *easdem*, see 1980 *Schema*, c. 333, 1). A more minor edit, reversed in the 1982 *Schema*, was the change of the numbering from “1^o” to “1”).

§1. Relations between different Conferences of Bishops, especially between ones bordering, are to be fostered in order to promote and protect the greater good of a region.

§2. Whenever Conferences enter into actions or programs having an international character, however, the Apostolic See must be heard.⁶⁶

In this case, again, the original draft canon 210 of the *Schema de populo Dei* was only slightly edited. Importantly, the Holy See is no longer simply to be advised but now must be heard.⁶⁷

2.1.3 1982 *Codicis iuris canonici: Schema novissimum*

In October 1981 the members of the Pontifical Commission approved all the changes that received majority votes during the plenary sessions. These texts were reworked and the Latin text was harmonized in terms of style and formatting. This text was printed on April 22, 1982 and presented to the Bishop of Rome for his review prior to promulgation with the help of experts and in consultation with the pro-president of the Commission.⁶⁸ The general canons on conferences of bishops were canons 447-459 of this final draft.

Relatively few changes occurred in the 1982 *Schema Codicis* with respect to the canons on conferences of bishops, and the majority of these were stylistic in nature. Canon 447 of this draft was stylistically edited, including some revision to word order.⁶⁹ This draft

⁶⁶ 1980 *Schema*, c. 334.

⁶⁷ The phrase “episcopal conferences” was also replaced with “conferences of bishops”, see *Populo Dei*, c. 210.

⁶⁸ “Preface to the Latin Edition,” p. xliii.

⁶⁹ In the 1982 *Schema* there was a replacement of *compositas* with *accommodatas* and a grammatical change whereby *provehendum* was placed prior to the *quod* clause, not after it; see PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex iuris canonici: Schema novissimum iuxta placit Patrum Commissionis emendatum atque Summo Pontifici praesentatum* (=1982 *Schema*), Vatican City, Libreria

canon was unchanged in the promulgated Latin Code.⁷⁰ Canon 448 of the 1982 *Schema* followed the 1980 *Schema Codicis* identically, outside of changes to capitalization.⁷¹ This canon was unchanged in the promulgated Latin Code.⁷² Canons 449, 450 and 451 were identical in the 1980 *Schema Codicis*, the 1982 *Schema Codicis*, and the promulgated Latin Code.⁷³ Canon 452 of the 1982 *Schema Codicis* had one minor edit where the phrase “place a general secretary” was changed to “designate a general secretary”.⁷⁴ This text was maintained unaltered in the promulgated Latin Code.⁷⁵ Canon 453 was identical in the two latter *schemata* and the final promulgated text.⁷⁶ Canon 454 was the subject of minor redactions, with the removal of the reference to the norm on conference membership.⁷⁷ This canon received several minor edits prior to promulgation.⁷⁸

Canon 455 of the 1982 *Schema Codicis* had several edits. In paragraph one of the canon, “decrees of the conference” was modified to refer specifically to general decrees. A more minor modification occurred where the term common law was replaced with

editrice Vaticana, 1982, c. 447. The final version of the canon, that which is contained in the Latin Code, had a stylistic replacement of *eius* (its) with *sui* (its own), see *CIC/83*, c. 447.

⁷⁰ *CIC/83*, c. 447.

⁷¹ 1982 *Schema*, c. 448. In the 1980 *Schema* Conference was capitalized whereas in the 1982 *Schema* it was no longer so.

⁷² *CIC/83*, c. 448.

⁷³ 1980 *Schema*, cc. 324-326; 1982 *Schema*, cc. 449-451; *CIC/83*, cc. 449-451.

⁷⁴ 1980 *Schema*, c. 327; 1982 *Schema*, c. 452.

⁷⁵ *CIC/83*, c. 452.

⁷⁶ 1980 *Schema*, c. 328; 1982 *Schema*, c. 453; *CIC/83*, c. 453.

⁷⁷ 1980 *Schema*, c. 329; 1982 *Schema*, c. 454.

⁷⁸ Grammatical changes occurred in 1982 *Schema* c. 454, §2 where *firimo* was replaced with *firmum*, *quod* with *sit*, and *competit* with *competere* in the promulgated *CIC/83*, c. 454, §2.

universal law.⁷⁹ In paragraph two, a clause was added to clarify that the two-thirds majority is to be drawn from those with conference membership.⁸⁰ The third paragraph remained unedited until promulgation.⁸¹ The fourth paragraph, like the first, had a stylistic change where the term common law was replaced with the term universal law.⁸² Prior to promulgation the paragraph was further refined and the reference to the diocesan bishop's own diocese, which was certainly implied, was removed.⁸³

The remaining canons again had relatively minor modifications. Canon 456 of the 1982 *Schema Codicis* repeated the same norm as canon 331 of the 1980 *Schema* with minor modifications to capitalization.⁸⁴ One further minor modification where a verb was modified occurred prior to promulgation.⁸⁵ The text of canon 332 of the 1980 *Schema* was maintained with minor stylistic changes in both canon 457 of the 1982 *Schema Codicis* as well as the later 1983 Latin Code.⁸⁶ While canon 458 of the 1982 *Schema* followed the text of the 1980 *Schema*, minor grammatical changes were inserted into the Latin Code.⁸⁷ Finally, canon 459 of the 1982 *Schema* maintained the text of the 1980 *Schema* canon 334

⁷⁹ 1982 *Schema*, c. 455, §1.

⁸⁰ 1982 *Schema*, c. 455, §2.

⁸¹ 1982 *Schema*, c. 455, §3.

⁸² 1982 *Schema*, c. 455, §4.

⁸³ *CIC/83*, c. 455, §4.

⁸⁴ 1982 *Schema*, c. 456.

⁸⁵ The verb *valeant* was replaced with *possint* in *CIC/83*, c. 456.

⁸⁶ 1982 *Schema*, c. 457.

⁸⁷ In 1982 *Schema* c. 458, 1° *easdem* was replaced with *eadem* in the *CIC/83* and *etiam* with *itemque*. In 2° *finitamarum regionum* was replaced with *finitimis* and *transmittenda* with *transmitti*.

with stylistic modifications.⁸⁸ However, in the promulgated text minor grammatical modifications occurred to the first paragraph of this canon.⁸⁹

2.2 Analysis of Canons 447-459 of the 1983 *CIC*

Canons 447-459 of the Latin Code provide general norms regarding episcopal conferences. These canons present a description of the nature of the conference, how they are established, their membership, statutes, and required officers, as well as regulations regarding plenary meetings and collaboration between conferences. As mentioned, the canons that concern the competency of conferences are located throughout the Latin Code. Canons 447-459 are, for the most part, founded on the decree of the Second Vatican Council *Christus Dominus*, no. 38.

For the purpose of this analysis this chapter of the Latin Code has been divided into six sub-categories pertaining to episcopal conferences, namely: their nature, their membership, their establishment, their internal organization, requirements for their meetings, and inter-conference collaboration. Each of these will be examined in turn, examining the *fontes* for these canons, interpretation of the canon in the *ius vigen*s, and any relevant post-codal legislation.

2.2.1 The Nature of Episcopal Conferences

Canon 447 provides the definition of an episcopal conference:

⁸⁸ 1982 *Schema*, c. 459.

⁸⁹ In the *CIC/83*, c. 459, §1, the words *diversam* and *regionum*, which were both implied, were deleted, while the word *neighbouring* was replaced with *bordering*. Canon 459, §2 was unchanged.

A conference of bishops, a permanent institution, is a group of bishops of some nation or certain territory who jointly exercise certain pastoral functions for the Christian faithful of their territory in order to promote the greater good which the Church offers to humanity, especially through forms and programs of the apostolate fittingly adapted to the circumstances of time and place, according to the norm of law.⁹⁰

This clearly parallels *Christus Dominus*, no. 38:

An episcopal conference is a kind of assembly in which the bishops of some nation or region discharge their pastoral office in collaboration, the better to promote the greater good which the Church offers to people, especially through forms and methods of apostolate carefully designed to meet contemporary conditions.⁹¹

The canon is clear that an episcopal conference is a stably established structure and is by law a permanent institution. This is an addition to the conciliar text from *Christus Dominus*, which makes no mention of permanence. An episcopal conference is a juridical person that is perpetual by its nature.⁹² This is also one way in which episcopal conferences are distinguished from other collegial structures, such as ecumenical and particular councils, which exist only for a definite period of time.

The canon further states that an episcopal conference is a grouping of bishops of a nation or some other territory. Thus, its membership includes bishops from a defined area.⁹³ They gather collegially to exercise jointly certain pastoral functions expressly limited to those that benefit the Christian faithful of a territory and are provided by the norm of law. That is, episcopal conferences are limited to those functions explicitly indicated in the

⁹⁰ CIC/83, c. 447.

⁹¹ CD, no. 38, §1.

⁹² CIC/83 cc. 120, §1, 449, §2.

⁹³ See CIC/83, c. 450.

universal law.⁹⁴ The limitations of territory and competency are both additions to the norm from *Christus Dominus*, no. 38, §1. This joint exercise of pastoral function has as its purpose the promotion of the greater good through the apostolate, adapted to the circumstances of time and place. While *Christus Dominus* does mention adaptation for time, this canon only provides express support for pastoral adaptation according to the differences of place. *Apostolos suos* would later provide clarification in the understanding of the theological and juridical nature of episcopal conferences.

2.2.2 Membership of Episcopal Conferences

Canons 448 and 450 provide norms for determining the membership of the episcopal conference. Canon 448 deals with the geographic territory of an episcopal conference from which members are to be selected. Canon 450 enumerates those individuals in the described territory who are to have membership in the conference.

2.2.2.1 Territory for Membership in Episcopal Conferences

Canon 448 is divided into two paragraphs. The first paragraph establishes the norm that the territory of an episcopal conference generally coincides with a political nation: “As a general rule, a conference of bishops includes those who preside over all of the particular churches of the same nation, according to the norm of can. 450.”⁹⁵ This paragraph has its cited source as *Christus Dominus*, no. 38, §1.

⁹⁴ Following the norm of *CIC/83*, c. 455, §1 the provision of competency could be by means of the law itself or by special delegation by the supreme legislator.

⁹⁵ *CIC/83*, c. 448, §1.

The preference for a conference to be composed of bishops from a single nation results from the common experiences of a political nation and on this point John Paul II explained: “the links of culture, tradition, and common history, as well as the interconnection of social relations among citizens of the same nation, require more constant collaboration among the members of the episcopate of that territory than the ecclesial circumstance of another territory might require.”⁹⁶ That is, there are common circumstances faced by a single national grouping that do not necessarily correspond to the context of a neighbouring region. Further, it should be clarified that the term nation in canon 448 is used not in the context of an ethnic nationality, but that of a political nation-state (as the *praxis curiae* clearly demonstrates).

While the norm is for conferences to correspond to a political nation-state there are some exceptions to this rule and occasionally conferences correspond to a territory that is either larger (ex. Scandinavia) or smaller (ex. Scotland) than a political nation. This flexibility regarding territorial structure attempts to balance possible problems that could occur with excessive diversity, such as lack of homogeneity, as well as situations where a nation has too few members to justify its own conference. There could also be challenges associated with a conference potentially becoming too large. The application of these exceptions is governed by *CIC*, canon 448, §2:

If, however, in the judgement of the Apostolic See, having heard the diocesan bishops concerned, the circumstances of persons or things suggest it, a conference of bishops can be erected for a territory of lesser or greater area, so that it only includes either bishops of some particular churches constituted in a certain territory or those who preside over particular churches in different

⁹⁶ *ApS*, no. 16.

nations. It is for the Apostolic See to establish special norms for each of them.⁹⁷

As a summary: a conference of bishops exists for its membership that is based generally on the structure of a nation but can, when circumstances suggest, be established by the Holy See as either larger or smaller than the size of a nation. In these cases, the Holy See has the obligation of consulting the bishops of the region in question. The dicastery responsible for approving these exceptions is, depending on the territory in question, the Congregation for Bishops or the Congregation for the Evangelization of Peoples.⁹⁸ It is clear, however, that the low number of international and infranational conferences indicates a clear preference for national conferences.⁹⁹

2.2.2.2 Those Who Have Membership in Episcopal Conferences

While *CIC* canon 448 deals with the geographic territory from which membership is drawn, canon 450 identifies which individuals from that territory are to be included as members:

To a conference of bishops belong by law itself all diocesan bishops in the territory, those equivalent to them in law, coadjutor bishops, auxiliary bishops, and other titular bishops who perform in the same territory a special function entrusted to them by the Apostolic See or conference of bishops. Ordinaries of another rite can also be invited though in such a way that they have only a consultative vote unless the statutes of the conference of bishops decree otherwise.¹⁰⁰

⁹⁷ *CIC/83*, c. 448, §2.

⁹⁸ See *PB*, arts. 76, 89. In special circumstances this function could also fall to the Secretariat of State (*PB*, art. 47, §1) or potentially the Congregation for the Eastern Churches, in cases of Latin conferences in Eastern territories (*PB*, art. 60).

⁹⁹ FELICIANI, “Bishops’ Conferences,” p. 996.

¹⁰⁰ *CIC/83*, c. 450, §1.

This canon clearly follows *Christus Dominus*, no. 38, §2 by granting membership to a variety of bishops and not just diocesan bishops. Care was taken to preserve the intention of the conciliar decree and the position of a more restrictive membership was rejected as being contrary to *Christus Dominus*.¹⁰¹ There are five groupings of bishops who are members of the conference by law: diocesan bishops, their equivalents in law, coadjutor bishops, auxiliary bishops, and other titular bishops who perform in the conference's territory a function entrusted to them by either the episcopal conference or the Holy See. No mention is made of retired bishops. Further, a sixth grouping, ordinaries of other Churches *sui iuris*, can be invited to membership in the conference.

There is no absolute requirement in the universal law to include ordinaries of other Churches *sui iuris* as the canon states they may, not must, be invited. These ordinaries would have consultative vote by law, but, as the canon indicates, the statutes of the conference could give them a deliberative vote. Thus, it is clearly established that episcopal conferences are, fundamentally, structures for the Latin Church. It is noticeable that the canon admits "ordinaries" of another rite with no requirement that these individuals be members of the episcopate. The canon does admit, at least in principle, the possibility of including Eastern vicars general (protosyncelli), episcopal vicars (syncelli), major superiors of clerical religious institutes of pontifical right, and major superiors of clerical societies of apostolic life of pontifical right who possess ordinary executive power.¹⁰² Given the context of the episcopal conference it would seem most appropriate for the invited ordinaries to be bishops. However, there are times when it would be appropriate for

¹⁰¹ See *Relatio*, p. 95.

¹⁰² *CIC/83*, c. 134, §1.

a priest-ordinary to be included, such as the case where an exarchate or vicariate is headed not by a bishop but a priest, or when an eparchy or exarchate is for multiple territories with a resident vicar in the nation of the conference of bishops.

This canon is in some aspects a more restrictive norm than the conciliar decrees where ordinaries of other Churches *sui iuris* were members of the conference by law with no mention of only consultative vote.¹⁰³ This restriction to a consultative vote emerged during the discussions of the *coetus De clericis* in 1967 and this was a response to the concern expressed with respect to members of other Churches having a deliberative vote in the affairs of the Latin Church, as well as concern for the Latin conference interfering in the autonomy of the Eastern Churches. The drafters decided to defer this issue to the statutes of the episcopal conference and this application of subsidiarity allowed for a diversity of approaches.¹⁰⁴ For example, while Canada has a significant number of Eastern hierarchs, this is not the case in a country such as Mexico. Different approaches would be necessary in these radically dissimilar contexts. Feliciani calls the possibility of granting deliberative vote to hierarchs of Eastern Catholic Churches *sui iuris* a “complex question” that has “provoked considerable perplexity” given that the episcopal conference is part of the hierarchical constitution of the Latin Church.¹⁰⁵ However, *Christus Dominus* is clear that “local ordinaries of whatever rite, except vicars general” have the right to attend the episcopal conference and those same local ordinaries are to have a deliberative vote.¹⁰⁶

¹⁰³ *CD*, no. 38, §2.

¹⁰⁴ *Comm.*, 18 (1986), pp. 88-89.

¹⁰⁵ Giorgio FELICIANI, “Le Conferenze episcopali,” in *Quaderni di diritto ecclesiale*, 9 (1996), p. 404.

¹⁰⁶ *CD*, no. 38, §2.

Then, *CIC* canon 450, §2 states: “Other titular bishops and the legate of the Roman Pontiff are not by law members of the conference of bishops.”¹⁰⁷ Thus, other bishops, such as retired bishops and bishops resident in the area without a qualifying ecclesiastical office or function, would be without membership by law. They may have this membership by other means, however, such as the statutes of the conference.¹⁰⁸

While the pontifical legate lacks membership in the conference by law, he is obliged by the universal law to be present at the initial session of the general assembly.¹⁰⁹ Further, in line with post-codal legislation, military ordinaries and the ordinaries of Anglican ordinariates are, by law, to be members of the episcopal conference.¹¹⁰ John Paul II cautioned about expanding membership too broadly in *Apostolos suos*, indicating that: “the proportion between diocesan Bishops and auxiliary and other titular Bishops should be taken into account, in order that a possible majority of the latter may not condition the pastoral government of the diocesan Bishops.”¹¹¹

2.2.2.3 Conclusions

CIC canons 448 and 450 establish a two-fold criterion for membership in the episcopal conference by law: episcopal ordination (or its juridic equivalency) and

¹⁰⁷ *CIC*/83, c. 450, §2.

¹⁰⁸ For example *ApS*, no. 17 indicates that episcopal conferences should allow for the presence of bishops emeriti. See also CONGREGATION FOR BISHOPS, *Apostolorum successores*, no. 29.

¹⁰⁹ PAUL VI, motu proprio *Sollicitudo omnium Ecclesiarum*, 24 June 1969, no. 8, §2, in *AAS*, 61 (1969), pp. 473-484. See also *CIC*/83, c. 364, 3°.

¹¹⁰ JOHN PAUL II, Apostolic constitution *Spirituali militum curae*, 21 April 1986, art. 3, in *AAS*, 78 (1986), pp. 481-443; BENEDICT XVI, Apostolic constitution *Anglicanorum coetibus*, Complimentary Norms, 4 November 2009, art. 2, §2, in *AAS*, 101 (2009), pp. 985-990.

¹¹¹ *ApS*, no. 17; also *CIC*/83, c. 454, §2.

ecclesiastical function within a region. Members must not only be in the order of bishops (or their juridic equivalents) but they must also have an ecclesiastical office or other qualifying function within the territory in question. The statutes of the episcopal conference are able to provide further information with respect to conference membership such as the inclusion of bishops emeriti or hierarchs from other Churches *sui iuris*, possibilities that are beyond the norms which are contained in the universal law.

2.2.3 Establishment of Episcopal Conferences

The canonical erection of episcopal conferences is regulated in canon 449. This action is solely the prerogative of the Roman Apostolic See and canon 449, §1 identifies this clearly: “It is only for the supreme authority of the Church to erect, suppress, or alter conferences of bishops, after having heard the bishops concerned.”¹¹² Further, a conference of bishops receives public juridical personality by law after its canonical erection: “A legitimately erected conference of bishops possesses juridic personality by the law itself.”¹¹³

Since conferences of bishops exercise their ministry in the name of the Church, and since their juridical personality is not by grant of competent authority but by law, their juridical personality can be understood to be public in its nature.¹¹⁴ As public juridical persons conferences have rights and obligations associated with public juridical personality, such as the administration of temporal goods. They are also permanent

¹¹² *CIC/83*, c. 449, §1.

¹¹³ *CIC/83*, c. 449, §2.

¹¹⁴ *CIC/83*, c. 116.

institutions that are perpetual by their nature.¹¹⁵ The nature of the juridical personality of an episcopal conference was a debated point prior to the Latin Code, with some scholars arguing that conferences acquired juridical personality by law and others arguing it needed to be issued by means of a formal decree.¹¹⁶ Further, for countries that have bilateral agreements with the Holy See in which there are civil effects resulting from canonical juridical personality, the explicit definition of when juridical personality is granted provides, as Feliciani notes: a “notable facility in obtaining recognition for civil purposes.”¹¹⁷

2.2.4 Statutes of Episcopal Conferences

As juridical persons episcopal conferences are required to have statutes. This requirement is also explicitly contained in canon 451 of the Latin Code. This canon requires the Holy See to grant a *recognitio* before these statutes can be promulgated. The statutes must also describe certain offices in the conference, a requirement of canon 452.

2.2.4.1 Requirement for Statutes

Canon 451 contains the requirement for statutes:

Each conference of bishops is to prepare its own statutes which must be reviewed by the Apostolic See and which are to organize, among other things, the plenary meetings of the conference which are to be held and to provide for a permanent council of bishops, a general secretariat of the conference, and also other offices and commissions which, in the

¹¹⁵ CIC/83, cc. 120, §1, 447.

¹¹⁶ See for example: Julio MANZANARES, “De Conferentiis episcopalibus post decem annos a Concilio Vaticano II,” in *Periodica de re morali, canonica, liturgica*, 54 (1975), pp. 611-618.

¹¹⁷ FELICIANI, “Bishops’ Conferences,” p. 998.

judgement of the conference, more effectively help it to achieve its purpose.¹¹⁸

The requirement for an episcopal conference to have its own statutes was already contained within the conciliar decree *Christus Dominus*:

Each episcopal conference should draw up its own statutes, to be approved by the apostolic see. Among other measures, provision should be made in these statutes for offices to secure more effectively the purpose of the conference, e.g. a permanent council of bishops, episcopal commissions, a general secretariat.¹¹⁹

This portion of the conciliar decree served as the primary source for *CIC* canon 451.

Statutes are ordinances established according to the norm of law and which define the purpose, constitution, government, and method of operating of a public juridical person.¹²⁰ As the nature of the episcopal conference as a juridical person is an aggregate of persons (*universitates personarum*), its statutes directly bind its membership described by *CIC* canon 450.¹²¹ During the process of revision, statutes were seen as a way to minimize the necessity of including a large variety of structures in the universal law.¹²² These “other offices and commissions” exist so as to allow the conference to achieve its goals effectively. However, the conference should not develop into an overly-large administration and in *Apostolos suos* John Paul II warned that an excessive bureaucracy would hinder these goals.¹²³ *Apostolorum successores* made this same point, emphasizing

¹¹⁸ *CIC/83*, c. 451.

¹¹⁹ *CD*, no. 38, §3.

¹²⁰ *CIC/83*, c. 94, §1.

¹²¹ *CIC/83*, c. 94, §2.

¹²² See for example *Comm.*, 14 (1982), p. 197.

¹²³ *ApS*, no. 18.

that commissions are not to direct or coordinate aspects of the Church's pastoral ministry, but exist to provide member bishops with the necessary resources to govern their particular Churches.¹²⁴

Since statutes regulate an episcopal conference, subsidiarity allows for a diversity of structures and procedures that can be customized to the local contexts of the numerous churches that make up the one Latin Church. The canon does provide guidelines as to what norms are to be contained in these statutes, such as the meetings, the permanent council, the general secretariat, and the other offices and commissions. For example, statutes could govern who is required to be present at which meetings.¹²⁵ Other legislation, such as *Apostolos suos*, provides additional direction for the content of statutes for episcopal conferences.¹²⁶

The plenary assembly of conference membership only meets periodically and during interim periods responsibility for the continued functions of the conference falls to the permanent council. The general secretary also assists in the permanent functioning of the episcopal conference. The statutes should provide requirements for the qualifications of the general secretary as this is not specified in the Latin Code. With respect to commissions, Renken lists seven commissions for episcopal conferences mandated in the

¹²⁴ CONGREGATION FOR BISHOPS, *Apostolorum successores*, no. 32.

¹²⁵ Mentioned in *Relatio*, p. 96.

¹²⁶ *ApS*, no. 4.

law: liturgy,¹²⁷ doctrine,¹²⁸ clergy distribution,¹²⁹ missions,¹³⁰ social communications,¹³¹ ecumenism,¹³² and seminaries.¹³³ Renken additionally lists several other commissions frequently employed by episcopal conferences such a migrants, religious, and canonical issues.¹³⁴

The *recognitio* of the Holy See is required for these statutes, which is an action that confirms they conform to the mind of the Church. Before this *recognitio* is granted the statutes are “examined from a juridical perspective” by the Pontifical Council for Legislative Texts.¹³⁵ These statutes have some precise requirements: in 1999 a specific formula related to the teaching authority of conferences was to be inserted into each set of statutes.¹³⁶ The final *recognitio* is granted by the Congregation of Bishops, the Congregation for the Evangelization of Peoples, or, in rare cases of a Latin Conference

¹²⁷ SACRED CONGREGATION FOR RITES, Instruction *Inter oecumenici*, 26 September 1964, in *AAS*, 56 (1964), pp. 877-900, nn. 44-46.

¹²⁸ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Litteris apostolicis*, 23 February 1967, in *Nuntius*, 1 (1967), pp. 15-16.

¹²⁹ SACRED CONGREGATION FOR THE CLERGY, Directive Notes *Postquam apostolici*, 25 March 1980, in *AAS*, 72 (1980), pp. 343-364, no. 18.

¹³⁰ *Ibid.*

¹³¹ PONTIFICAL COUNCIL FOR INSTRUMENTS OF SOCIAL COMMUNICATIONS, Pastoral instruction *Communio et progressio*, 23 May 1971, in *AAS*, 63 (1971), pp. 593-656, nn. 172-173.

¹³² PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY, *Directory for the Application of Principles and Norms on Ecumenism*, 23 March 1993, Vatican City, Libreria editrice Vaticana, 1993, nn. 46-47.

¹³³ CONGREGATION FOR CATHOLIC EDUCATION, *Ratio fundamentalis institutionis sacerdotalis*, 19 March 1985, Vatican City, Libreria editrice Vaticana, 1985, General Norms, §1.

¹³⁴ RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, pp. 196-198.

¹³⁵ *PB*, art. 157.

¹³⁶ *La congregazione per i vescovi*, no. 3.

being erected in a territory subject to this congregation, the Congregation for the Eastern Churches.¹³⁷ These statutes are generally approved for a five-year period, requiring their periodic review.¹³⁸

2.2.4.2 Offices of the Episcopal Conference

Among the topics governed by the statutes are details regarding conference officials. This topic receives further direction in the Latin Code itself: “Each conference of bishops is to elect a president for itself, is to determine who is to perform the function of pro-president when the president is legitimately impeded, and is to designate a general secretary, according to the norm of the statutes.”¹³⁹ Each conference must as a result have a president, a pro-president, and a general secretary. The president has responsibilities that are defined in both the universal law and the conference statutes. The canon indicates that the president is to be elected and thus the general norms regarding elections (*CIC* cc. 164-179) would govern this process, unless the statutes provide otherwise.¹⁴⁰ An auxiliary bishop cannot serve as president due to the fact that the conference is concerned with

¹³⁷ See *PB*, arts. 82, 89. One could also add the Secretariat of State as having some competence in this matter for certain restricted territories, in virtue of *PB*, art. 47. Johnson, writing in the *CLSAComm2* errors in note 107 by not including the Congregation for Eastern Churches, see JOHNSON, “Title II: Groupings of Particular Churches,” p. 595. Johnson’s reasoning is simple: “Is not the episcopal conference an institute of the Latin church [sic]?” Unfortunately this position ignores the Congregation for Eastern Churches having full jurisdiction over certain territories (including Latin Catholics), see *Rescriptum ex audientia*, 4 January 2006, in *AAS*, 98 (2006), pp. 65-66.

¹³⁸ José Luis GUTIÉRREZ, “Capítulo VI Organización Jerárquica de la Iglesia,” in *Manual de derecho canonico*, Pamplona, Universidad de Navarra, 1988, p. 358.

¹³⁹ *CIC/83*, c. 452, §1.

¹⁴⁰ As has been observed by commentators, this requirement for an elected president is not absolute as the statutes of the Italian conference indicate the Bishop of Rome appoints the president. See RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, note 96, p. 199.

coordinating pastoral activity in a given territory and an auxiliary bishop does not, strictly speaking, enjoy personal territorial pastoral responsibility.¹⁴¹ The office of president is of extreme importance to the conference as he represents the conference, helps resolve impasses, and participates in the extraordinary general assembly of the synod of bishops.¹⁴² The statutes should designate the manner by which the president represents the juridical person.¹⁴³ Questions such as the length of terms of office as well as the method of selecting both the pro-president and general secretary should also be defined in these statutes.

Further, if the one who holds the office of pro-president or president has his resignation as diocesan bishop accepted by the Bishop of Rome, his office as president or pro-president also becomes vacant by law.¹⁴⁴ It is concluded by commentators, as a result of these clarifications, that the president must be a member who has deliberative vote by law in the conference.¹⁴⁵ This conclusion could, consequently, exclude hierarchs from Eastern Churches *sui iuris* if they do not have deliberative vote in the conference.

Paragraph two of canon 452 provides further definition about the role of the president and the pro-president: “The president of a conference, and, when he is

¹⁴¹ PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, *Authentic Interpretation*, 23 May 1988, also Rosalio José CASTILLO LARA, “De episcoporum conferentiarum praesidentia,” 10 March 1989, in *Comm.*, 21 (1989), p. 95. While the argument has been answered definitively since there is an authentic interpretation on the topic, a critique of this position exists: see G. MCKAY, “Episcopal Conferences and Auxiliary Bishops,” in *Canon Law Society of Great Britain and Ireland Newsletter*, 80 (1989), pp. 8-16.

¹⁴² SECRETARIAT OF STATE, *Rescriptum ex audientia Ordo synodi episcoporum*, 29 September 2006, in *AAS*, 98 (2006), pp. 755-776, art. 5, §2.

¹⁴³ Following the norm of *CIC/83*, c. 118.

¹⁴⁴ PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, *Responsio ad propositum dubium*, 3 March 1989, in *AAS*, 81 (1989), p. 388; *La congregazione per i vescovi*, no. 7.

¹⁴⁵ See for example RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, p. 201.

legitimately impeded, the pro-president, presides not only over the general meetings of the conference of bishops but also the permanent council.”¹⁴⁶ If the pro-president is also legitimately impeded, it would be prudent that the statutes would indicate who should assume this position. This canon, together with canon 456, is the extent of the definition of the president’s function in this section of the Latin Code. Further functions may be defined in the statutes of the conference or simply rely on custom. The universal law does not indicate the secretary must be a cleric but the conference statutes could require this quality.

2.2.4.3 Conclusions

As a public juridical person the episcopal conference is required to have statutes. These statutes, requiring a *recognitio*, provide greater detail for the functioning of the conference and allow for norms that are customized to the local context. The universal law requires a conference to have a permanent council including a president, a pro-president, and a general secretary. These requirements are found in canons 451 and 452 of the 1983 Latin Code as well as numerous sources of extra-codal legislation.

2.2.5 Meetings of Episcopal Conferences

Six canons, 453-458, provide guidelines for plenary sessions of the episcopal conference. These canons govern the required frequency of these meetings, who is to be present at meetings, the decision-making process, as well as required actions by the president, the permanent council, and the general secretariat. Each of these norms will now be examined in turn.

¹⁴⁶ *CIC/83*, c. 452, §2.

2.2.5.1 Timing of Meetings

The timing of plenary sessions, as indicated by canon 453, is to be prescribed by the statutes: “Plenary meetings of a conference of bishops are to be held at least once each year and, in addition, whenever particular circumstances require it, according to the prescripts of the statutes.”¹⁴⁷ This canon is an application of the conciliar decree which directed that conferences were to meet at “regular intervals”.¹⁴⁸

The term plenary assembly is not defined in the Latin Code. However, *Pastor bonus*, art. 11, does refer to plenary sessions of dicasteries to which all members of a dicastery must be invited. Following this understanding, a plenary assembly of the conference would be one to which all members of the conference are to be invited.¹⁴⁹ Due to the importance of the plenary assembly in the attainment of the goals of the conference, it must occur at least annually. The statutes should indicate how extraordinary meetings are convoked. While general decrees must pass by a two-thirds majority of the members with deliberative vote (*CIC*, c. 455, §1), other matters require approval by an absolute majority of those present with deliberative vote following canon 119, 2°. ¹⁵⁰

2.2.5.2 Voting Status of those Present at Meetings

CIC canon 454 distinguishes between those members having a deliberative and those having a consultative vote at the plenary meeting of an episcopal conference:

¹⁴⁷ *CIC*/83, c. 453.

¹⁴⁸ *CD*, no. 37.

¹⁴⁹ JOHNSON, “Title II: Groupings of Particular Churches,” p. 596.

¹⁵⁰ RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, p. 202.

§1. By the law itself, diocesan bishops, those who are equivalent to them in law, and coadjutor bishops have a deliberative vote in plenary meetings of a conference of bishops.

§2. Auxiliary bishops and other titular bishops who belong to a conference of bishops have a deliberative or consultative vote according to the prescripts of the statutes of the conference. Nonetheless, only those mentioned in §1 have a deliberative vote in drawing up or changing the statutes.¹⁵¹

CIC canon 454, §2 clearly restricts the drafting and editing of conference statutes to those with deliberative vote, that is, diocesan bishops, their juridical equivalents, and coadjutor bishops. This restriction was not contained in *Christus Dominus*, which is cited as a source for this canon. That conciliar norm more simply stated: “Local Ordinaries and coadjutors have a deliberative vote. It will be for the statutes of the conference to determine whether auxiliary and other bishops who have the right to take part in the conference have a deliberative or a consultative vote.”¹⁵²

A deliberative vote is the ability to vote upon the outcome of a question. A consultative vote is that which is not counted towards the outcome of a question but instead provides input into the question or issue. Johnson explains it as follows: “All bishops who are members of a conference have the right to speak, but not all of them have the right to vote.”¹⁵³ There are, as a result, two groups of those with deliberative vote: first, those who have this vote in virtue of the universal law, that is, diocesan bishops, their juridical equivalents, and coadjutor bishops, and second, those who have it in virtue of the statutes of the conference, that is, any or all auxiliary bishops and other titular bishops, as well as ordinaries from other Churches *sui iuris*, according to *CIC* canon 450, §1 and the statutes

¹⁵¹ *CIC*/83, c. 454.

¹⁵² *CD*, no. 38, §2.

¹⁵³ JOHNSON, “Title II: Groupings of Particular Churches,” p. 596.

of the conference. According to this canon, only those of the first grouping are able to vote upon the statutes in virtue of paragraph two of this canon. Further, while bishops emeriti can be members of the episcopal conference, later documents clearly indicate that bishops emeriti should have a consultative vote.¹⁵⁴

2.2.5.3 Decisions of the Conference

The decision-making process of a conference of bishops is treated in a single canon with four paragraphs. Paragraph one of canon 455 clearly outlines the competency of episcopal conferences to issue general decrees: “A conference of bishops can only issue general decrees in cases where universal law has prescribed it or a special mandate of the Apostolic See has established it either *motu proprio* or at the request of the conference itself.”¹⁵⁵ This canon follows *Christus Dominus*, no. 4, which provides the same general norm:

The decisions of an episcopal conference will have binding force in law [...] only to matters that have been prescribed by common law or enacted by special mandate of the [Roman] apostolic see acting on its own initiative or in response to a petition made by the conference itself.¹⁵⁶

Early in the process of codification it was decided that this paragraph of *Christus Dominus* was to be the primary source for competency of episcopal conferences.¹⁵⁷ This norm went through several levels of redaction during the drafting process out of concern for the

¹⁵⁴ CONGREGATION FOR BISHOPS, *In vita Ecclesiae*, 31 October 1998, no. 4, in *Comm.*, 20 (1988), pp. 167-168; CONGREGATION FOR BISHOPS, *Apostolorum successores*, nn. 29, 230(b); *ApS*, no. 4.

¹⁵⁵ *CIC/83*, c. 455, §1.

¹⁵⁶ *CD*, no. 38, §4.

¹⁵⁷ *Comm.*, 4 (1972), p. 48.

conference having too broad of an ability to promulgate general decrees.¹⁵⁸ This was part of a gradual process in the years after the Second Vatican Council whereby conferences were assigned gradually fewer legislative competencies.¹⁵⁹

The number of competencies contained in the universal law was gradually reduced during the process of revision and, as Feliciani observes: “many competencies envisioned by the *schemae* [sic] that were sent to the consultative bodies between 1972 and 1977 disappeared, probably because of the prevalence of the concerns for protecting the autonomy of the particular churches.”¹⁶⁰ Several sources have attempted to enumerate the instances for which the episcopal conference is currently competent by virtue of the universal law; these calculations have greatly varied in number.¹⁶¹ These modifications demonstrate how those revising the Latin Code clearly intended conferences as primarily organs of collaboration and not legislation.¹⁶² Acerbi stated: “The view rejected by the drafters of the code is that the episcopal conference would have all the power necessary to govern a determined portion of the Church, between what is reserved to the pope and what is reserved to the diocesan bishop.”¹⁶³ The episcopal conference has a specified function

¹⁵⁸ See *Comm.*, 12 (1980), pp. 267-268.

¹⁵⁹ For a discussion of this, see Thomas J. GREEN, “The Normative Role of Episcopal Conferences in the 1983 Code,” in REESE, *Episcopal Conferences: Historical, Canonical and Theological Studies*, pp. 137-175.

¹⁶⁰ FELICIANI, “Bishops’ Conferences,” p. 1016.

¹⁶¹ An authoritative list of 21 instances that should be contained within the particular law is contained in a list provided by the Secretariat of State published in *Comm.*, 15 (1983), pp. 135-139. Some commentators, however, list many more than 21. For example, Green lists 53 competencies, see GREEN, “The Normative Role of Episcopal Conferences in the 1983 Code,” pp. 168-175.

¹⁶² See, for example, *Comm.*, 14 (1982), p. 199.

¹⁶³ Antonio ACERBI, “The Developments of the Canons on Conferences and the Apostolic See,” in *The Jurist*, 48 (1988), p. 151.

within its limited jurisdiction, which is intended not to infringe on the prerogatives of either the Holy See or the diocesan bishop.

This canon speaks of general decrees and these are laws properly speaking.¹⁶⁴ Two situations of legislative authority for episcopal conferences exist: those provided in the universal law and those that are granted by the Holy See. This is ordinary power but in the former case, this power is ordinary while in the latter case, this power is delegated.¹⁶⁵ When the conference passes legislation in its proper areas of competence it functions using ordinary power. However, in these cases where the Holy See has granted a delegation the conference acts using delegated papal power.¹⁶⁶ At times, these delegated competencies have occurred by means of international concordats.¹⁶⁷

Paragraph 2 of canon 455 indicates that a two-thirds majority is required for the approval of these general decrees:

The decrees mentioned in §1, in order to be enacted validly in a plenary meeting, must be passed by at least a two thirds vote of the prelates who belong to the conference and possess a deliberative vote. They do not obtain binding force unless they have been legitimately promulgated after having been reviewed by the Apostolic See.¹⁶⁸

¹⁶⁴ CIC/83, c. 29. For more on this topic see John M. HUELS, "A Theory of Juridical Documents Based on Canons 29-34," in *Studia canonica*, 32 (1998), pp. 337-370, esp. section 3.1.

¹⁶⁵ See Reinhard LETTMAN, "Episcopal Conferences in the New Canon Law," in *Studia canonica*, 14 (1980), pp. 334-355; also Thomas GREEN, "The Authority of Episcopal Conferences: Some Normative and Doctrinal Considerations," in *CLSA Proceedings*, 51 (1989), p. 127.

¹⁶⁶ GREEN, "The Authority of Episcopal Conferences: Some Normative and Doctrinal Considerations," p. 125. This position is debated, however, and there are several other theses that are competing, see Juan FORNÉS, "Naturaleza sinodal de los Concilios particulares y de las Conferencias episcopales," in *L'Année canonique, Hors série*, 1 (1992), pp. 340-346.

¹⁶⁷ See Georgio FELICIANI, "Prospettive di sviluppo del diritto particolare ad opera delle Conferenze episcopali," in *Folia canonica*, 2 (1999), pp. 23-31.

¹⁶⁸ CIC/83, c. 451, §2.

This paragraph, also, has its source in *Christus Dominus*:

The decisions of an episcopal conference will have binding force in law under certain conditions: namely, provided that they have been made legitimately and by at least a two-thirds majority of the votes of the prelates who are members of the conference with a deliberative vote; that these decisions have been approved by the apostolic see; and that they apply only to matters that have been prescribed by common law or enacted by special mandate of the apostolic see acting on its own initiative or in response to a petition made by the conference itself.¹⁶⁹

The norm requiring a *recognitio* for the decrees of an episcopal conference thus has clear foundation in the conciliar decree

This canon clearly prescribes that a two-thirds majority is required for the approval of all general decrees, a majority that must be reached in a plenary meeting and is necessary for validity. Further, this required two-thirds majority is of all members of the conference with deliberative vote, not just those members present.¹⁷⁰ This majority is an exception to the normal requirement for an absolute majority contained in *CIC* canon 119, 2°. These requirements ensure that the decisions are reflective of the full membership of the conference and not a few bishops alone. This requirement in fact predates *Christus Dominus* and was instituted by Paul VI for national episcopal conferences in 1964.¹⁷¹ Again, the law reflects a concern for maintaining the powers of the local bishop and ensuring that the conference does not function as an intermediate governing body, but

¹⁶⁹ *CD*, no. 38, §4.

¹⁷⁰ The understanding of the two-thirds majority as referring to two-thirds of all members and not simply two-thirds of those present was clarified during the revision process, see *Relatio*, p. 96.

¹⁷¹ PAUL VI, Apostolic letter *Sacram liturgiam*, 26 January 1964, §10, in *AAS*, 56 (1964), pp. 139-144.

instead, as Gutiérrez observes: “the conference appears rather as a logical extension of the task that every bishop in his own diocese plays.”¹⁷²

Conference decisions that have received the required two-thirds majority also require a *recognitio* from the Holy See before they can be enacted.¹⁷³ This is not to occur until after the competent dicastery submits them for examination by the Pontifical Council for Legislative Texts.¹⁷⁴ This dicastery explained that the *recognitio* is a review which is intended, “to judge the legitimacy of the agreement with universal canonical or liturgical norms of the relative texts which the episcopal conference desires to promulgate or publish.”¹⁷⁵ This does not change acts of the conference into pontifical acts and offers them no additional legislative authority. These decisions remain acts of the conference.¹⁷⁶ Huels states: “The *recognitio* does not make the conference’s decree to be law; it is already validly enacted law when approved by the conference, albeit not yet promulgated and in force. The *recognitio* is an act of executive, not legislative, power.”¹⁷⁷ After the granting of the *recognitio* these decisions still require promulgation.

¹⁷² José Luis GUTIÉRREZ, “La Conferenza episcopale come organo supradiocesano nella struttura ecclesiastica,” in *Ius Ecclesiae*, 1 (1989), pp. 69-91.

¹⁷³ The dicastery competent for granting the *recognitio* is either the Congregation for Bishops, the Congregation for the Evangelization of Peoples, the Congregation for Eastern Churches, or the Secretariat of State –Section for Relations with States, as the case demands. See *PB*, arts. 47, 82, 89 and SECRETARIAT OF STATE, *Rescriptum ex audientia*, 4 January 2006, in *AAS*, 98 (2006), pp. 65-66.

¹⁷⁴ *PB*, art. 157.

¹⁷⁵ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Explanatory note on the Juridical Nature and Extension of the *Recognitio* of the Holy See, no. 4.

¹⁷⁶ See Julio MANZANARES, “Papal Reservation and *Recognitio*: Considerations and Proposals,” in *The Jurist*, 52 (1992), pp. 228-254.

¹⁷⁷ John M. HUELS, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montreal, Wilson and Lafleur Ltée, 2006, p. 54.

Some commentators, such as Provost, argued that the restrictive provisions of canon 455 only apply to general legislative decrees and not to general executory decrees, following the division of canons 29 and 31 of the Latin Code.¹⁷⁸ This position was erroneous, however, and an authentic interpretation issued 5 July 1986 clarified that the term “decrees” in canon 455, §1 applies to both executory and legislative decrees.¹⁷⁹ Huels explains: “The decisive criterion for the observance of canon 455 is the intention of the conference that the text be juridically binding in all the dioceses of the conference.”¹⁸⁰ Thus, any decree meeting this condition of being binding in nature necessarily requires both a two-thirds majority and a *recognitio*. However, this canon exclusively makes reference to general decrees, meaning that the competency to issue singular decrees is not subject to these limitations.¹⁸¹ *Apostolorum successores* made a similar distinction in 2002, distinguishing between those decisions of the conference that are juridically binding norms, as opposed to particular decisions that bishops should (not must) accept faithfully and apply in his diocese.¹⁸²

The conference is free to determine the manner of promulgation according to the norm of canon 455, §3: “The conference of bishops itself determines the manner of promulgation and the time when the decrees take effect.” Provision for both the *vacatio*

¹⁷⁸ See James A. CORIDEN, Thomas J. GREEN, and Donald E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, New York/Mahwah, NJ, Paulist Press, 1985, p. 369.

¹⁷⁹ PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, Authentic Interpretation, 1 August 1985, in *AAS*, 77 (1985), p. 771.

¹⁸⁰ HUELS, *Liturgy and Law*, pp. 52-53.

¹⁸¹ *Ibid.*, p. 56. An example of a singular decree would be the erection of a national seminary, c. 237, §2.

¹⁸² CONGREGATION FOR BISHOPS, *Apostolorum successores*, no. 31.

legis and manner of promulgation could be specified either in the statutes or the decree itself. In the absence of a particular norm to the contrary, the period of the *vacatio legis* is one month.¹⁸³

The fourth and final paragraph of canon 455 provides a norm to preserve the individual competence of the diocesan bishop:

In cases in which neither universal law nor a special mandate of the Apostolic See has granted the power mentioned in §1 to a conference of bishops, the competence of each diocesan bishop remains intact, nor is a conference or its president able to act in the name of all the bishops unless each and every bishop has given consent.¹⁸⁴

This paragraph has its source clearly in *Lumen gentium*, which states that the power of a diocesan bishop in his diocese is: “proper, ordinary, and immediate.”¹⁸⁵

During the process of revision concerns were raised regarding the competency of the episcopal conference. One member found the competencies were too broad and while another member found that they were too limited.¹⁸⁶ This canon attempts to address both these positions by protecting the competence of the diocesan bishop to function as shepherd of his own diocese. This is also an application of a general norm of canon law: “what touches all as individuals, however, must be approved by all.”¹⁸⁷ The episcopal conference is not able to impose itself upon any bishop when it does not have a special mandate to do so, either from the universal law or by a special mandate of the Holy See. While other

¹⁸³ *CIC/83*, c. 8, §2.

¹⁸⁴ *CIC/83*, c. 455, §4.

¹⁸⁵ *LG*, no. 27.

¹⁸⁶ *Relatio*, pp. 96-97.

¹⁸⁷ *CIC/83*, c. 119, 3°.

documents can be issued, they cannot be binding upon the membership of the conference and do not impact their individual functions of *sanctificandi*, *docendi*, and *regendi*.

When the conference of bishops has followed canon 455, §1 and issued a general decree for something within its competence, the diocesan bishop is still able to dispense from the conference norms. This follows the norm of canon 88: “A local ordinary is able to dispense from diocesan laws and, whenever he judges that it contributes to the good of the faithful, from laws issued by a plenary or provincial council or by the conference of bishops.”¹⁸⁸ However, *Apostolorum successores* adds that when a member of the episcopal conference feels that he cannot, in conscience, assent to a statement or resolution of the episcopal conference, he should apply to the Holy See for a dispensation, “allowing him to distance himself from its contents.”¹⁸⁹

A question also arose as to the nature of the doctrinal competence of the episcopal conference.¹⁹⁰ These discussions developed especially in the context of conferences issuing statements that were at times controversial.¹⁹¹ *Apostolos suos* established that, while conferences of bishops do participate in the Church’s teaching magisterium: “these

¹⁸⁸ CIC/83, c. 88.

¹⁸⁹ CONGREGATION FOR BISHOPS, *Apostolorum successores*, no. 29.

¹⁹⁰ On this topic see, for example, i) Avery DULLES, “Bishops’ Conference Documents: What Doctrinal Authority?” in *Origins*, 14 (1984-1985), pp. 528-534; ii) Avery DULLES, “What is the Role of a Bishops Conference,” in *Origins*, 17 (1987-1988), pp. 789, 791-796; iii) Thomas J. GREEN, “The Authority of Episcopal Conferences: Some Normative and Doctrinal Considerations,” in *Canon Law Society of America Proceedings*, 51 (1990), pp. 123-136; iv) Julio MANZANARES, “The Teaching Authority of Episcopal Conferences,” in *The Jurist*, 48 (1988), pp. 234-263; v) Francis G. MORRISEY, “Episcopal Conferences and the Three *Munera*,” in *The Jurist*, 48 (1988), pp. 26-29; vi) Francis A. SULLIVAN, “The Teaching Authority of Episcopal Conferences,” in *Theological Studies*, 63 (2002), pp. 472-493; and vii) Patrick LAGGES, “The Teaching Authority of the Episcopal Conference,” in *Canon Law Society of America Proceedings*, 69 (2007), pp. 41-79.

¹⁹¹ GREEN, “The Authority of Episcopal Conferences: Some Normative and Doctrinal Considerations,” p. 129.

pronouncements do not have the characteristics of a universal magisterium.”¹⁹² This document also gave clear requirements for dogmatic declarations and gave two methods for their issuance. First, these statements can be approved unanimously by conference members, in which case the faithful are obliged to adhere to these statements as part of the authentic magisterium. However, when unanimity is lacking, dogmatic declarations can be approved in a second way, namely by means of obtaining a *recognitio* from the Holy See after having obtained the required two-thirds majority, “analogous to that required by the law in order for the Episcopal Conference to issue general decrees.”¹⁹³ These decisions are to be made in the context of the plenary assembly and, as *Apostolorum successores* indicates, any non-episcopal members of an episcopal conference are not eligible to vote on doctrinal statements.¹⁹⁴ *Apostolos suos* notes, “Smaller bodies—the permanent council, a commission or other offices—do not have the authority to carry out acts of authentic magisterium either in their own name or in the name of the Conference, and not even as a task assigned to them by the Conference.”¹⁹⁵

2.2.5.4 Responsibilities of Conference Officers

Three canons, 456-458, provide general norms regarding the responsibilities of conference officers. The first of these, canon 456, reads: “When a plenary meeting of a

¹⁹² *ApS*, no. 22.

¹⁹³ *Ibid.* For a discussion of these norms, especially the question of unanimity in *ApS* and *CIC/83*, c. 455, §4, see Andrea BETTETINI, “Collegialità, unanimità, e «potestas». Contributo per uno studio sulle conferenze episcopali alla luce del m.p. «Apostolos suos»,” in *Ius Ecclesiae*, 11 (1999), pp. 493-509.

¹⁹⁴ CONGREGATION FOR BISHOPS, *Apostolorum successores*, no. 31. See also *ApS*, Complimentary Norms, art. 1.

¹⁹⁵ *ApS*, no. 23.

conference of bishops has ended, the president is to send a report of the acts of the conference and its decrees to the Apostolic See so that the acts are brought to its notice and it can review the decrees if there are any.”¹⁹⁶ This requirement satisfies the norm in canon 455, §2 of obtaining a *recognitio* prior to the promulgation of any decrees and is a concrete application of the *Nota explicativa praevia*, cited as a source, which requires hierarchical communion with the head of the college in order for a group of bishops to exercise jurisdiction.¹⁹⁷

Canon 456 provides the procedure to obtain this *recognitio*: the conference president, as the juridical representative of the conference, has the responsibility of submitting the decrees, if any, to the Holy See. This obligation to submit a report of the acts of the conference to the Holy See was not contained in any of the conciliar decrees. However, this requirement emerged well before the revised Latin Code as Paul VI instituted this practice in 1969.¹⁹⁸ The president accomplishes this requirement by sending the decrees through the papal legate of his territory.¹⁹⁹

Canon 457 provides the permanent council of the episcopal conference with a list of responsibilities during a plenary session:

It is for the permanent council of bishops to take care that the agenda for a plenary session of a conference is prepared and that decisions made in plenary session are properly executed. It is also for the council to take care of other affairs which are entrusted to it according to the norm of the statutes.²⁰⁰

¹⁹⁶ CIC/83, c. 456.

¹⁹⁷ *Nota explicativa praevia*, no. 2.

¹⁹⁸ PAUL VI, *Sollicitudo omnium Ecclesiarum*, no. 8, §2.

¹⁹⁹ *Ibid.*

²⁰⁰ CIC/83, c. 457.

The source of this canon is cited as *Christus Dominus*, which also indicates that the episcopal conference's statutes are to provide for a permanent council in order to achieve its objectives.²⁰¹ This is also an application of the earlier prescripts of *CIC* canon 451, which requires the statutes to provide for the permanent council.

This canon provides three minimum requirements for the permanent council: this group is to prepare the agenda for plenary meetings, it has the responsibility to ensure decisions are properly executed, and it is to complete any other business assigned to it by the conference statutes.²⁰² This council ensures the continuous functioning of the episcopal conference between plenary assemblies. The definition of the powers of the permanent council in the statutes ensures that it performs its functions while not exceeding its competency.

Canon 458 provides the responsibilities of the general secretariat with respect to the plenary meeting. This canon is divided into two norms, the first of which describes internal responsibilities, namely responsibilities of the secretariat to members of the conference, and the second of which describes external responsibilities, such as responsibilities of the secretariat in relations with other episcopal conferences. The first norm is:

It is for the general secretariat:

1° to prepare a report of the acts and decrees of a plenary meeting of a conference and the acts of the permanent council of bishops, to communicate the same to all the members of the conference, and to draw up other acts whose preparation the president of the conference or the permanent council entrusts to the general secretary;²⁰³

²⁰¹ *CD*, no. 38, §3.

²⁰² *CIC/83*, c. 457.

²⁰³ *CIC/83*, c. 458, 1°.

As Johnson observes, in the preparation of the official acts of the conference the secretariat is responsible for tasks comparable to those of a diocesan chancellor.²⁰⁴

Section two of *CIC* canon 458 describes the general secretariat's function in inter-conference collaboration. This canon states simply that the secretariat has the responsibility: "to communicate to neighbouring conferences of bishops the acts and documents which the conference in plenary meeting or the permanent council of bishops decides to send to them."²⁰⁵ The universal law, as a result, assigns a single task to conference secretariats with respect to collaboration between conferences: the communication of acts and documents as directed. This does not include communication with the Holy See (occurring through the papal representative for the region), which, as indicated by a previous canon, is the responsibility of the conference's president.²⁰⁶ Certainly, the statutes can identify other responsibilities of the secretariat with respect to internal and external collaboration.²⁰⁷ The secretariat is an office of communication and coordination and not one of decision-making.²⁰⁸

2.2.5.5 Conclusions

Canons 453-458 provide norms that regulate the plenary sessions of episcopal conferences. These meetings, governed by both universal law and conference statutes, must

²⁰⁴ JOHNSON, "Title II: Groupings of Particular Churches," p. 602.

²⁰⁵ *CIC*/83, c. 458, 2°.

²⁰⁶ *CIC*/83, c. 456.

²⁰⁷ Cf. *CIC*/83, c. 452, §1.

²⁰⁸ FELICIANI, "Bishops' Conferences," p. 1028.

occur annually. The membership of episcopal conferences is divided between those with deliberative and those with consultative vote. At a plenary session, a conference can issue general decrees (both legislative and executory) for those situations where it has competency, either by law or by delegation from the Roman Apostolic See. A two-thirds majority of members with deliberative vote as well as a *recognitio* are required before decrees can be promulgated. Canon 457 provides responsibilities for the permanent council with respect to plenary sessions and canon 458 does the same for the general secretariat.

2.2.6 Inter-Conference Collaboration

Canon 459, the final canon in “Chapter IV: Conferences of Bishops”, provides direction for the relations between episcopal conferences. Since the codal drafters intended conferences to be primarily bodies of communication, not legislation, inter-conference communication is an extension of the fundamental role of the conference of bishops.²⁰⁹ Paragraph one of *CIC* canon 459 prescribes that: “Relations between conferences of bishops, especially between neighbouring ones, are to be fostered in order to promote and protect the greater good.”²¹⁰ *Christus Dominus*, no. 38 stated in a general fashion that: “to promote and safeguard the greater good, contact between episcopal conferences of different nations is to be cultivated.”²¹¹ This was more precisely defined in the *motu proprio Ecclesiae Sanctae*, which instructed at length that:

§5. Relationships between episcopal conferences, especially those of neighboring countries, can be maintained in opportune and suitable ways

²⁰⁹ *Relatio*, p. 199.

²¹⁰ *CIC*/83, c. 459, §1.

²¹¹ *CD*, no. 38, §5.

through the secretariat of these conferences. These communications may concern, among other things, the following:

- (a) giving information about the principal features of pastoral conditions and activity;
- (b) forwarding writings and papers which report the decisions of the Conference or records or documents issued jointly by the bishops;
- (c) announcing various apostolic projects which have been proposed or recommended by the Episcopal Conference and which can be used to advantage in similar circumstances;
- (d) proposing serious questions which seem to be of great importance in these times and in some particular circumstances;
- (e) pointing out dangers or errors which are beginning to appear in their own country and which may work their way into other countries so that proper and timely measures can be taken to forestall or eradicate them, or to keep them in check, and so forth.²¹²

The *motu proprio Ecclesiae Sanctae* thus instructed that the secretariat is responsible for this coordination and provided several instances of possible inter-conference collaboration. This was echoed by the final of the *fontes* of the canon: the 1969 Synod of Bishops, which also recommended collaboration between conferences with common borders or socio-economic situations.²¹³

While the first paragraph does encourage inter-conference collaboration, unlike the *motu proprio Ecclesiae Sanctae* the current legislation does not enumerate any specific forms of cooperation. Inter-conference collaboration is primarily intended to be in the form of communication, not common programs. While communication between conferences was encouraged, at the same time *Ecclesiae Sanctae* required international programs to

²¹² PAUL VI, *Ecclesiae Sanctae* I, no. 41, §5.

²¹³ PAUL VI, Post-Synodal Apostolic Exhortation *Nunc nobis*, 27 October 1969 in *AAS*, 61 (1969), pp. 726-730. For more on this synod and its complex debates, especially regarding collegiality, see, for example: i) Giovanni CAPRILE, *Il Sinodo dei Vescovi: prima assemblea straordinaria (11-28 ottobre 1969)*, Rome, Edizioni La Civiltà cattolica, 1970; ii) Mariano FACCANI, *Collegio e collegialità episcopali nel sinodo 1969*, Bologna, Edizioni Dehoniane, 1991; iii) Mario PUCCINELLI, *Note sul Sinodo dei vescovi*, Quaderni di orientamenti sociali, no. 2, Rome: Editrice A.V.E., 1970.

have the prior approval of the Holy See.²¹⁴ This is echoed in paragraph two of this canon which states: “Whenever conferences enter into actions or programs having an international character, however, the Apostolic See must be heard.”²¹⁵ While there is a clear requirement in the *ius vigens* for a response from the Holy See, Johnson observes: “Neither text demands papal approval of the initiative, but both implicitly enable the Holy See to forbid anything that seems particularly unwise and to encourage especially prudent initiatives.”²¹⁶

International collaboration between episcopal conferences allows for common responses to broad pastoral challenges and avoids ecclesiastical regionalism. In a 1988 article on regionalism in the European conferences, Fürer listed eight examples for inter-conference collaboration. First, episcopal conferences can invite members of other conferences to their plenary assemblies. Second, conferences can collaborate closely on language-related issues, such as the translation of liturgical books, a joint exercise of their competency under canon 838, §3. Third, neighbouring conferences can engage common pastoral programs, such as for migrant workers. Fourth, several conferences can have special gatherings to address special issues, such as the decline in vocations and religious life. Fifth, conferences can meet in order to attempt to diffuse tension, such as the gathering of Polish and German bishops in 1965. Sixth, groups of bishops can work on projects for the universal Church, such as preparation for a Synod of Bishops. Seventh, bishops can collaborate on common issues with respect to relations with states, such as the teaching of

²¹⁴ PAUL VI, *Ecclesiae Sanctae* I, no. 41, §4.

²¹⁵ *CIC/83*, c. 459, §2.

²¹⁶ JOHNSON, “Title II: Groupings of Particular Churches,” p. 602.

religion in schools. Finally, permanently established gatherings of groups of conferences can be undertaken; these are not gatherings with juridical authority but venues for communication and collaboration.²¹⁷ These groupings are listed in the *Annuario Pontificio*.²¹⁸

2.2.7 Conclusions

Conferences of bishops are permanent groupings of bishops of a nation or territory that jointly exercise certain pastoral functions for the good of the Church and the Christian faithful.²¹⁹ The Holy See erects these bodies and alone is competent to suppress or change them.²²⁰ Their membership includes bishops of a given territory, according to the norm of universal law and the statutes of the conference.²²¹ These statutes are also to provide direction as to the frequency and timing of meetings, officers of the conference along with their functions, and any other required details.²²²

²¹⁷ Ivo FÜRER, “Episcopal Conferences in their Mutual Relations,” in *The Jurist*, 48 (1988), pp. 153-155. For a detailed examination of inter-conference collaboration in the European context, see, for example, Myriam WIJLENS, “Structures for Episcopal Leadership for Europe: The CCEE and the ComECE,” in *The Jurist*, 61 (2001), pp. 190-212.; also Giorgio FELICIANI, “Il Consiglio delle Conferenze dei Vescovi d’Europa (C.C.E.E.),” in *Antonianum*, 79 (2004), pp. 633-655.

²¹⁸ SECRETARIAT OF STATE, *Annuario Pontificio per l’anno 2015*, pp. 1094-1095. Feliciani lists only eight (FELICIANI, “Bishops’ Conferences,” p. 1030), while Renken lists thirteen (RENKEN, *Particular Churches: Their Groupings, Commentary on Canons 431-459*, p. 237). The discrepancy emerges as Feliciani strictly includes only those listed under “Riunioni internazionali di conferenze episcopali” (*Annuario*, pp. 1094-1095), while Renken includes the following two pages (pp. 1096-1097) which includes the Conseil des patriarches catholiques d’Orient, the Consilium conferentiarum episcoporum Europae, the Consejo episcopal latinoamericano, the Secretariado episcopal de América central y Panamá, and the Commissio episcopatum communitatis europaeae.

²¹⁹ *CIC/83*, c. 447.

²²⁰ *CIC/83*, c. 449.

²²¹ *CIC/83*, c. 450.

²²² *CIC/83*, cc. 451-452, 457-458.

The episcopal conference is required to have a plenary meeting of its membership at least once annually and its membership is divided amongst those who have deliberative and those who have consultative vote.²²³ Generally, in the universal law those bishops with personal territorial jurisdiction (that is, diocesan bishops and their equivalents) possess deliberative vote, while those without personal territorial jurisdiction (that is, auxiliary bishops and other titular bishops) have only consultative vote. However, the statutes may prescribe otherwise and allow certain bishops to also have deliberative vote, although not with respect to the statutes of the conference.²²⁴

A conference of bishops has authority to promulgate legislation only in those cases where it has been given specific competence, either in virtue of the universal law or by means of a special mandate of the Holy See. In order for these decrees to be validly enacted they require approval by a two-thirds majority of those members with deliberative vote at a plenary meeting, followed by promulgation after having obtained papal *recognitio*.²²⁵ Conference officers have a responsibility to facilitate communications not only between members of the conference, but also between the conference and the Holy See as well as between the conference and neighbouring conferences.²²⁶

²²³ *CIC/83*, c. 453.

²²⁴ *CIC/83*, c. 454.

²²⁵ *CIC/83*, c. 455.

²²⁶ *CIC/83*, cc. 451, 456, 459.

Conclusions

Conferences of bishops are a structure within the hierarchical constitution of the Latin Church that have territorial jurisdiction. They are not contained in the Eastern Code. However, hierarchs of other Churches *sui iuris* can be invited to plenary meetings with either deliberative or consultative vote, according to the statutes of the conference.²²⁷ While many conferences actively involve hierarchs of Eastern Churches *sui iuris*, these conferences properly belong to the hierarchical constitution of the Latin Church.²²⁸ The granting of deliberative vote to bishops of other Churches *sui iuris* is arguably a strange concept for these conferences, which are inter-ritual assemblies by exception, and not by their nature.

The Eastern Code offers an alternative model: that of the assembly of hierarchs of several Churches *sui iuris*. These assemblies, like conferences of bishops, are also based on geographic territory. This is a contrast to the other stably-established collaborative bodies present in the Eastern Code, that is, the synod of bishops of a patriarchal (or major-archiepiscopal) Church or the council of hierarchs of a metropolitan Church *sui iuris*, as these bodies are based primarily not upon geography but membership within a Church *sui iuris* and involve all bishops who are members of that Church, regardless of location.²²⁹ The assembly of hierarchs is the subject of the third chapter of this study, and is itself an

²²⁷ *CIC/83*, c. 450, §1,

²²⁸ See, for example, the inter-ritual approach to collaboration adopted by the CCCB, see CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, especially arts. 3, 2°, and 5, §§1, 4.

²²⁹ See *CCEO*, cc. 102, 164, §1.

under-utilized structure of collaborative activity also intended to “serve to ensure and safeguard communion.”²³⁰

²³⁰ JOHN PAUL II, Apostolic letter *Novo millennio ineunte*, no. 44.

3 – ASSEMBLIES OF HIERARCHS OF SEVERAL CHURCHES *SUI IURIS*

Introduction

The Catholic Church is a communion of Churches drawn together under the pastoral leadership of the Bishop of Rome as successor of Peter.¹ While the individual Churches originally developed in their own distinct manner, time and history led to not only spiritual and hierarchical communion, but also, at times, the exercise of jurisdiction in the same geographic territory. While the Churches *sui iuris* have their own particular hierarchical constitutions, hierarchs in the same territory face common circumstances and challenges based on shared geographic location. Recognizing these challenges the Second Vatican Council's decree on the Eastern Churches stated: "Ordinaries of the various individual churches who exercise jurisdiction in the same territory should take care to further unity of action, after taking counsel among themselves in periodic meetings."² The assembly of hierarchs of several Churches *sui iuris* is one of the canonical structures developed after the Council by which these inter-ecclesial meetings occur.³ These assemblies are governed by a single canon in the Eastern Code: canon 322.

This chapter begins with an examination of two concepts that are foundational for assemblies of hierarchs of several Churches *sui iuris*. First, the canonical structure of the Church *sui iuris* is examined. Second, the exercise of jurisdiction of several Churches *sui iuris* in a single geographic territory is explored. Following this, canon 322 of the Eastern

¹ See *OE*, no. 3.

² *OE*, no. 4. See also *CD*, no. 38, §6.

³ Numerous other canons in the Eastern Code explicitly cite *OE*, no. 4 and provide structures and other opportunities for contact between the various Churches *sui iuris* in a territory. See: *CCEO*, cc. 84, §1, 193, §1, 202, 405.

Code is analyzed, first by studying the canon's legislative history and finally by examining each paragraph of the canon.

3.1 Foundations for Assemblies of Hierarchs

Assemblies of hierarchs of several Churches *sui iuris* is an inter-ecclesial canonical structure built upon the structure of the Church *sui iuris*. This section begins by examining the notion of the Church *sui iuris* and its meaning as a canonical term. Second, the firm principle of the Early Church of a single bishop in a given territory will be examined, especially as it gave way to the emergence of multiple hierarchies in single jurisdictions. Finally, theological and pastoral foundations for regular collaboration between hierarchs of multiple Churches *sui iuris* in a common territory will be explored as the impetus for *CCEO* canon 322.

3.1.1 The Church *sui iuris*

Western ecclesiology of the second millennium can be characterized by the special role of the Church of Rome and its bishop. This ecclesiological model displaced the earlier communion ecclesiology of the New Testament. During this time unity in the Church was understood as not only unity of faith but also unity of discipline. In this understanding, any non-Latin Catholics were understood only in terms of their ritual identity and not in any expressions of theological or disciplinary uniqueness.⁴ The various rites of the Catholic

⁴ Emmanuel LANE, "La conception post-tridentine de la Primauté et l'origine des Églises unies," in *Irenikon*, 52 (1979), pp. 15-17.

Church were not equal and special prestige was assigned to the Latin rite in virtue of the *praestantia ritus latini*.⁵

This specific ecclesiology reflects an understanding of the Catholic Church as a single self-governing Church with different liturgical rites. In this paradigm the individual rites were, as Nedungatt describes: “communities of faithful with or without their own hierarchy who were received into direct communion with Rome.”⁶ Rite was understood as a descriptor for a particular Church.⁷ This was the position present in the previous law of the *Codex iuris canonici orientalis* and Bassett notes that, with only two exceptions: “The entire system of laws in the Oriental code is consistent in applying the canonical notion [of a particular Church] as rite.”⁸

The Second Vatican Council moved away from describing the Eastern Churches as “rites” and instead presented the Catholic Church as a communion of Churches.⁹ These self-governing Churches are, in the language of Paul VI, likened to the Trinity in that the universal is manifested in the local but the local cannot be separated from the universal.¹⁰ At the same time, rite was used to describe a liturgical tradition such as the Byzantine,

⁵ For a brief overview of the history of the concept of the prestige of the Latin rite see Natale LODA, “Uguale dignità teologica e giuridica delle chiese *sui iuris*,” in Luis OKULIK (ed.), *Nuove terre e nuove Chiese: Le comunità di fedeli orientali in diaspora*, Venice, Marcianum Press, 2008, pp. 40-48.

⁶ George NEDUNGATT, *The Spirit of the Eastern Code*, Bangalore, Dharmaram Publications, 1992, pp. 63-64.

⁷ William BASSETT, *The Determination of Rite*, Analecta Gregoriana, no. 157, Rome, Gregorian University Press, 1967, pp. 103-106.

⁸ Ibid., p. 102. The two exceptions noted by Bassett are *Cleri sanctitati*, cc. 38, §1, 1° and 364, §3, 4°.

⁹ See, for example, *LG*, nn. 13, 23. However this usage is not always consistent, cf. *OE*, no. 7.

¹⁰ PAUL VI, Allocution of 17 September 1973, in *Comm.*, 5 (1973), p. 127.

Antiochian, Armeanian, Chaldean, and Alexandrian rites.¹¹ Equality of the Church's rites was explicitly stated in the decree *OE*: "none of them [the individual Churches] is superior to others as regards to rite."¹²

This conciliar understanding of rite and particular Church was reflected in the revision of the Church's canon law where rite no longer primarily identified a Church. When a particular Church is described in the Latin Code several terms are used: ritual Church, *sui iuris* ritual Church, and rite.¹³ In the Eastern Code the drafters wished to avoid any juridical imprecision and this resulted in the guideline for revision: "The notion of Rite should be re-examined and a new term agreed upon to designate the various Particular Churches of the East and of the West."¹⁴ This principle resulted in a two-fold challenge for the drafters of the Eastern Code: first, rite required re-examination, and second, a term was to be agreed upon which would designate the various Churches.

The task of developing this term was entrusted to the *Coetus de normis generalibus, ritibus, personis physicis et moralibus, potestate ordinaria et delegata* for study. This study group concluded that the term "rite" was not synonymous with the term "particular Church" and must not be used as such. This was based on *Orientalium Ecclesiarum*, no. 3, which indicated that rite is to describe the liturgical, disciplinary, spiritual, and theological

¹¹ See *CCEO*, c. 28.

¹² *OE*, no. 5.

¹³ In describing a particular Church, ritual Church is used in *CIC/83* cc. 111-112, *sui iuris* ritual Church in *CIC/83*, cc. 111-112, and rite in many canons, for example cc. 383, 476, 479.

¹⁴ PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO, "Guidelines for the Revision of the Code of Oriental Canon Law," no. 7, in *Nuntia*, 3 (1976), p. 22. On the development of this guideline, see KOKKARAVAYIL, *The Guidelines for the Revision of the Eastern Code: Their Impact on CCEO*, pp. 314-344; also Sunny KOKKARAVAYIL, "The Guidelines Riti e Chiese Particolari Applied in CCEO: History and Appraisal," in Luis OKULIK (ed.), *Le Chiese sui iuris: Criteri di individuazione e delimitazione*, Venice, Marcianum Press, 2005, pp. 29-40.

heritage of a particular Church. A Christian belongs to a hierarchically organized community that entails, as a consequence, a rite. A Christian is not a member of a rite, but follows a rite as a consequence of membership in a particular Church.¹⁵

This *coetus* examined several possible terms to describe a particular Church. The members proposed using the term “particular Church” (*Ecclesia particularis*) to only denote a self-governing Church. This was intended to reflect the use of “particular church” in *Orientalium Ecclesiarum*.¹⁶ The term “particular Church” denoting a self-governing Church was to be used alongside “singular Church” identifying the eparchy and “universal Church” identifying the one Church of Christ.¹⁷ At the same time, there was a desire to harmonize the terminology between the Latin and Eastern codes. As a result, a proposal was made to the *coetus* responsible for the *Lex Ecclesiae fundamentalis* to not use the term “particular church” to describe a diocese. The president of this *coetus* dismissed this proposal with the explanation that the consultants had already approved the term “particular church” as denoting a diocese.¹⁸ It was further explained that using the term “diocese” instead of “particular church” would eliminate ecclesiastical circumscriptions that are likened to a diocese but were, none the less, particular churches.¹⁹ PCCICR, as a result, continued to use “particular church” to describe a diocese while PCCICOR used another

¹⁵ Ivan ŽUŽEK, “The *Ecclesiae sui iuris* in the Revision of the Canon Law,” trans. Leslie WEARNE, in René LATOURELLE (ed.), *Vatican II: Assessment and Perspectives Twenty-five Years After (1962-1987)*, vol. 2, New York, Paulist Press, 1989, pp. 292-293.

¹⁶ *Nuntia*, 3 (1976), p. 45.

¹⁷ George NEDUNGATT, “*Ecclesia universalis, particularis, singularis*,” in *Nuntia*, 2 (1976), pp. 75-87.

¹⁸ *Comm.*, 8 (1976), pp. 81-82.

¹⁹ *Comm.*, 9 (1977), p. 298.

term to designate a self-governing Church. The term “ritual Church *sui iuris*” was proposed and accepted with twenty-three votes in favour and five abstentions.²⁰ This term was adopted in two canons of the Latin Code.²¹

In the end, however, PCCICOR did not adopt the term “ritual Church *sui iuris*”. The word ritual was removed, resulting in the term “Church *sui iuris*”, by a vote of the *coetus* in April 1980, with five votes in favour and four against.²² Žužek notes that including the word “ritual” was: “considered superfluous and counterproductive when speaking of *Ecclesiae sui iuris*, especially since there are different *Ecclesiae sui iuris* belonging fundamentally to the same rite.”²³ As a result, an individual Church is denoted as a Church *sui iuris* in the Eastern Code, despite repeated proposals to reintroduce the term “particular church”.²⁴ The term was not without criticism. Nedungatt points out the language of singular, particular, and universal allows for greater ecclesiological dimensions and recognizes that even a diocese is, to some extent, a church *sui iuris*.²⁵ The vice-president of PCCICOR pointed out that “Church *sui iuris*” highlights the “*ratio formalis*” for an individual Catholic Church’s constitution.²⁶ Beyond that *Ecclesia sui iuris* was a

²⁰ *Comm.*, 9 (1977), p. 299.

²¹ *CIC/83*, cc. 111-112.

²² *Nuntia*, 19 (1984), p. 5.

²³ ŽUŽEK, “The *Ecclesiae sui iuris* in the Revision of the Canon Law,” p. 296.

²⁴ See *Nuntia* 22 (1986), p. 23; *Nuntia* 29 (1989), pp. 68-69.

²⁵ NEDUNGATT, *The Spirit of the Eastern Code*, p. 73. See also George NEDUNGATT, “Autonomy, Autocephaly, and the Problem of Jurisdiction Today, in *Kanon*, 5 (1981), pp. 21-23; and George NEDUNGATT, “Equal Rights of the Churches in the Catholic Communion,” in *The Jurist*, 49 (1989), p. 3.

²⁶ *Nuntia*, 29 (1989), pp. 68-69.

term adopted *pro bono pacis* and was, as a result, not discretionary.²⁷ This term is used 244 times in the Eastern Code.

Churches *sui iuris* are not only the Eastern Catholic Churches but also the Latin Church is substantially similar to a Church *sui iuris*. The 2011 official, explanatory note, published by the Pontifical Council for Legislative Texts on *CCEO* canon 1 stated:

One must hold that the Latin Church is implicitly included by analogy each time that *CCEO* explicitly uses the term “Church *sui iuris*” in the context of interecclesial relations. We say “by analogy” keeping in mind that the characteristics of the Latin Church, though not coinciding completely with those of the Church *sui iuris* described in canons 27 and 28, §1 of *CCEO*, in this regard are, nevertheless, substantially similar.²⁸

Undoubtedly, the Latin Church substantially differs in its structure from the other Churches *sui iuris*.²⁹ It lacks any intermediary hierarchical structure similar to the synod of bishops or council of hierarchs and is more directly reliant upon the power of governance possessed by the Bishop of Rome. Despite these differences, it is still considered a Church *sui iuris* by analogy. This is clearly implied by the expression in canons 111 and 112 of the Latin Code which refer to the “Latin Church or another Church *sui iuris*.”³⁰ Further, the non-promulgated *Lex Ecclesiae fundamentalis* expressly indicated that the ritual Church *sui iuris* was the “Latin Church and the various Eastern Churches.”³¹ *CCEO* canon 322

²⁷ *Nuntia*, 22 (1986), p. 23.

²⁸ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Explanatory note, 8 December 2011, in *Comm.*, 43 (2011), pp. 315-316, English translation Jobe ABBASS, “The Explanatory Note Regarding *CCEO* Canon 1: A Commentary,” in *Studia canonica*, p. 295.

²⁹ Luis OKULIK, “Significato e limiti della definizione di Chiesa *sui iuris*,” in *Folia canonica*, 12 (2009), pp. 86-87.

³⁰ *CIC/83*, cc. 111, §2, 112, §1.

³¹ *Comm.*, 12 (1980), p. 31.

emphasizes this same point when it refers to “local hierarchs of various Churches *sui iuris*, even the Latin.”³²

CCEO canon 27 defines Church *sui iuris* as: “A community of the Christian faithful, which is joined together by a hierarchy according to the norm of law and which is expressly or tacitly recognized as *sui iuris* by the supreme authority of the Church.”³³ There are four points to this understanding of a Church. First, it is a community of the Christian faithful, a defined group of individuals who are joined together by their bonds of baptism and ascription within an individual Church. The faithful are ascribed to a Church *sui iuris* according to the norm of law at the time of baptism.³⁴

Second, this community is joined together by a hierarchy. This hierarchy has juridical bonds based on their shared membership in the Church *sui iuris*. This may include membership in a synod of bishops or council of hierarchs. The hierarchy has governing authority over the Church *sui iuris* and thus has proper jurisdiction over its subjects. This hierarchy functions according to the norm of law, which is the third element of this canon. The patriarch has defined functions in canon law which govern the Church *sui iuris* such as functioning as the juridical representative of the Church.³⁵ The patriarchal synod also has functions defined in law related to leading the Church *sui iuris* with legislative, executive, and judicial power of governance.

³² *CCEO*, c. 322, §1.

³³ *CCEO*, c. 27.

³⁴ See *CCEO*, cc. 29-38; *CIC/83*, cc. 111-112.

³⁵ *CCEO*, c. 79. Salachas lists ten functions in the common law for the patriarch, see Dimitri SALACHAS, “Lo «Status sui iuris» delle Chiese patriarcali nel diritto canonico orientale,” in *Periodica de re morali, canonica, liturgica*, 83 (1994), pp. 590-596.

The self-governing status of the *sui iuris* Churches is not an absolute juridical reality. These Churches are not autocephalous Orthodox Churches.³⁶ The Bishop of Rome is not *primus inter pares* as he possesses the power of governance over these Churches, despite their self-governing status. The Eastern Churches always remain subject to the supreme authority of the Church.³⁷ This supreme authority itself defines the norm of law that applies to the individual Churches *sui iuris*, such as when the Bishop of Rome promulgated the Eastern Code. This is reflected in the fact that the patriarch himself has his power territorially limited by the norm of law.³⁸ The jurisdiction of the synod of bishops is also circumscribed by territorial limitations.³⁹

Fourth, and finally, this community must be recognized as *sui iuris* by the Church's supreme authority. This recognition may be either tacit or explicit recognition by either the Bishop of Rome or an ecumenical council.⁴⁰ This would be recognition of a Church *sui iuris* as either a patriarchal Church *sui iuris*,⁴¹ a major archiepiscopal Church *sui iuris*,⁴² a metropolitan Church *sui iuris*,⁴³ or a Church *sui iuris* that does not belong to the previous

³⁶ Dimitri SALACHAS, "Le « status » ecclésiologique et canonique des Églises catholiques orientales « sui iuris » et des Églises orthodoxes autocéphales, in *L'Année canonique*, 33 (1990), pp. 36-52.

³⁷ Dimitri SALACHAS, "Le *status* d'autonomie des Églises catholiques orientales et leur communion avec le siège apostolique de Rome," in *L'Année canonique*, 38 (1996), pp. 78-90.

³⁸ *CCEO*, c. 78, §2.

³⁹ *CCEO*, cc. 146-150.

⁴⁰ SALACHAS, "Le *status* d'autonomie des Églises catholiques orientales et leur communion avec le siège apostolique de Rome," p. 76.

⁴¹ *CCEO*, cc. 55-150.

⁴² *CCEO*, cc. 151-154.

⁴³ *CCEO*, cc. 155-173.

three categories.⁴⁴ The supreme authority of the Church alone has the authority of erection, restoration, modification and suppression of patriarchal Churches.⁴⁵

3.1.2 One Region, Multiple Hierarchies

The earliest traditions of the Church maintained a practice of one bishop in a city. However, for various reasons, this situation changed in response to the changing circumstances facing the Church. This section begins by examining the historical practice of a single bishop for a local Church and then continues with an examination of the changes which occurred over time. This situation of multiple hierarchs of different Churches *sui iuris* in a single territory provides the impetus for the assembly of hierarchs of several Churches *sui iuris*.

Most fundamentally, the early Christians identified the local Church with the person of the bishop. As St Ignatius of Antioch (+ *ca.* 107) observed: “Where the bishop is, therein are the multitudes, just as where Jesus Christ is, therein is the catholic Church.”⁴⁶ The first ecumenical council at Nicaea (325) specifically identified the need to avoid any possibility of having two bishops in a single city. This canon ensured that no solution to the Novatianist schism was permitted to result in the creation of separate, reconciled hierarchies.⁴⁷ This same council also emphasized the territoriality of sees so much that these canons, as Marini observes: “were originally intended to enunciate the principle of

⁴⁴ *CCEO*, cc. 174-176.

⁴⁵ *CCEO*, c. 57, §1.

⁴⁶ IGNATIUS OF ANTIOCH, *Letter to the Smyrnians*, 7.

⁴⁷ Nicaea I, c. 8.

one bishop for a certain territory, and this also has been a constant until the present.”⁴⁸ This practice was so fundamental in the early Church that the Orthodox historian John Meyendorff observed that: “no canonical regulation has ever been affirmed by the tradition of the Church with more firmness than the rule which forbids the existence of separate ecclesiastical structures in a single place.”⁴⁹ Legrand sees this not as a mere mimicking of civil structures but as a fundamental eucharistic understanding of ecclesiology.⁵⁰ Local Churches enjoyed single hierarchies, regardless of rite or ethnicity.⁵¹ John Chrysostom, as archbishop of Constantinople, erected parishes and ordained priests for Latin Goths in his territory.⁵²

Preference for a single hierarchy in an area was present not only in the Christian East but also in the Latin Church, with canonical structures holding a clear single structure of governance.⁵³ In fact, it is the establishment of Latin hierarchies in the Middle East during the Crusades that is understood to be the actual practical establishment of schism between Latin West and Byzantine East, since this was not the erection of parallel

⁴⁸ Francis MARINI, “The Establishment of New Eastern Jurisdictions in the West,” in Luis OKULIK (ed.), *Nuove terre e nuove Chiese: Le comunità di fedeli orientali in diaspora*, Venice, Marcianum Press, 2008, p. 244.

⁴⁹ John MEYENDORFF, “One Bishop in One City,” in *Orthodoxy and Christianity*, New York, Sheed & Ward, 1966, p. 107.

⁵⁰ Hervé LEGRAND, “‘One Bishop Per City’: Tensions around the Expression of the Catholicity of the Local Church Since Vatican II,” in *The Jurist*, 52 (1992), pp. 374-375.

⁵¹ With respect to ethnicity, see the example of Copts and Greeks in Egypt in Gustave BARDY, *La question des langues dans l'Église ancienne*, Paris, Beauchesne, 1948, p. 43.

⁵² See JOHN CHRYSOSTOM, *Homilia habita postquam presbyter Gothus concionatus fuerat*, in J.P. MIGNE (ed.), *Patrologiae cursus completus (series Graeca)*, vol. 63, cols. 499-510.

⁵³ LEGRAND, “‘One Bishop Per City’: Tensions around the Expression of the Catholicity of the Local Church Since Vatican II,” p. 377.

jurisdiction, but instead the non-recognition of existing canonical jurisdiction.⁵⁴ This fit the classic definition of schism whereby a separate altar was raised under a competing bishop.⁵⁵ This situation, as Nichols observes: “was formalised by the emergence of competing Greek and Latin hierarchies for three of four of the Oriental patriarchal sees. (The Crusaders never took Alexandria, even if, early in the fourteenth century, Rome appointed a titular Latin patriarch to that city.)”⁵⁶ During this time, Church discipline required Latin bishops to appoint priests to care for their faithful of other Churches, preserving the notion of a single bishop for a territory, regardless of the rite of the faithful.⁵⁷

In the modern era, despite pressure to establish multiple hierarchies based on ethno-linguistic lines, the Holy See did attempt to maintain the traditional practice of single ecclesiastical structures within individual Churches. One example of this is the movement to establish a separate German-language hierarchy in the United States in response to the large number of German immigrants whose sensibilities were foreign to the largely Irish-American hierarchy. Leo XIII refused to concede this point and felt personal parishes to be sufficient in this respect.⁵⁸ While there has arguably been some departure from a strict

⁵⁴ For example, Paul LEMERLE, “L’Orthodoxie byzantine et l’œcuménisme médiéval : les origines du « schisme » des Églises,” in *Bulletin de l’Association Guillaume Budé*, 1 (1965), pp. 228-246.

⁵⁵ See, for example, Canons of the Apostles, c. 31; Gangara, c. 6; Antioch, c. 5; Carthage, cc. 10-11, 53, 93; Constantinople I, c. 6; Constantinople IV, c. 10; First-Second Council, cc. 13-15; also St. Basil the Great, c. 1.

⁵⁶ Aiden NICHOLS, *Rome and the Eastern Churches: A Study in Schism*, 2nd ed., San Francisco, Ignatius Press, 2010, p. 281. In these situations the appointment of Latin hierarchs and deposition of Greeks was in order to establish a hierarchy more committed to both the crusaders and the Latin Church. See *ibid.*, p. 281.

⁵⁷ Lateran IV, const. 9.

⁵⁸ See LEGRAND, “‘One Bishop Per City’: Tensions around the Expression of the Catholicity of the Local Church Since Vatican II,” pp. 377-378.

approach to this question, as some structures such as military ordinariates have ordinary jurisdiction which overlaps with dioceses, the general rule of one city, one bishop has been maintained internally within the individual Churches *sui iuris* whereby each singular church is headed by one shepherd in a given place.⁵⁹ This structure of the Church *sui iuris* is at the foundation of the canonical structure of the assembly of hierarchs.

3.1.2.2 Emergence of Overlapping Hierarchies

Historically, the individual Churches resisted any multiplication of bishops in a single territory. However, the reality of the various self-governing Churches coexisting in common geographic locations resulted in overlapping hierarchies of different Catholic Churches *sui iuris* in some territories. As Legrand observes: “[this] is a phenomenon introduced in these regions by Catholic uniatism after the Council of Florence.”⁶⁰ At this council Pope Eugenius IV granted the Armenians permission to have a second bishop with an independent jurisdiction in the same city as another diocese.⁶¹ At times these situations arose from the requirements of civil law.⁶² At other times the historical movements of

⁵⁹ See JOHN PAUL II, Apostolic constitution *Spirituali militum curae*.

⁶⁰ LEGRAND, “‘One Bishop Per City’: Tensions around the Expression of the Catholicity of the Local Church Since Vatican II,” p. 378. One could point to Lateran IV as eliminating the strict requirement for one bishop, one city, when it allowed for vicar-bishops for the faithful of another Church; Motiuk makes this point, see MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, pp. 6-7. Strictly speaking, however, these vicar-bishops would have been titular and both were not bishops of the same city as has become the case in the modern era.

⁶¹ LEGRAND, “‘One Bishop Per City’: Tensions around the Expression of the Catholicity of the Local Church Since Vatican II,” p. 378.

⁶² Legrand makes this point for the Churches in the Ottoman empire, which had parallel territories and competing patriarchates in communion with each other (ex. Antioch or Jerusalem), as being a product of Islamic law and the practice of the patriarch serving as a civil-ethnarc for his community, see LEGRAND, “‘One Bishop Per City’: Tensions around the Expression of the Catholicity of the Local Church Since Vatican II,” p. 379.

Eastern non-Catholic hierarchies re-establishing communion with the Holy See resulted in overlapping hierarchies in a given territory. One example is Lviv, Ukraine. The Latin archdiocese of Lviv (Lvov) was erected in 1412. At this time, it was the only episcopal see in Lviv. Later, in 1630, an Armenian Catholic archeparchy was established in this city. The Ukrainian Eparchy of Lviv, established as a non-Catholic episcopal see in 1540, became a Catholic eparchy in 1677 and was elevated to an archeparchy in 1807.⁶³ Thus, from 1807 there were three Catholic archbishops of Lviv: Latin, Armenian, and Ukrainian.

The situation of Eastern Catholics relocating to territories dominated by the Latin Church yields a third situation whereby overlapping hierarchies emerged. This third case is a major cause of ecclesial plurality in the modern Church. Originally, Eastern Christians in Latin territories had their own pastors who were under the jurisdiction of Latin ordinaries.⁶⁴ Conversely, Latin Christians in Eastern territories were under the jurisdiction of Eastern hierarchs.⁶⁵ The principle of a bishop having subjects belonging to a different Church had been the case for centuries and the constitutions of Leo X (1513-1521) for Italo-Albanians are examples of such structures.⁶⁶ Benedict XIV affirmed the jurisdiction of Latin ordinaries over Eastern Catholics with *Etsi pastoralis* (1732). This document

⁶³ All dates of erection are taken from the *Annuario Pontificio*.

⁶⁴ Lateran IV, const. 9.

⁶⁵ As per the previously cited example of St John Chrysostom erecting parishes for Goths in Constantinople.

⁶⁶ Leo X's *Pro parte vestra* was a provision of a Greek priest subject to the Bishop of Rome for the Italo-Albanians of Venice, see LEO X, Constitution *Pro parte vestra*, 3 June 1514, in Pietro GASPARRI (ed.), *Codicis iuris canonici fontes*, vol. 8, Rome, Typis polyglottis Vaticanis, 1938, p. 242. *Accepimus nuper* required a vicar for Greeks in Latin territories, see LEO X, Constitution *Accepimus nuper*, 18 May 1521, in GASPARRI (ed.), *Codicis iuris canonici fontes*, vol. 8, p. 242. *Cum nuper* established a commission for arbitrating disputes between Latins and Greeks, see LEO X, Constitution *Cum nuper*, 4 July 1521, in GASPARRI (ed.), *Codicis iuris canonici fontes*, vol. 8, p. 243.

added the requirement for Italo-Albanians to commemorate the local Latin ordinary during the divine praises and, in regions where they lacked their own hierarchy, they were entirely subject to the Latin ordinary.⁶⁷ The norms of *Etsi pastoralis* were expanded into other regions, largely responding to migration of populations, including Ruthenians in Hungary, Serbia, and Croatia, Armenians in Constantinople, and Melkites in France.⁶⁸

This situation, as Marini observes: “was dormant after the era of the Crusades, but developed with the large scale migration of Oriental Catholics into the United States and Canada in the late nineteenth and early twentieth centuries.”⁶⁹ One such group was Austria-Hungarian immigrants, many of whom were Eastern Catholic faithful. In the United States, Ukrainian Catholic priests were reminded they were subject to the local Latin ordinary in all things.⁷⁰ This reflected the principle of one bishop for a single territory. Even when Soter Ortynsky was appointed as ordinary for Ukrainian Catholics in the United States, he had no ordinary jurisdiction and was required to receive delegated jurisdiction from local Latin ordinaries following the norms of *Etsi pastoralis*.⁷¹ In Canada, however, an ordinary

⁶⁷ BENEDICT XIV, *Etsi pastoralis*, 26 May 1742, in *Benedicti XIV. Pont. Opt. Max. Olim Prosperi cardinalis de Lambertinis Bullarium*, vol. 15, Prati, Typographia Aldina, 1845, pp. 197-212.

⁶⁸ MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, pp. 10-11.

⁶⁹ MARINI, “The Establishment of New Eastern Jurisdictions in the West,” p. 245.

⁷⁰ LEO XIII, Apostolic letter *Orientalium dignitas*, 30 November 1894, in GASPARRI (ed.), vol. 3, pp. 454-459; also CONGREGATION FOR THE PROPAGATION OF THE FAITH, Letter *Aliquibus abbinc*, 10 May 1892, in *American Ecclesiastical Review*, 7 (1892), pp. 66-67; also CONGREGATION FOR THE PROPAGATION OF THE FAITH, Letter *Romana ecclesia*, 1 May 1897, in *Collectanea S. Congregationis de propaganda Fide, seu, Decreta instructiones rescripta pro apostolicis missionibus*, vol. 2, Rome, Typographia Polyglotta, 1907, p. 357.

⁷¹ MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, p. 12. These pontifical acts were not without controversy and yielded tens of thousands of converts to Orthodoxy. The Orthodox Church in America estimates 90,000 converts in response to *Ea semper*, see Constance J. TARASAR (ed.), *Orthodox America 1794-1976: Development of the Orthodox Church in America*, Syosset, NY, Department of History and Archives of the Orthodox Church in America, 1975, pp. 47-48. For more on the development of the Ruthenian-Ukrainian Church in the United

was appointed for Ruthenians (Ukrainians) in 1912 with full ordinary jurisdiction.⁷² Marini explains this change: “during the codification process for the 1917 *Codex iuris canonici*, the view began to develop at the Secretariat of State for more emphasis on personal jurisdiction as opposed to territorial jurisdiction so that the law could keep up with changing conditions.”⁷³ The Canadian Ruthenian ordinary, Nykyta Budka was originally titular bishop of Patara and the head of an exarchate. However, once the Apostolic Exarchate for the Ukrainians was raised to an Archeparchy in 1956 the hierarch not only had a territory with ordinary jurisdiction overlapping that of Latin sees, but he also held title to the see of Winnipeg.⁷⁴ Multiple hierarchies thus clearly coexisted in a common territory in numerous regions of the Church.

3.1.2.3 Conclusions

The practice of the early Church is clear: one city, one bishop. This practice was maintained within the various Churches *sui iuris* over the centuries. However, between the various Churches *sui iuris*, multiple hierarchies emerged in the Catholic Church with

States, see: Walter PASKA, *Sources of Particular Law for the Ukrainian Catholic Church in the United States*, Canon Law Studies, no. 485, Washington, DC, Catholic University of America, 1975; also Victor POSPISHIL, “The Ukrainians in the United States and Ecclesiastical Structures,” in *The Jurist*, 39 (1979), pp. 368-422.

⁷² SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH FOR THE AFFAIRS OF THE EASTERN RITE, Decree *Fidelibus ruthenis*, 18 August 1913, in *AAS*, 5 (1913), pp. 393-399. On the development of the Ukrainian Catholic Church in Canada, see MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*.

⁷³ MARINI, “The Establishment of New Eastern Jurisdictions in the West,” p. 245. In establishing this fact Marini cites Pacelli’s arguments for increased personal jurisdiction in Eugenio PACELLI, *La Personalità e la territorialità delle leggi, specialmente nel diritto canonico*, Rome, Typis polyglottis Vaticanis, 1912, pp. 21-24, 32-33.

⁷⁴ The City of Winnipeg has three Catholic archbishops: Latin-English (Archbishop of Winnipeg), Latin-French (Archbishop of St-Boniface), and Ukrainian (Archbishop of Winnipeg).

overlapping territories and even common episcopal sees. An extreme example of this is Cairo: at the Second Vatican Council there were seven Catholic bishops of this city.⁷⁵ There was some movement to regularize this situation at the Council, including a movement proposed by several hierarchs to unify jurisdictions under a single episcopate based on the majority in a given area.⁷⁶ This did not occur with any success, largely due to the practical challenges of regularizing the situation.⁷⁷

3.1.3 Collaborative Bodies for Multiple Churches *sui iuris*

In countries with large populations of Eastern Catholics, such as Canada and the United States, multiple ecclesiastical jurisdictions overlap due to the presence of several Churches *sui iuris*. While the individual hierarchs belong to their own Churches *sui iuris* and by extension the hierarchical constitutions of those Churches, they nonetheless face common pastoral situations. In fact, one could argue that, for example, the Latin, Slovak, and Ukrainian Catholic bishops of Toronto face more common pastoral challenges than the Slovak eparchial bishop of Toronto shares with other Slovak Catholic bishops in other territories. Collaborative structures for joint pastoral activity are natural and necessary responses to the changing realities of the modern Church.

Cleri sanctitati recommended co-operation between Churches:

⁷⁵ LEGRAND, p. 380. There are currently three eparchies whose hierarchs are bishops of Cairo (Le Caire): Chaldean, Maronite, and Syrian, with two eparchies of Alexandria based in Cairo: Copts and Armenians.

⁷⁶ *Acta et documenta Concilio oecumenico Vaticano II apparando* (=AD), Series I: antepreparatoria, vol. 2(4), Rome, Typis polyglottis Vaticanis, 1960, pp. 69, 409, 418, 448; I:2(5), p. 388; I:4(2), p. 728.

⁷⁷ See Hervé LEGRAND, *La charge pastorale des évêques*, Unam Sanctam, no. 74, Paris, Éditions du Cerf, 1969, pp. 195-214.

The hierarchs who are exercising jurisdiction over a common territory are to promote, by joint agreement, unity of action among the clerics of different rites and unite their efforts to support common works to advance more readily the good of religion and observe discipline of the clergy more effectively.⁷⁸

This canon does not provide direction on how this unity of action is to occur, but does require its occurrence. This follows the ecclesial principle of cooperation between neighbouring hierarchs that is part of early Christian tradition. This collaboration is also based on Eastern canonical tradition. The need to foster interecclesial collaboration was articulated at the Third Provincial Synod of the Romanian ecclesiastical province of Alba-Iulia and Făgăraș in 1900. This council explicitly required cooperation between the Latin and the Romanian Greco-Catholic Churches in all things for the good of the Church.⁷⁹

In order to achieve greater collaboration between the Churches, canon 340 of *Cleri sanctitati* admits the possibility of an established gathering for hierarchs of different Churches: “The bishops and other hierarchs of different rites can gather a synod after having obtained the permission of the Bishop of Rome, who defines the place where the synod gathers and appoints his legate, charged with its convocation and presides at it.”⁸⁰ Already before the Council, as a result, legislation existed that would facilitate inter-ecclesial gatherings, whereby bishops of different Churches would be able to engage in common activity. This body required the prior approval of the Holy See who designated a

⁷⁸ CS, c. 4.

⁷⁹ THIRD PROVINCIAL SYNOD OF ALBA-IULIA AND FĂGĂRAȘ, 1900, in *Concilium Provinciale Tertium Provinciae ecclesiasticae graeco-catholicae Alba-Iuliensis et Fogarasiensis celebratum anno 1900*, Blaj, Tipografia seminariului archidiecezan, 1906, Tit. II, cap. i, §5.

⁸⁰ CS, c. 340, §3.

legate to convoke the body and act as its president. *Cleri sanctitati* offered indication whether this is a stably erected assembly or whether it was of a temporary nature.

The norms of *Cleri sanctitati* were not ignored. Chapter 8 of this document listed several types of synods: patriarchal synods, provincial synods, synods for different rites, and synods of multiple provinces.⁸¹ As one example, in 1960 the Ukrainian Greco-Catholic metropolitan of Winnipeg, following canon 351 of *Cleri sanctitati*, convoked a meeting of bishops of his ecclesiastical province in order to plan a provincial synod, which occurred in 1962. At this provincial synod Metropolitan Hermaniuk along with the three eparchial bishops of Toronto, Saskatoon, and Edmonton joined with 125 priests for the provincial synod under the leadership of the apostolic delegate, Archbishop Sebastiano Baggio.⁸² This synod had the purpose of studying, for each territory, what was suitable for an increase of faith, the improvement of morality, the elimination of abuses, the reconciliation of controversies, and the observation of a single ecclesiastical discipline.⁸³ This synod occurred despite the fact that by this period of time the Ukrainian Catholic bishops of Canada were meeting in not only the Canadian Catholic Conference but also their own Ukrainian Catholic gatherings for the bishops of Canada (from 1951), North America (from 1954), and the entire diaspora (from 1957).⁸⁴ Each of these structures coexisted and provided different opportunities for collegial activity with a separate purpose.

⁸¹ CS, cc. 340-351.

⁸² MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, pp. 68-72.

⁸³ CS, c. 349.

⁸⁴ MOTIUK, *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, pp. 82-83.

During the Antepreparatory Commission preparing for the Second Vatican Council, several Council Fathers raised the topic of the need for inter-ecclesial assemblies. This followed the possibility of interritual synods as provided for by *Cleri sanctitati*.⁸⁵ Cardinal Gracias, the Archbishop of Bombay, proposed that since the Holy See had abandoned the prescripts of Lateran IV that prohibited double jurisdictions in the same territory, it should establish a manner by which tensions between different Churches could be minimized. He proposed that the papal legate in a territory could mediate relations between bishops.⁸⁶ Chaldean Patriarch Paul II, Archbishop Kakvukaat of Changanacherry, Archbishop Alvernaz of Goa, Archbishop Gogue of Bassorah, Bishop Reis of Zaku, and Bishop Nugaim of Baalbek all made similar proposals for an “interritual” body of multiple Churches to coordinate pastoral activity between Churches in a given area.⁸⁷

These proposals were frequently based upon previous experience. Already in the 1940s, inter-ecclesial assemblies were convoked in Damascus and Beirut, Syria.⁸⁸ During this same period, the Eastern Catholic hierarchs of Egypt met together in Cairo to discuss topics of common interest. The Egyptian gatherings also included the participation of non-Catholic Eastern hierarchs.⁸⁹ These were precursors to the canonically erected assemblies in these same regions after the Second Vatican Council.

⁸⁵ CS, c. 340, §3.

⁸⁶ AD, I:2(4), pp. 115-116.

⁸⁷ AD, I:2(4), pp. 120, 131, 153, 363, 366, 370, 393.

⁸⁸ George MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, Kerala, Oriental Institute of Religious Studies India Publications, 1995, p. 160.

⁸⁹ Ibid., p.163.

The decrees of the Council reflected these proposals by emphasizing the need for inter-ecclesial activity. The proposal was present already in the drafting period of the decrees, in the original document under the subtitle *De commissione episcoporum interrituale*. It was proposed that in regions of different Churches (*plures ritus Catholicī*), an episcopal commission of all rites including the Latin Church (*latino non excepto*) could be constituted in the main city of the nation to formulate norms for all the Churches. This gathering was imagined to occur at least twice annually.⁹⁰ During the Council itself, Melkite Patriarch Maximos IV spoke of the need to have a body for inter-ecclesial collaboration and coordination:

While the unity of jurisdiction in the same territory is in principle the best formulation, there are many advantages and it is sometimes necessary so that where Churches of different rites and of different traditions sometimes exist in the same territory, they are entrusted to different hierarchies. The fact is that it is impossible, without very grave inconvenience for both the Church and the faithful, to disregard this new state of affairs. Nevertheless, despite the multiplicity of jurisdiction, the united action of the Church must be safeguarded by inter-ritual synods. This particularly forms episcopal collegiality that is necessary since, if for the good of the faithful many hierarchs have jurisdiction in the same territory, they should take in common, collegially, the opportune decisions to unite the action of the Church in their territory.

It is as a result of a new attitude of thought and of action that the bishops are invited throughout the East. For all the questions which are not of an order that is strictly ritual or communal, they collaborate, unite their efforts, decide collegially in common, avoiding separating forces: schools, the press, radio-television, charitable works, catholic action, pastoral activity, catechism, preaching, etc.

The different Churches have lived until now reaffirmed themselves, jealous of their prerogatives. Today these new times correspond to a new mentality. If it is not possible to unify the jurisdictions, it is necessary to

⁹⁰ AD, I:2(1), p. 404.

unify the action, to exploit to the maximum the possibilities of episcopal collegiality, synodality, as has the East.⁹¹

This proposal of Maximos IV emphasized numerous points of common activity as a response to the impossibility of having a single hierarchy in a given area. The same call for an episcopal assembly including all Churches of a territory was also proposed by Bishop Collin of Digne.⁹² These proposals were reflected first in the decree on the Eastern Catholic Churches *Orientalium Ecclesiarum*:

But ordinaries of the various individual Churches who exercise jurisdiction in the same territory should take care to further unity of action, after taking counsel among themselves in periodic meetings. They should also take care, with united forces, to help common activities for furthering the cause of religion more easily and safeguarding the role of life of the clergy more effectively.⁹³

This citation has clear parallels to the previously cited canon 4 of *Cleri sanctitati*, making the change from “hierarchs” to “ordinaries of the various individual Churches” and establishing that these gatherings are to be periodic and thus occur stably.

This proposal for an inter-ecclesial assembly was again made in the decree on the pastoral office of bishops *Christus Dominus*:

It is earnestly recommended that, in promoting the discipline of their own church in their synods, the prelates of eastern churches should, for the more efficacious encouragement of works for the good of religion, also take into account the common good of the whole territory where many churches of different rites exist, by exchanging views in inter-ritual meetings, according to the norms to be determined by competent authority.⁹⁴

⁹¹ *AS*, vol. 3:5, p. 876.

⁹² *Ibid.*, p. 783.

⁹³ *OE*, no. 4.

⁹⁴ *CD*, no. 38, §6.

Again, encouragement to meet in inter-ecclesial gatherings was made without providing clear guidelines for such activity. *Orientalium Ecclesiarum* identified inter-ecclesial assemblies as applying to those bishops “who exercise jurisdiction in the same territory”, seemingly including the Latin Church. *Christus Dominus*, on the other hand, directs its prescription specifically at “the prelates of eastern churches”. Mörsdorf postulates that, while participation of Latin hierarchs in these gatherings would be “especially necessary and welcome,” the specific mention of only Eastern hierarchs is due to the fact that: “different rites are equally represented in one [Eastern] territory far more frequently than in territories of the Latin rite.”⁹⁵ The continued migration of Eastern Christians out of their ancestral homelands into territories of the Latin Church during the previous fifty years has arguably made this conclusion less reasonable as Churches, such as the Chaldeans, have rapidly increasing numbers in the diaspora with a converse decline in the patriarchal territory.

During the process of revising the Latin Code, an inter-ecclesial gathering was originally drafted for the new Code. The *coetus De Lege Ecclesiae fundamentalis* had made an observation in September 1979 that an inter-ritual assembly would be beneficial.⁹⁶ At that time, the *coetus* had input from both the Latin and Eastern codification working groups.⁹⁷ This was reflected in canon 78, §2 of the *Lex Ecclesiae fundamentalis*:

In discharging their mission, diocesan bishops should look to the different rites in the same territory so that after taking counsel in regular meetings, they should promote a unified action among different rites, even to introducing through their legislation a similar

⁹⁵ MÖRSDORF, “Decree on the Bishop’s Pastoral Office in the Church,” p. 295.

⁹⁶ *Comm.*, 12 (1980), p. 27.

⁹⁷ Marco BROGI, “Codificazione del diritto comune delle chiese orientali cattoliche,” in *Revista Española de Derecho Canonico*, 45 (1988), p. 20.

discipline to the extent that the character or the ritual Church allows.⁹⁸

However, when the *Lex Ecclesiae fundamentalis* was not promulgated, this norm was discarded.

Still, however, the universal law of the Latin Church also makes mention of inter-ecclesial collaboration between hierarchs of different Churches *sui iuris*. According to *CIC* canon 450, §1 conferences of bishops have the possibility of inviting ordinaries of another rite.⁹⁹ In the Eastern Code, several such collaborative opportunities exist. Patriarchs have the requirement of ensuring the promotion of a unity of action with patriarchs and eparchial bishops of other Churches *sui iuris* in the same territory.¹⁰⁰ This obligation exists also for eparchial bishops.¹⁰¹ Bishops of other Churches *sui iuris* can be invited to the council of hierarchs of a metropolitan Church *sui iuris*.¹⁰² A bishop who has the care of faithful of another Church *sui iuris* has the obligation to foster relations with the hierarchy of that Church *sui iuris*.¹⁰³ Bishops are able to have an inter-ecclesial catechetical commission.¹⁰⁴ Eparchial bishops have the obligation to establish common norms with bishops of other Churches *sui iuris* in a territory for general absolution, prenuptial investigations, the setting

⁹⁸ O.G.M. BOELENS (ed.), *Synopsis "Lex Ecclesiae fundamentalis"*, Leuven, Peeters, 2001.

⁹⁹ *CIC/83*, c. 450, §1.

¹⁰⁰ *CCEO*, c. 84.

¹⁰¹ *CCEO*, c. 202.

¹⁰² *CCEO*, c. 164, §1. Interestingly, this same provision is not made explicitly for the patriarchal synod; instead, a more general norm for inviting "others" to the synod exists, see *CCEO*, c. 102, §3.

¹⁰³ *CCEO*, c. 193, §1.

¹⁰⁴ *CCEO*, c. 622, §1.

of taxes, stipends, and stole fees, and the establishment of other diriment impediments.¹⁰⁵ When individual Churches *sui iuris* establish a commission of experts on ecumenical matters, they are to consult both patriarchs and other bishops of other Churches *sui iuris* exercising jurisdiction in the same territory.¹⁰⁶ There are, further, several instances where inter-ecclesial collaboration is encouraged on a level other than that of the episcopacy.¹⁰⁷ Inter-ecclesial collaboration is a frequent requirement in the Eastern Code, reflecting the communion of Churches and common pastoral activity.

3.1.4 Conclusions

As a result of various historical events, overlapping jurisdictions exist in territories of the Catholic Church. In some cases, these bishops have sees in the same city. These local churches, while belonging to the hierarchies of different Churches *sui iuris*, have a common presence in the same territories resulting in common pastoral challenges. In response to these situations, the Church has exhorted hierarchs of different Churches in a same territory to meet periodically in order to coordinate pastoral activity in a given area. While historically the Church did not canonically define the venue for this collaboration, the Eastern Code provided a model for these meetings, as we have seen above, on different levels and for various purposes. In particular *CCEO* canon 322 proposes the assembly of hierarchs of several Churches *sui iuris*, now to be examined.

¹⁰⁵ *CCEO*, cc. 720, §3, 784, 792, 1013, §2.

¹⁰⁶ *CCEO*, c. 904, §2.

¹⁰⁷ See, for example, common formation of candidates to the priesthood, *CCEO*, cc. 330, 332, §2.

3.2 CCEO Canon 322

Canon 322 provides a venue for inter-ecclesial collaborative activity between hierarchs. This canon, exclusive to the Eastern Code, is the only canon present in Title IX: Assemblies of Hierarchs of Several Churches *sui iuris*. It is the only title consisting of a single canon in the Eastern Code. This canon has its theological foundation in the exhortations for collaborative activity contained in both *Christus Dominus* and *Orientalium Ecclesiarum*, both sources for this canon. There are no parallel canons in the Latin Code. This section examines assemblies of hierarchs by first exploring the legislative history of canon 322 during the process of revision of the Eastern Code before analysing the current canon in the Eastern Code.

3.2.1 Legislative History of CCEO Canon 322

In 1972, Paul VI instituted the Pontifical Commission for the Revision of the Code of Eastern Law (PCCICOR) while at the same time suppressing the 1935 Pontifical Commission for the Codification of the “Code of Eastern Canon Law” which had been previously entrusted with redacting Eastern canonical discipline. This commission, composed primarily of Eastern hierarchs with Eastern priests as consultors, was entrusted with the task:

to revise completely, primarily in the light of the decrees of the Second Vatican Council, the whole Code of Eastern Canon Law, both those parts which had been published, as well as those sections that had not yet been promulgated, although a draft had been brought to completion by the former commission.¹⁰⁸

¹⁰⁸ “Preface to the Latin Edition,” in *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, Washington, DC, Canon Law Society of America, 2001, p. xxxvii (=“Preface CCEO”).

Paul VI inaugurated this work on 18 March 1974. The Bishop of Rome directed that this revised canon law should follow both the wishes of the Second Vatican Council Fathers as well as Eastern tradition.¹⁰⁹

3.2.1.1 1984 *Schema canonum de constitutione hierarchica Ecclesiarum orientalium*

The plenary session of PCCICOR, which met in March 1974, was a meeting not only of the consultors of the Pontifical Commission but also observers from the Eastern non-Catholic Churches who participated with consultative vote. This gathering approved not only the Guidelines for Revision but also the direction of the revision by means of study groups. It was also decided to maintain the decisions of Pius XI and Pius XII to organize the Eastern Code in titles, not books as with the Latin Code. The first draft of the revised Eastern law was completed in six years and ten study groups met to discuss the eight completed drafts. Assemblies of hierarchs were contained in the *Schema canonum de constitutione hierarchica Ecclesiarum orientalium* that was distributed in October 1984.

The *praenotanda* to this draft explicitly indicated that the canon on inter-ecclesial assemblies is a response to the wish of the Council Fathers to have a structure for collaboration between Churches *sui iuris*:

Everyone is aware of the force with which the Fathers of Vatican Council II recommended periodic meetings among hierarchs of various rites exercising their power in the same territory, as well as the very important words the Fathers added regarding the promotion of unity of action which greatly contributes to the good of religion (Decree *Orientalium Ecclesiarum*, n. 4; Decree *Christus Dominus*, n. 38,6).

Everyone is also aware of the various kinds of interritual assemblies, works of Sacred Congregation for the Eastern Churches, to be established in these recent times in Eastern regions, whose action is of great benefit to the

¹⁰⁹ “Preface to the Latin Edition,” p. xxxviii.

salvation of souls and to each Church *sui iuris*, that takes part in these assemblies. Statutes exist for ten of these assemblies, among which is helpful to note especially the “Textes fondamentaux concernant l’Assemblée des Patriarches et Evêques Catholiques au Liban.”

Having submitted the statutes of these assemblies for thorough study and having diligently considered the nature of the notion of “Ecclesia sui iuris”, the study group of experts *de S. Hierarchia* has formulated the single canon of this title. The hope is that this canon appropriately complies with the wishes of Vatican Council II regarding interritual cooperation, accurately observing, however, the same Council's decrees (Decr. *Orientalium Ecclesiarum*, n. 9) regarding the *sui iuris* nature of the patriarchal Churches. No decisions of these assemblies can derogate from the law, unless, as is evident, they have been approved by the Roman Pontiff, himself.¹¹⁰

This canon was clearly intended to implement common activity between the Churches *sui iuris* while at the same time respecting both the common law as well as the autonomy of the individual Churches.

Assemblies of hierarchs were described in canon 292 of this *schema* as the only canon of Title VIII: Interritual Assemblies of Hierarchs. This draft canon has four paragraphs.¹¹¹ This *schema* reads:

§1. Periodic assemblies are to be held of patriarchs as well as local hierarchs of various rites, the Latin not excluded, exercising their power in the same nation or region. These assemblies are to be convoked at regular intervals by the patriarch or another authority designated by the Apostolic See. The purpose of these meetings is that, by sharing the insights of wisdom born of experience and by the exchange of views, the pooling of their resources is achieved for the common good of the Churches, so that unity of action is fostered, common works are facilitated, the good of religion is more readily promoted and ecclesiastical discipline is preserved more effectively.

§2. The decisions of the assemblies mentioned in § 1 do not have juridically binding force unless they deal with matters that cannot be prejudicial to the rite of each proper hierarch or to the power of patriarchs,

¹¹⁰ *Nuntia*, 19 (1984), p. 19, English translation in ABBASS, “Assemblies of Hierarchs for Eastern Catholic Bishops in the Diaspora,” p. 374.

¹¹¹ This draft text was published as PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO, *Schema canonum de constitutione hierarchica Ecclesiarum orientalium* (=1984 *Schema*), in *Nuntia*, 19 (1984), pp. 3-90.

of synods, of metropolitans and of the council of hierarchs; further, they have to have been passed at least by two-thirds of the prelates having a deliberative vote and approved by the Apostolic See.

§3. Decisions, even if passed by a unanimous vote, which in any way go beyond those things mentioned in §2, are devoid of all force until they are approved by the Roman Pontiff himself.

§4. Every assembly of hierarchs of several rites is to draw up its own statutes in which, as far as possible, the participation of the hierarchs of those Churches that are not yet in full communion with the Catholic Church is also to be fostered. The statutes, to have force, are to be approved by the Apostolic See.¹¹²

This canon is substantially similar to that which is contained in the final canon 322 of the Eastern Code, but minor revisions did occur.

This *Schema* on the hierarchical constitution of the Eastern Churches was sent to the Bishop of Rome as well as numerous consultative bodies including the episcopacy of the Eastern Catholic Churches, the dicasteries of the Holy See, the Roman faculties, and the unions of superior generals. These groups were given six months to respond to the *schemata* and their observations were compiled and examined by an expert study group.¹¹³ The draft canon 292 was reviewed in October 1985.¹¹⁴ During this time a proposal was made to change the title from “Interritual Assemblies of Hierarchs” to “Interecclesial Assemblies of Hierarchs”, reflecting the language of Churches *sui iuris* in the Eastern Code. This proposal was accepted with some modification, the final decision being to

¹¹² 1984 *Schema*, c. 292. English translation in ABBASS, “Assemblies of Hierarchs for Eastern Catholic Bishops in the Diaspora,” pp. 374-375.

¹¹³ Preface *CCEO*, pp. xxxvii-xxxix.

¹¹⁴ *Nuntia*, 23 (1986), p. 3.

change the title from “Interritual Assemblies of Hierarchs” to “Assemblies of Hierarchs of Several Churches *sui iuris*”.¹¹⁵ This change was preserved in the 1990 Eastern Code.¹¹⁶

There were two suggested redactions that were rejected by the study group. First, one consultative organ proposed eliminating the clause “unless (*nisi*) they deal with matters that cannot be prejudicial to the rite of each proper hierarch or to the power”. This proposal, however, was rejected, as it would result in a norm that was too general. Second, another consultative organ proposed that since this body was similar to conferences of bishops, a closer norm to *CIC* canon 455, §1 should be adopted whereby both bodies would have similar norms with respect to issuing decisions. The study group rejected this proposal, however, as the assembly by its nature involves all the Churches *sui iuris* and was felt to be substantially different from the Latin conference.¹¹⁷

Draft canon 292 of the 1984 *Schema* did, however, receive several revisions. During the continued reconsideration of this draft the *coetus* agreed to a proposal whereby the canon was modified.¹¹⁸ Several changes resulted. First, the draft first paragraph, while implicitly stating the Holy See has responsibility for these conferences, does not have the same condition of “Where it seems advisable in the judgement of the Apostolic See” regarding the establishment of these conferences. The addition of this clause left the decision to establish or an assembly entirely to the discretion of the Apostolic See of Rome. Further, the draft canon 292 refers to “patriarchs as well as local hierarchs of Churches”,

¹¹⁵ *Nuntia*, 23 (1986), p. 102.

¹¹⁶ *CCEO*, c. 322.

¹¹⁷ *Nuntia*, 23 (1986), p. 103

¹¹⁸ *Ibid.*

which is a briefer norm than “patriarchs, metropolitans of metropolitan Churches *sui iuris*, eparchial bishops, and, if the statutes so state, local hierarchs of various Churches *sui iuris*.” The original draft paragraph one made no reference to the statutes of the assembly.¹¹⁹

There are only two minor changes between §2 of the 1984 *Schema* and that text which was approved. First, the 1984 *Schema* referred to “the assemblies mentioned in § 1”, while this phrase was simplified to “of the assembly” in the redacted canon. Certainly, given the context of the canon and its location both within canon 322 and Title IX of the Eastern Code, the assemblies to which §2 is referring are certainly those assemblies in §1 and this edit eliminated a certain redundancy. Further, the term “prelates” in the 1984 *Schema* was replaced with “members”, which is a term with greater juridical precision. With respect to the third paragraph, the draft canon received only slight modifications, with “decisions” replaced by “a decision” and “go beyond those things mentioned in §2” generalized to “whatever exceeds the competence of this assembly.” The fourth paragraph also received minor modifications: first, the language of rites was replaced with the language of a Church *sui iuris*, reflecting the consistent terminology of the Eastern Code; second, “are to be approved” was replaced with “must be approved” (*approbari debent*).¹²⁰ The study group approved this final text.¹²¹

¹¹⁹ *Nuntia*, 23 (1986), p. 103

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

3.2.1.2 1986 *Schema Codicis iuris canonici orientalis*

The revisions to the 1984 *Schema* were published with the other revised drafts as the 1986 *Schema Codicis iuris canonici orientalis* (1986 *SCICO*).¹²² The process of revision involved the assigned group, called the Coordinating Committee, combining the thirty titles from the eight drafts into a single text with internal coherence and unity, especially with a consistent juridical language. The *SCICO* text was published in October 1986 and was distributed to the members of PCCICOR that same month. The *Coetus de expensione observationum*, which met twice to consider observations and propose amendments or explain why a text was retained, then reviewed the observations submitted by the commission members. These comments were then discussed by the plenary session of the Pontifical Commission in 1988. The text was amended by the members of PCCICOR and submitted to the Bishop of Rome in January 1989. After it was reviewed and revised where necessary, this text was promulgated in October 1990.¹²³ The canon received only minor redactions at these later stages.¹²⁴

The model of assemblies of hierarchs was now canon 322 and Title IX of *SCICO*. There was a proposal made by a PCCICOR member to move this canon to follow Title VI (on metropolitan Churches *sui iuris*) given that it describes hierarchs and, further, this was the order followed in *Cleri sanctitati*. This proposal, however, was not supported as it was

¹²² This was published as PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO, *Schema Codicis iuris canonici orientalis*, (=1986 *Schema*) in *Nuntia*, 24-25 (1987), pp. 1-276.

¹²³ “Preface *CCEO*”, pp. xl-xli.

¹²⁴ The Coordinating Committee made two proposals: in §1 adding the word *Ecclesiae* to the adjective *latinae* and in §2 changing *iis* to *eis* and *voto deliberativo fuentium* to *suffragium deliberativum habentium*, see *Nuntia*, 27 (1988), pp. 36-37. In §3, the legislator made the change of replacing *est* (is) with *erit* (will be) in the final text, see *Nuntia*, 31 (1990), p. 40.

felt that the norms of *Cleri sanctitati* were sufficiently broken up throughout the *schema*.¹²⁵

As a result, the canon was left in its previous location.

The question of the geographic location of these assemblies was raised and is recorded in the *iter* for canon 322. One member of PCCICOR asked:

The canon seems to want to create a counterpart of the Latin episcopal conferences. In any case, it does not reflect the situation of the Eastern Catholic bishops established outside the territories of the patriarchal Churches. The tenor of canon 450, 1, of the *CIC*, if [these Eastern hierarchs are] invited to the conferences of bishops, they have there a consultative vote, and on the other hand are excluded from participating in the assemblies described in this canon, because they do not exercise their power. What is the *mens* of the legislator in this matter? Maybe the Eastern Catholic bishops should have a deliberative vote in the episcopal conference or does the *CICO* intend to institute for these bishops these proper assemblies distinct from episcopal conferences of the Latin Church?¹²⁶

The response given to this question was, that the “substance of the proposal is accepted in accordance with the *mens* of the canon, to circumscribe the regions in which the Eastern rites are prevalent; to express this juridically, the canon now starts with the following clause: ‘Where it seems advisable in the judgement of the Apostolic See.’”¹²⁷ This is the explanation for the insertion of this preamble that left the question of the geographic locations of these assemblies to the judgement of the Apostolic See.

A second proposal was received where one member suggested the elimination of the requirement for a *recognitio*, arguing that the two-thirds majority was sufficient. The proposal indicated that overprotecting the autonomy of the Churches was harmful to common pastoral activity. This was explained by the fact that in a region with many

¹²⁵ *Nuntia*, 28 (1989), p. 58.

¹²⁶ *Ibid.*, pp. 57-58.

¹²⁷ *Ibid.*, p. 57.

Churches a two-thirds majority would be difficult to obtain, even when the consent of a Church's synod is not required. This proposal critically referred to the autonomy of the Churches *sui iuris* as a "claim" or "pretence" of sovereignty. This proposal was dismissed with the response that the canon safeguards the *sui iuris* nature of each of the Eastern Churches.¹²⁸

A third proposal was submitted during the process of revision that proposed that greater autonomy needed to be granted to the assemblies, following the model of the synods in the Early Church. As a result, the proposal felt the requirement for the *recognitio* was unnecessary. This proposal included three redactions: removing the requirement for approval by the Apostolic See in §2, eliminating §3 entirely, and again removing the requirement for approval by the Apostolic See in §4. This proposal was dismissed by the *coetus* as contrary to the prescripts of *Orientalium Ecclesiarum* and the Bishop of Rome's role as supreme judge of relations between Churches.¹²⁹

With respect to §4 and the possibility of the participation of non-Catholic hierarchs, a fourth proposal was submitted where a member of PCCICOR recommended that non-Catholic hierarchs should only be admitted as observers. Two reasons were provided for this position. First, one member indicated that in regions where Catholics are in a minority, the presence of non-Catholic hierarchs would as a result be "neither desirable nor beneficial." Second, one member indicated that it is "neither practical nor desirable" to allow their participation and they should only be invited as observers. The response was:

¹²⁸ *Nuntia*, 28 (1989), p. 57.

¹²⁹ *Ibid.*

since the Holy See approves the statutes and the nature of their participation would be included in these statutes, a sufficient guarantee already exists.¹³⁰

3.2.2 Commentary on *CCEO* Canon 322

Canon 322 of the *CCEO* has four paragraphs. Paragraph 1 cites as its sources *Christus Dominus* numbers 37 and 38, §6 as well as number 4 of *Orientalium Ecclesiarum*.

This paragraph, in its final form, is:

Where it seems advisable in the judgement of the Apostolic See, periodic assemblies are to be held of patriarchs, metropolitans of metropolitan Churches *sui iuris*, eparchial bishops, and, if the statutes so state, other local hierarchs of various Churches *sui iuris*, even of the Latin Church, exercising their authority in the same nation or region. These assemblies are to be convoked at regular intervals by the patriarch or another authority designated by the Apostolic See. The purpose of these meetings is that, by sharing the insights of wisdom born of experience and by the exchange of views, the pooling of their resources is achieved for the common good of the Churches, so that unity of action is fostered, common works are facilitated, the good of religion is more readily promoted and ecclesiastical discipline is preserved more effectively.

This canon refers to “where (*ubi*) it seems advisable”, meaning those geographic locations determined as appropriate by the Holy See. While the canon does not provide any indication as to how these regions are determined, the *praenotanda* of the 1984 *Schema* indicated the intention of the original drafters: “to be erected in Eastern regions” (*in Orientalibus regionibus constitutas esse*). As Abbass remarks:

However, given the addition of the clause “Where it seems advisable in the judgement of the Apostolic See,” the establishment of assemblies of hierarchs need not be circumscribed only to patriarchal territories. Nor would it seem that the Eastern Catholic Churches need to be the majority

¹³⁰ *Nuntia*, 28 (1989), p. 58.

in a nation or region outside the patriarchal territories for an assembly to be established there.¹³¹

Regardless of the recorded intention of the drafters, it is correct to observe that the law in no way excludes the canonical erection of these structures in any territory determined appropriate by the Holy See, that is, potentially in regions far outside any patriarchal territories.

These bodies are “periodic assemblies” whose membership includes: “patriarchs, metropolitans of metropolitan Churches *sui iuris*, eparchial bishops, and, if the statutes so state, other local hierarchs of various Churches *sui iuris*, even of the Latin Church, exercising their authority in the same nation or region.”¹³² These assemblies are thus established either on the level of an ecclesiastical region or political nation. For example, the erected assemblies in Egypt and Lebanon are national assemblies, while the assembly in the Holy Land involves several political nations: Israel, the Palestinian territories, and Jordan. The membership of an assembly includes by law: patriarchs, major archbishops, metropolitans, and all eparchial bishops in this region.¹³³

¹³¹ ABBASS, “Assemblies of Hierarchs for Eastern Catholic Bishops in the Diaspora,” p. 381. *Cf.*, however, Péter SZABÓ, “Convento dei Gerarchi ‘plurium Ecclesiarum sui iuris’ (CCEO can. 322): Figura canonica dello ius commune e la sua adattabilità alla situazione dell’Europa Centro-orientale,” in *Ius canonicum in Oriente et Occidente: Festschrift für Carl Gerold Fürst zum 70. Geburtstag*. Elmar GÜTHOFF and Karl-Heinz SELGE (eds.), Frankfurt am Main, Peter Lang International Academic Publishers, 2003, p. 593; also Pablo GEFAELL, “L’Attenzione agli orientali cattolici nei documenti delle Conferenze episcopali,” in Pablo GEFAELL (ed.), *Cristiani orientali e pastori latini*, Pontificia Università della Santa Croce Monografie Giuridiche, no. 42, Milan, Giuffrè Editore, 2012, pp. 372-373. Szabó’s argument is that the *praenotanda* indicated that the assembly is to be erected in Eastern regions, and thus this canonical body is restricted to these territories. However, the addition of the clause, as Abbass reasonably points out, certainly opens the possibility within the law of developing these structures in other territories when, in the judgement of the Holy See, it seems opportune.

¹³² CCEO, c. 322, §1.

¹³³ Major archbishops are included in virtue of CCEO, c. 152. Exarchs could be added to this list in virtue of CCEO, c. 313; see ABBASS, “Assemblies of Hierarchs for Eastern Catholic Bishops in the Diaspora,” p. 383; also John D. FARIS, *Eastern Catholic Churches: Constitution and Governance: According to the Code of Canons of the Eastern Churches*, New York, Saint Maron Publications, 1991, p. 643. However, *cf.* Vincent CHE, “Le assemblee dei gerarchi di diverse Chiese sui iuris,” in *Commento al Codice dei Canonici delle Chiese*

The statutes can include other local hierarchs of any identified Churches *sui iuris* in the same territory. The canon uses the term local hierarchs following *Cleri sanctitati; Orientalium Ecclesiarum*, on the other hand, used the term “hierarchs”.¹³⁴ This latter term would include titular bishops, while the former would not. This change also admitted protosyncelli and syncelli.¹³⁵ One example demonstrating the benefit of including local hierarchs is in the Melkite Church: the Melkite Patriarch is patriarch of three sees: Jerusalem, Antioch, and Alexandria. The Melkite prelate resident in Egypt is, as a result, not a bishop himself but a priest with the title of protosyncellus, exercising vicarious power in the exarchate.¹³⁶ The statutes can identify that Latin local ordinaries are also to be members. Further, the statutes could identify other members, including non-Catholic hierarchs.¹³⁷ Pallath proposes these other members could include titular bishops (who are not local hierarchs), pontifical legates, and major superiors.¹³⁸

The canon indicates that: “These assemblies are to be convoked at regular intervals by the patriarch or another authority designated by the Apostolic See.”¹³⁹ There is no indication in the common law as to how frequently these assemblies are to be convoked and the answer to this question should be contained in the statutes of the assembly. The

Orientali, Pio Vito PINTO (ed.), Vatican City, Libreria Editrice Vaticana, 2001, p. 285 which states this would need to be included in the statutes, which would seem to be contrary to *CCEO*, c. 313.

¹³⁴ *CS*, c. 4; *OE*, no. 4.

¹³⁵ *CCEO*, c. 984, §2

¹³⁶ *Annuario Pontificio 2015*, pp. 4-5.

¹³⁷ *CCEO*, c. 322, §4.

¹³⁸ Paul PALLATH, “L’Assemblée des hiérarques de plusieurs Églises de droit propre selon le Code des canons des Églises orientales,” in *L’Année canonique*, 42 (2000), pp. 118-119.

¹³⁹ *CCEO*, c. 322, §1.

patriarch, or another authority designated by the Holy See, serves as the one responsible for convoking these assemblies. Why would the Holy See designate a different authority other than the patriarch? As Pallath points out: “It does not seem appropriate for the prestige and the dignity of an Eastern patriarch or a major archbishop, *pater et caput* of the Church *sui iuris*, who would participate in an assembly as a simple member.”¹⁴⁰ One situation would be that in some territories overlapping patriarchal territories exist and it would be a question of which patriarch serves as president. This question would be answered in the statutes of the assembly.

Finally, the canon describes the goals of the assembly. These collaborative structures are intended to foster unity of action, common works, and promote the good of religion and common ecclesiastical discipline. The canon does not describe in detail the manner of achieving these goals, which would be potentially diverse, depending on the local circumstances. These goals have clear parallels to the decree *Orientalium Ecclesiarum* as well as the earlier canon in *Cleri sanctitati*.¹⁴¹ Pallath lists eleven possible collaborative functions of these assemblies: promoting communion and harmony between bishops, answering questions concerning Catholic doctrine, coordinating evangelization and re-evangelization, coordinating ecumenical activity, coordinating interreligious activity, acting in social communication, coordinating relations with civil and other national and international organizations, coordinating social, educational, and charitable activities, creating a common strategy concerning social-economic situations in a region,

¹⁴⁰ PALLATH, “L’Assemblée des hiérarques de plusieurs Églises de droit propre selon le Code des canons des Églises orientales,” p. 113.

¹⁴¹ *OE*, no. 4; *CS*, c. 4.

ensuring clergy discipline is appropriate for the local context, and answering those questions in the Eastern Code which call for consultation with hierarchs of other Churches *sui iuris*, for example: the obligation of patriarchs to consult other patriarchs in *CCEO* canon 84.¹⁴²

These examples demonstrate that, by their nature, assemblies would deal with questions that are common to the Churches *sui iuris* and facing all the Christian faithful in an area. As a result, these are structures that are at the service of ecclesiastical communion and manifest the diversity of the Church while at the same time promoting its oneness. As Pallath further observes that: “interecclesial assemblies aim to guarantee not only the calm coexistence of the faithful of different Churches, but also the creation of a unique family of God’s children who reciprocally love as Jesus loves us – a family which is one and at the same time is diverse.”¹⁴³

The second paragraph of canon 322 of the *CCEO* is as follows:

The decisions of this assembly do not have juridically binding force unless they deal with matters that cannot be prejudicial to the rite of each Church *sui iuris* or to the power of the patriarchs, of synods, of metropolitans and of the councils of hierarchs; further, they have to have been passed at least by two-thirds of the members having a deliberative vote and approved by the Apostolic See.¹⁴⁴

Assemblies of hierarchs have as their goal the coordination of pastoral activity and collaboration of its execution within a given territory. This goal, however, is in no way to infringe upon the legitimate autonomy of the individual Churches *sui iuris* and their proper

¹⁴² PALLATH, “L’Assemblée des hiérarques de plusieurs Églises de droit propre selon le Code des canons des Églises orientales,” pp. 115-116. This list cannot be considered exhaustive.

¹⁴³ Ibid., p. 114.

¹⁴⁴ *CCEO*, c. 322, §2.

legislative competencies. In establishing this principle, the drafters of the Eastern Code ensured that no majority could impact upon this autonomy as any such decision would “lack binding force”.

A decision of the assembly cannot be “prejudicial to the rite”. This reflects the principle, firmly established in Catholic theology, that individual rites are to be preserved.

The decree *Orientalium Ecclesiarum* articulates this position in stating that:

All members of the Eastern Rite should know and be convinced that they may and should always preserve their own lawful liturgical rites and their way of life, and that changes should be made only by reason of their proper and organic development. All these things are to be observed with the greatest fidelity by the eastern Christians themselves. They should indeed, from day to day, acquire greater knowledge of these matters and more perfect practice of them and if for reasons of circumstances, times or persons they have fallen unduly short of this they should have recourse to their age-old traditions.¹⁴⁵

This requirement to preserve one’s “legitimate liturgical rite and their established way of life” is also reflected in the Eastern Code, especially in canons 39-41, which describes these rites as “the patrimony of the entire Church of Christ.”¹⁴⁶ The Eastern Code defines a rite as: “a liturgical, theological, spiritual and disciplinary heritage, differentiated by the culture and circumstances of the history of peoples, which is expressed by each Church *sui iuris* in its own manner of living the faith.”¹⁴⁷ As a result, no decision can impact the liturgical, theological, spiritual, and disciplinary patrimony, culture, and circumstances of history of a distinct people. The norm in the Eastern Code expands the understanding of rite as compared to *OE* number 4 to also include the disciplinary (that is, canonical) heritage of a

¹⁴⁵ *OE*, no. 6.

¹⁴⁶ *CCEO*, c. 39.

¹⁴⁷ *CCEO*, c. 28, §1.

rite. This diversity affirms the divine unity and diversity of the Catholic faith and the assembly can in no way interfere with this most sacred Apostolic Tradition.¹⁴⁸ Any such interference would be contrary to the mind of the legislator and, consequently, have no juridical force.

The canon further indicates that it is not only the rites that cannot be altered, but also the “power of the patriarchs, of synods, of metropolitans and of the councils of hierarchs” must be preserved intact. This certainly follows the same principles as the earlier prohibition of altering the rites. *Orientalium Ecclesiarum* emphasizes the dignity of these “traditional forms of governance”, referring to them as “deserving special honour” and calls for the re-establishment and preservation of their rites and privileges.¹⁴⁹ As an example, an assembly of hierarchs could not create norms for an inter-ecclesial election of bishops, as this would infringe on the rights of the synod. The canon safeguards the legitimate diversity present in the Church by declaring any such decision as lacking any and all juridical force. This is a contrast to the competency of conferences of bishops, “A conference of bishops can only issue general decrees in cases where universal law has prescribed it or a special mandate of the Apostolic See has established it either *motu proprio* or at the request of the conference itself.”¹⁵⁰ While the competency of the episcopal conference is restricted to those situations where competency has been explicitly prescribed, the assembly has a general competence that can cover any topic, provided it

¹⁴⁸ *CCEO*, c. 28, §1.

¹⁴⁹ *OE*, nn. 9-11.

¹⁵⁰ *CIC/83*, c. 455, §1.

does not violate the legitimate autonomy of the Churches *sui iuris* according to the norm of this canon.

The canon indicates that in order for a decision to have binding force it requires a special majority of “two-thirds of the members having a deliberative vote and approved by the Apostolic See.”¹⁵¹ This again is a parallel requirement with the norm in the Latin Code regarding conferences of bishops that also requires a two-thirds majority of members with deliberative vote,¹⁵² drawing on the conciliar decree *Christus Dominus*.¹⁵³ This two-thirds majority is an exception to the normal requirement for an absolute majority contained in *CCEO* canon 924, 1°. This majority requires two-thirds support of all members with deliberative vote and not simply two-thirds of those who are present at the meeting.

This norm, as the canon indicates, is a prerequisite for juridical force of an assembly’s decision. This is one of several canons in the Eastern Code that require a special majority of two-thirds.¹⁵⁴ This is a larger majority than the majority required for decisions of a synod of bishops or council of hierarchs.¹⁵⁵ A two-thirds majority requires assemblies to act closer to a consensus-based model of decision-making, as opposed to the synod of bishops or council of hierarchs, which requires a lesser majority and allows for the approval of more divisive topics. As Pallath points out, the special majority would also have the practical benefit of preventing any one Church that forms a majority in a region from

¹⁵¹ *CCEO*, c. 322, §2.

¹⁵² *CIC/83*, c. 455, §2.

¹⁵³ *CD*, no. 38, §4.

¹⁵⁴ See also *CCEO*, cc. 72, §1, and 962.

¹⁵⁵ Unless other norms have been enacted by particular law and excluding the election of a patriarch, see *CCEO*, cc. 72, §1, 107, §2, 166, §2, 924.

dominating the decisions of an assembly. This would protect the rights of minority Churches just as the similar norm in the Latin Code protects the rights of the diocesan bishop.¹⁵⁶

In order to have binding force, the decisions of an assembly require the approval of the Holy See.¹⁵⁷ Following the procedures for the *recognitio* this would be submitted to the Pontifical Council for Legislative Texts, who would consult with the Congregation for the Eastern Churches following articles 56-58 and 156 of *Pastor bonus*. Approval is a stronger level of endorsement and oversight as compared to the *recognitio*. In the case of the *recognitio*, the action is executive in nature and the decree is not an act of the Apostolic See. However, it is unclear as to whether approval of a decision would then require its promulgation by the assembly or, instead, whether approval includes promulgation by the Apostolic See. This question should be answered in the statutes, as a result. The question of the relationship between the assembly and the Bishop of Rome is not settled at this point of the canon and remains the subject of the subsequent two paragraphs of *CCEO* canon 322.¹⁵⁸ If the assembly has the ability to promulgate decrees it possesses legislative power of governance.

Canon 322 of the Eastern Code continues: “A decision, even if passed by a unanimous vote, which in any way whatever exceeds the competence of this assembly, is devoid of all force until it is approved by the Roman Pontiff himself.”¹⁵⁹ This paragraph

¹⁵⁶ PALLATH, “L’Assemblée des hiérarques de plusieurs Églises de droit propre selon le Code des canons des Églises orientales,” p. 123.

¹⁵⁷ *CCEO*, c. 322, §2.

¹⁵⁸ *CCEO*, c. 322, §§3-4.

¹⁵⁹ *CCEO*, c. 322, §3.

enshrines the autonomy of the Churches *sui iuris* in the universal law of the Church. Faris explains this canon as follows: “The canon clearly indicates that the collective authority of the hierarchs convened in the assembly is no greater than the individual authority of the hierarchs.”¹⁶⁰ The assembly is not able to violate any of the prescripts of universal law, including the legitimate authority of the Churches *sui iuris* and their hierarchical constitutions. This is an application of the canonical principle that a lower legislator cannot validly enact a law that is contrary to a higher law.¹⁶¹ Any contrary norm would derogate from common law and thus require the approval of the Bishop of Rome as supreme legislator. A norm which impacted on the rite of a Church *sui iuris* would be contrary to canon 322, §2 and thus require this permission. This norm also, as in the case of the previous paragraph, reflects the role of the Bishop of Rome as the supreme judge of relations between Churches.¹⁶² As Abbass points out, this norm is an important distinction between episcopal conferences and assemblies of hierarchs: episcopal conferences can issue general decrees in circumstances by universal law or special mandate if they have unanimous consent while the assembly of hierarchs, on the other hand, still requires approval from the Holy See, even in cases of unanimous consent.¹⁶³ This restriction demonstrates the importance assigned to the autonomy of the Churches *sui iuris* by the legislator.

¹⁶⁰ FARIS, *Eastern Catholic Churches: Constitution and Governance: According to the Code of Canons of the Eastern Churches*, p. 645.

¹⁶¹ *CCEO*, c. 985, §1.

¹⁶² *OE*, no. 4; *Nuntia*, 28 (1989), p. 57.

¹⁶³ See *CIC/83*, c. 455, §4; ABBASS, “Assemblies of Hierarchs for Eastern Catholic Bishops in the Diaspora,” p. 386.

The final paragraph of canon 322 governs the statutes of the assembly of hierarchs:

Every assembly of hierarchs of several Churches *sui iuris* is to draw up its own statutes in which, as far as possible, the participation of the hierarchs of those Churches that are not yet in full communion with the Catholic Church is also to be fostered. The statutes, to have force, must be approved by the Apostolic See.¹⁶⁴

The first portion of this canon is a requirement for the assembly of hierarchs to have statutes. While canon 322 does not enumerate specific requirements for these statutes, the common law does provide general guidelines for the statutes of juridical persons, including identifying who is responsible for the juridical person, who represents it in both the civil and canonical fora, and its nature and purpose.¹⁶⁵ These statutes would importantly identify the membership of the assembly as well as define its structure. Canon 322, §4 provides another item to be included: norms for the participation of non-Catholic hierarchs. The participation of non-Catholics demonstrates the collaborative nature of the assembly of hierarchs and its purpose of building relationships between Churches. This participation is a concrete application of the ecumenical nature of the Eastern Code and the special role Eastern Catholics have in promoting unity with the non-Catholic Eastern Churches.¹⁶⁶ Such inclusion of non-Catholic hierarchs also allows the non-Catholic Christians to participate in common pastoral activity, especially given that mixed marriages are extremely prevalent between Catholic and non-Catholic Eastern Christians. Collaboration of this sort is also important in regions dominated by Islam, where Christians are in a minority and the faithful often do not have access to their own proper Churches.

¹⁶⁴ *CCEO*, c. 322, §4.

¹⁶⁵ *CCEO*, c. 922, §2.

¹⁶⁶ “Guidelines for the Revision of the Code of Oriental Canon Law,” p. 21; also KOKKARAVAILAYIL, *The Guidelines for the Revision of the Eastern Code: Their Impact on CCEO*, pp. 179-216.

With respect to the possibility of the participation of non-Catholic hierarchs, the Code is silent as to the level of activity these hierarchs would have in these assemblies. Would they be voting members? If so, would they have deliberative or consultative voice? Or would they be non-voting guests? This paragraph left the question to the statutes allowing subsidiarity to take into account the local circumstances facing the individual assemblies without legislating specific requirements in the universal law. It would seem appropriate for them to not have deliberative voice since they do not possess power of governance and may, at times, hold positions that are contrary to the Catholic Faith.

The final portion of this paragraph indicates that the Holy See is the competent authority to approve the statutes of the assembly of hierarchs. This, again, reflects the role of the Bishop of Rome as supreme judge of relations between the Churches.¹⁶⁷ These statutes would be submitted to the Congregation for the Eastern Churches. However, in many cases the Congregation would proceed “in consultation with the dicastery that has competence in the same matter for the faithful of the Latin Church,” that is, the Congregation for Bishops, the Congregation for the Evangelization of Peoples, or the Secretariat of State – Section for Relations with States, as the case demands, in consultation with the Pontifical Council for Legislative Texts.¹⁶⁸

The assembly of hierarchs is not granted juridical personality in the common law.¹⁶⁹ An assembly of hierarchs of several Churches *sui iuris* is an aggregate of persons. Aggregates of persons can be granted juridical personality in one of two ways: either by

¹⁶⁷ *OE*, no. 4.

¹⁶⁸ *PB*, arts. 47, 58, 82, 89, 157, and SECRETARIAT OF STATE, *Rescriptum ex audientia*, 4 January 2006.

¹⁶⁹ This is not granted in either *CCEO* c. 322 or c. 921, §2.

grant of competent authority or by prescription of law.¹⁷⁰ It is both possible and appropriate for the competent authority, in this case the Holy See, to grant juridical personhood to the assembly of hierarchs. The Holy See would be competent to erect the assembly as a juridical person not only because of the theological argument of the Bishop of Rome's role as supreme judge of inter-Church relations,¹⁷¹ but also through an inductive application of canon law: "Every juridic person, erected by a special concession of the competent ecclesiastical authority must have its own statutes, approved by the juridical authority that is competent to erect it as a juridic person."¹⁷² Since the Holy See, according to this paragraph, is competent to approve the statutes, it would stand to reason that they would also be the only competent authority capable of granting juridical personhood to the assembly. The decree of erection by the Apostolic See should indicate whether or not the assembly of hierarchs is erected as a juridic person. If an assembly is not a juridic person and therefore not the subject of laws with rights and obligations, it is unclear how it could exercise power of governance and issue binding norms. Given the purpose of the assembly to facilitate inter-ecclesial relations, it would stand that this body should, as much as possible, always be erected as a juridic person. However a juridic person is perpetual by its nature and thus a special stability should be found before such a grant would be issued.¹⁷³

¹⁷⁰ *CCEO*, c. 921, §1.

¹⁷¹ *OE*, no. 4.

¹⁷² *CCEO*, c. 922, §1.

¹⁷³ *CCEO*, c. 927, §1.

3.2.3 Conclusions

Canon 322 provides norms for common collaboration for hierarchs of several Churches *sui iuris*. In this canon the Holy See is able to establish canonical assemblies wherever it deems them beneficial. These assemblies are to have an individual who is responsible for convoking the hierarchs at regular intervals so that common pastoral activity can be coordinated among the various Churches *sui iuris*.¹⁷⁴ The decisions of these assemblies cannot be prejudicial to the rite of a Church or the power of the structures in its hierarchical constitution. Further, they require a two-thirds majority of all members holding a deliberative vote as well as the approval of the Apostolic See.¹⁷⁵ Any vote which is contrary to the competence of an assembly, that is, one that is prejudicial to the rite of a Church or the power of its governing structure, even if passed unanimously, requires approval by the Bishop of Rome in order to have any juridical force.¹⁷⁶ Finally, this assembly requires statutes, to be approved by the Roman Apostolic See, which are to govern topics such as the involvement of non-Catholic hierarchs.¹⁷⁷ It does not possess juridic personality in the law and must be granted this by the competent authority, that is, the Apostolic See.

¹⁷⁴ *CCEO*, c. 322, §1.

¹⁷⁵ *CCEO*, c. 322, §2.

¹⁷⁶ *CCEO*, c. 322, §3.

¹⁷⁷ *CCEO*, c. 322, §4.

Conclusions

In the early Church, there was a firm principle: one city, one bishop. This was the practice of the universal Church, East and West. However, in later centuries, especially non-Catholic circumscriptions resuming hierarchical communion with the Bishop of Rome, situations of multiple hierarchies emerged in single territories. These bishops had jurisdiction that was not only territorial but also personal and included the faithful of their Church while excluding those of the other Church or Churches in the same territory. In some situations these bishops even hold title to the same city, such as the numerous Catholic bishops of Jerusalem.

Each of these Churches has their respective hierarchical constitution. However, they coexist in the same territory as other Churches *sui iuris* which face many of the same pastoral challenges. In some situations, these hierarchies are in territories that are traditionally Eastern Christian; in other situations, largely due to immigration, these overlapping hierarchies are in territories where the Latin Church is in the majority. While the faithful often enter into intermarriages and face common pastoral challenges, their hierarchical structures remain distinct and thus separate from their coexisting Churches.

The benefit of common pastoral action for these hierarchs residing in the same territory was recognized in the modern era. The assembly of hierarchs of several Churches *sui iuris* is a canonical structure, present only in the Eastern Code, which facilitates this inter-ecclesial collaboration. These hierarchs who are members of the assembly can establish common norms so that what is permitted in one Church is not out-of-line with that permitted in another. Further, common pastoral responses can be coordinated to deal with the challenges of modern culture in a given region. This is done while respecting the legitimate autonomy of the individual Churches. The assembly is a new structure in terms

of the history of canonical institutions; however this body is a response to the evolving nature of the Church, especially in terms of the migration of Christians. This reflects the need for the Church to develop structures that respond to the challenges of the time, are true to its tradition of episcopal collegiality, and safeguard and strengthen the bonds of communion.¹⁷⁸ This structure, inter-ecclesial in nature, is part of the hierarchical constitution of no individual Church and directly under the jurisdiction of the Bishop of Rome who serves as the supreme judge of inter-ecclesial relations.¹⁷⁹

The assembly of hierarchs, however, has remained an uncommon structure. In territories that are traditionally Eastern, some of these assemblies have been erected, for example in India and Egypt. However, in other traditionally Eastern territories these structures have not been utilized. One example is Ukraine which lacks an assembly of hierarchs despite the presence of three Catholic Churches *sui iuris*.¹⁸⁰ In places in the so-called diaspora, such as Canada and the United States, the assembly has not been implemented at all and the conference of bishops remains the favoured collaborative structure. However, these structures have important differences, most fundamentally that the conference of bishops belongs to the hierarchical constitution of the Latin Church while the assembly belongs to no single Church. A comparative study of these structures is to follow, identifying the nature of each and identifying possibilities for inter-ecclesial

¹⁷⁸ JOHN PAUL II, Apostolic letter *Novo millennio ineunte*, no. 44.

¹⁷⁹ *OE*, no. 4.

¹⁸⁰ The Ukrainian major-archiepiscopal Church *sui iuris* based in Kyiv, the Latin-rite Church with its metropolitan see in Lviv, and the eparchy of Mukachevo which is immediately subject to the Holy See and not part of the Ukrainian Catholic Church, being of the same tradition as the American Ruthenian Church *sui iuris*.

collaboration in a world of ever-greater mobility resulting in situations of permanent ecclesial plurality.

4 – COMPARATIVE ANALYSIS OF INTER-ECCLESIAL COLLABORATION

Introduction

Assemblies of hierarchs of several Churches *sui iuris* and conferences of bishops are collaborative structures for hierarchs of a given region. While assemblies of hierarchs are restricted to the Eastern Code, conferences of bishops are restricted to the Latin Code. However, both models can include members from multiple Churches *sui iuris* with varying degrees of involvement. In order to understand the strengths and limitations of these collegial models, a comparative analysis of these two structures is the main subject of this chapter. First, comparative law is defined as a subject. Second, the two collegial models are compared, first in terms of both the Latin and Eastern codes, followed by a comparison of sample statutes from existing conferences and assemblies. Finally, proposals for future collaborative models are made in order to continue the effective promotion of the Gospel and advancement of the common good.

4.1 Comparative Analysis of Assemblies of Hierarchs and Conferences of Bishops

Assemblies of hierarchs of several Churches *sui iuris* and conferences of bishops are both collegial bodies that allow for collaboration between local Churches in a given region. However, there are differences between these structures, especially concerning their nature and competency. This section will first examine the principles of comparative law before engaging in a comparative examination of assemblies of hierarchs and conferences of bishops.

4.1.1 Principles of Comparative Law

Comparative law is not a discipline of law in the same sense that canon law is or that branches of civil law such as family law or criminal law are. This has resulted in an opinion among some legal theorists that comparative law does not, strictly speaking, exist.¹ These theorists have postulated that it is not a discipline in itself, while others argue it is an umbrella term involving several scientific disciplines.² Fundamentally, comparative law is a methodology. It is, as Kamba defines, “the *systematic* application of the comparative technique to the field of law. It means the study of, and research in, law by the systematic comparison of two or more legal systems; or of parts, branches or aspects of two or more legal systems.”³ While comparative law has many different purposes based on its various methodologies and subfields, the science in general is characterized by a study of systems of law or portions of systems of law by using explicit comparisons and drawing conclusions based on these comparisons, whether of similarities, differences, or some combination thereof.⁴ These comparisons have, as Abbass notes, the primary goal “to obtain a knowledge of the juridical systems being compared.”⁵ This section examines comparative

¹ See Alan WATSON, “Legal Transplants: An Approach to Comparative Law,” in Mary Ann GLENDON, Paolo G. CAROZZA, and Colin B. PICKER, *Comparative Legal Traditions: Text, Materials, and Cases on Western Law*, 3rd ed., St. Paul, MN, Thomson/West, 2007, p. 2.

² *Ibid.*, pp. 3-4.

³ Walter J. KAMBA, “Comparative Law: A Theoretical Framework,” in *The International and Comparative Law Quarterly*, 23 (1974), p. 486.

⁴ John C. REITZ, “How to Do Comparative Law,” in *The American Journal of Comparative Law*, 46 (1998), pp. 617-636.

⁵ Jobe ABBASS, “CCEO and CIC in Comparison,” in George NEDUNGATT (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Kanonika, no. 10, Rome, Pontifical Oriental Institute, 2002, p. 848.

law first by defining it as a legal science in general and examining its role, particularly within the study of Church law.

Comparative law as an academic science is a modern phenomenon. However, the concept of comparing systems of law is of ancient antiquity. Aristotle entered into comparative law in his *Politics*, examining the constitutions of 153 city-states.⁶ Later, Roman legal tradition drew upon Greek legal concepts and became a coherent system by means of comparative jurisprudence and rational speculation. For example, Pomponius testifies that Athenian law was studied prior to the composition of the Twelve Tables.⁷ Also, Gaius's *Institutes* contains comparative remarks.⁸ The first extant work of explicit comparative law, in fact, dates back to the Romans: the *Mosaicarum et romanarum legum collatio* is a late-fourth or early-fifth century work (*ca.* 390-438) which compares Roman law with the Mosaic Law contained in the Old Testament, mainly with respect to the law of torts and criminal law.⁹ Scholars postulate this work to be the product of a Christian-Roman jurist attempting to connect pagan Roman law and monotheistic Mosaic Law for non-Christian lawyers.¹⁰

The comparative approach to the study of law has, for centuries, also been part of the study of ecclesiastical legislation. This has historically involved the study of Roman

⁶ Richard G. MULGAN, *Aristotle's Political Theory: An Introduction for Students of Political Theory*, Oxford, Oxford University Press, 1977, pp. 60–77, 116–38.

⁷ *Digesta*, 1.2.2.4.

⁸ For example, his mention of the Galatians in *Institutes*, 1.55.

⁹ For a critical text along with an English translation and extensive scholarly apparatus see Robert M. FRANKS, *Compiling the Collatio Legum Mosaicarum et Romanarum in Late Antiquity*, Oxford Studies in Roman Society and Law, New York, Oxford University Press, 2011.

¹⁰ *Ibid.*, p. 149.

law. Given that Roman law was the context in which Church law developed, it was of great influence on Church structures.¹¹ In the West, the Church Fathers applied Roman legal terms to describe Church organization.¹² The relationship between Roman law and canon law was much more defined in the Byzantine East where church law was promulgated as Roman (Byzantine) Imperial law. As a result, while, in the West, Roman law and Church law formed two distinct systems of law with great influence on each other, in the East, Church law was a dynamic part of the continuing system of Roman (Byzantine) law.

Comparative studies of church law had a practical element of providing legislative norms. Roman law was used in formal canonical texts, especially after the “rediscovery” of the *Digesta* of Justinian in the eleventh century.¹³ Gratian’s work itself, the *Concordia discordantium canonum*, was, arguably, a rudimentary work of comparative law. Gratian not only drew on Roman law sources in his *Decretum* but he also structured his entire work in a form of comparative legal analysis, drawing together discordant texts in order to deduce a harmonized norm.¹⁴ Gratian argued that Roman law was “worthy of reverence”

¹¹ On the early relationship between Church law and Roman law see, for example, i) Jean GAUDEMET, *La formation du droit séculier et du droit de l'Eglise aux IV^e et V^e siècles*, 2nd ed., Paris, Sirey, 1979, ii) Jean GAUDEMET, “Le droit romain dans la littérature chrétienne occidentale du III^e au V^e siècle,” in *Ius Romanum Medii Aevi*, Milan, Giuffrè, 1978, and iii) Albert GAUTHIER, *Roman Law and Its Contribution to the Development of Canon Law*, 2nd ed., Ottawa, Saint Paul University, 1996.

¹² GAUTHIER, *Roman Law and its Contribution to the Development of Canon Law*, pp. 4-5.

¹³ Wolfgang P. MÜLLER, “The recovery of Justinian’s Digest in the Middle Ages,” in *Bulletin of Medieval Canon Law*, 20 (1990), pp. 1-29.

¹⁴ On the topic of the *Decretum Gratiani* in general, see Peter LANDAU, “Gratian and the *Decretum Gratiani*,” in Wilfried HARTMANN and Kenneth PENNINGTON (eds.), *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, History of Medieval Canon Law, no. 3, Washington, DC, Catholic University of America Press, 2008, pp. 22-54. For an examination of Gratian’s use of Roman law, see i) Charles MUNIER, “Droit canonique et Droit romain d’après Gratien et les Décrétistes,” in *Études d’histoire du droit canonique dédiées à Gabriel Le Bras*, vol. 2, Paris, Éditions Sirey, 1964, pp. 943-954, and ii) Anders WINDROTH, *The Making of Gratian’s Decretum*, Cambridge Studies in Medieval Life and Thought, Fourth Series, no. 49, Cambridge, Cambridge University Press, 2001, especially ch. 5: Gratian and Roman Law, pp. 146-174.

and the decretists made frequent references to Roman law. This was a practice which later canonical commentators followed, especially in the use of principles of Roman law for the study of law as a science.¹⁵ Roman law and canon law continued to be subjects of comparative study into the modern era.¹⁶

In the East, comparative law was also practiced within the study of ecclesiastical legislation. The 13th century Syrian Orthodox canonist Bar Hebraeus drew widely on not only Byzantine Greek and Assyrian law, but also extensively included Islamic civil law in his *Book of Directives* (also called the *Nomokanon of Bar Hebraeus*).¹⁷ Ebedjesus, the great Assyrian canonist writing in the same era, draws on “western” Greek and Latin sources in his *Regulations on Ecclesiastical Judgement*.¹⁸ The Greek monk Nikodemus the Hagiorite writing in the eighteenth century frequently makes reference to Latin customs in the *Pedallion*.¹⁹

Comparative law, however, was generally not given sufficient attention as a science until after the middle ages, largely due to the absolute pre-eminence of Roman law and

¹⁵ GAUTHIER, *Roman Law and Its Contribution to the Development of Canon Law*, pp. 8-9.

¹⁶ See, for example, Charles BOUCAUD, “Relationes inter Ius Romanum et Codicem Benedicti XV,” in *Acta Congressus iuridici internationalis*, IV, Rome, Apud Custodiam Librariam Pontificii, 1937, pp. 45-50 and Bernard F. DEUTSCH, “Ancient Roman Law and Modern Canon Law,” in *The Jurist*, 27 (1967), pp. 297-309; 28 (1968), pp. 23-37, 149-162, 449-469; 29 (1969), pp. 10-25, 265-278; 30 (1970), pp. 182-192; 31 (1971), pp. 478-488.

¹⁷ Clarence GALLAGHER, *Church Law and Church Order in Rome and Byzantium: A Comparative Study*, Birmingham Byzantine and Ottoman Monographs, no. 8, Aldershot, UK, Ashgate, 2002, pp. 193-196.

¹⁸ *Ibid.*, pp. 208-209.

¹⁹ John H. Erickson, “On the Cusp of Modernity: The Canonical Hermeneutic of St Nikodemus the Hagiorite (1748-1809),” in *St Vladimir’s Theological Quarterly*, 42 (1998), p. 51.

canon law.²⁰ What little comparative work did occur in legal faculties was generally focused on harmonization of laws and not scientific examination.²¹ Comparative study grew in popularity during the Renaissance, especially in the comparison of classical Roman law with various systems of civil law. This occurred especially in Germany during the sixteenth and seventeenth centuries.²² French humanists examined the customary law of their country in a comparative fashion.²³ In Spain during this same era, Spanish law was compared with the indigenous laws of its colonies.²⁴ The seventeenth-century natural law school, where comparative methods were used deductively to arrive at legal conclusions, adopted the study of comparative law.²⁵ This comparative method served as a source of jurisprudence in difficult situations where no clear statute existed.²⁶ These studies were all, at this time, comparisons of various systems of law that coexisted in the same territory and were, as a result, generally of a genre that is described by the categories of Sauser-Hall as

²⁰ Walther HUG, "The History of Comparative Law," in *Harvard Law Review*, 45 (1932), pp. 1034-1039.

²¹ Charles DONAHUE, "Comparative Law before the Code Napoléon," in Mathias REIMANN and Reinhard ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, Oxford University Press, 2006, pp. 8-12.

²² See for example, i) Ludwig FACHS, *Differentiae aliquot juris civilis et Saxonici, in quatuor partes divisae. Nunc primum in lucem editae*, Köln, apud Dietrich Baum, 1567; ii) Paulus BUSIUS, *Commentarius in universas Pandectas Domini Justiniani cum differentiis consuetudinem Communium et Germaniae, Galliae, Belgicae, singularum juris canonici, item atque additione decisionum juris prope totius controversy*, Daventria, Typis J. Columbii, 1656; and iii) Benedict CARPZOV, *Jurisprudentia forensis romano-saxonica*, Frankfurt, Johannis Pressii, 1684.

²³ See, for example, Guy COQUILLE, *Institution au droict des François*, Paris, A L'Angelier, 1607.

²⁴ See, for example, Gregorio GARCIA, *Origen de los indios de el Nuevo Mundo e Indias Occidentales*, Valencia, Casa de Pedro Patricio Mey, 1607.

²⁵ DONAHUE, "Comparative Law before the Code Napoléon," p. 22.

²⁶ Rudolph B. SCHLESINGER, "The Past and Future of Comparative Law," in *American Journal of Comparative Law*, 43 (1995), p. 477.

internal comparative law (*droit comparé interne*), as distinguished from the examination of different systems of law, called external comparative law (*droit comparé externe*), that characterizes the modern study.²⁷

In the eighteenth-century the modern nation-states began the process of national legal codification. As a result, juridical literature focused on commentaries on these newly developed codes and an atmosphere emerged where, as Hug describes, “studies in foreign and comparative law were regarded as having no value.”²⁸ The mid-nineteenth century, in fact, was a period where comparative study nearly ceased. The only exceptions were some isolated studies of Roman law and comparative studies of the maritime law of various nations.²⁹

At the same time, the development of the European codes of law caused comparative law to be founded as a disciplinary science. As modern codes developed, several important changes occurred in the legal systems of Europe. These codes were written in the language of a nation, not the *lingua latina*, as had been the case of the previous Roman civil codes. Also, national codes meant law was unified within a specific jurisdiction. A by-product of this development was the emergence of what Schlessinger termed “national individuality”, that is, national intellectual barriers whereby jurists in different countries were using truly distinct systems of law, frequently separated by language.³⁰ It was in this context that comparative law emerged as a distinct branch of

²⁷ Georges SAUSER-HALL, *Fonction et méthode du droit comparé; Leçon inaugurale, faite le 23 octobre 1912*, Geneva, Imp. A. Kündig, 1913.

²⁸ HUG, “The History of Comparative Law,” p. 1053.

²⁹ HUG, “The History of Comparative Law,” pp. 1053, 1070.

³⁰ SCHLESINGER, “The Past and Future of Comparative Law,” p. 479.

modern legal science so as to understand and explain foreign law. This occurred primarily through two movements: legislative comparative law, where foreign laws were utilized in the drafting of new laws, and scientific or theoretical comparative law, where foreign law was studied simply to contribute to legal knowledge.³¹

By the late nineteenth century, scientific societies occupied with the study of comparative law were founded in France, Germany, and England.³² In 1900 the first international congress on comparative law, the Paris Congress, focused on defining the aims and uses of comparative law as well as its place in legal science.³³ While chairs in comparative law were founded in Germany in 1829 and Oxford already in 1869, entire academic institutes of comparative law were founded in Germany in 1916 and France in the 1920s and 1930s.³⁴ It was after the Second World War that comparative law greatly expanded as a field of study with the establishment of specialized journals and other forms of scholarship.³⁵

In the modern era, comparative law has become a distinct part of legal study in the Church. Canon law has been compared to the law of other Christian communities,³⁶ non-

³¹ Konrad ZWEIGERT and Hein KÖTZ, *Introduction to Comparative Law*, 3rd rev. ed., trans. Tony WEIR, Oxford, Clarendon Press, 1998, p. 51.

³² GLENDON, CAROZZA, and PICKER, *Comparative Legal Traditions: Text, Materials, and Cases on Western Law*, p. 1; ZWEIGERT and KÖTZ, *Introduction to Comparative Law*, p. 59.

³³ For more on the Paris Congress see David S. CLARK, "Nothing New in 2000: Comparative Law in 1900 and Today," in *Tulane Law Review*, 75 (2000-2001), pp. 875-887.

³⁴ ZWEIGERT and KÖTZ, *Introduction to Comparative Law*, p. 61.

³⁵ Matthias REIMAN, "The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century," in *The American Journal of Comparative Law*, 50 (2002), pp. 673-674.

³⁶ See, for example, Gregorios PAPATHOMAS, "Les sanctions dans la tradition canonique de l'Église orthodoxe," in *Revue de droit canonique*, 56 (2006), pp. 281-322; Cyril VASIL' and George GALLARO, "Remarriage in the Orthodox Church Challenges Catholic Church," in *Studia canonica*, 47 (2013), pp. 119-143.

Christian traditions,³⁷ and civil legal systems.³⁸ Canon law is also examined internally in a comparative fashion, for example with historical studies comparing the current law with older laws,³⁹ as well as comparisons between the two codes of canon law.

While the Latin and Eastern codes are distinct bodies of canon law,⁴⁰ they form, in the description of John Paul II, a single “*Corpus iuris canonici*” along with the apostolic constitution on the Roman Curia *Pastor bonus*.⁴¹ In fact, John Paul II explicitly called for the promotion of comparative studies examining the interrelationship of the Latin and Eastern codes: first in 1990 when he called on faculties of canon law to engage in these studies,⁴² and again in 1993 when he encouraged both faculties of canon law and institutes of priestly formation to engage in comparative studies.⁴³ These East-West studies serve several purposes and, while gaining knowledge of both systems of law is certainly a primary goal of any comparative study, these studies can be valuable sources for aid in

³⁷ See, for example, Langes James SILVA, “The Church of Jesus Christ of Latter-Day Saints, the Roman Catholic Church and the Institution of Marriage: A Juridical Comparative Study,” in *CLSA Proceedings*, 71 (2009), pp. 190-231; Irene María BRIONES MARTÍNEZ, “Del diálogo interreligioso al matrimonio interreligioso: Disparidad de cultos y de tradiciones,” in *Revista Española de Derecho Canónico*, 69 (2012), pp. 329-369.

³⁸ See, for example, Phillip BROWN, “The Right of Defense in Canon Law (and ‘Due Process’ in American Civil Law),” in *CLSA Proceedings*, 70 (2008), pp. 355-382; E. COLAGIOVANNI, “Procedural Convergence and Divergence between Canon Law and Common Law,” in *Monitor ecclesiasticus*, 128 (2004), pp. 398-407; Francis G. MORRISEY, “Canon Law Meets Civil Law,” in *Studia canonica*, 32 (1998), pp. 183-202; Davis PANADAN, “‘Medicinal Character’ in the Penal Process of CCEO and ‘Fair Trial’ in the Criminal Procedure Code of India: A Comparative Study,” in *Iustitia*, 2 (2011), pp. 365-384.

³⁹ See, for example, Kurt MARTENS, “*Tu es Petrus, et super hanc petram aedificabo Ecclesiam Meam*: An Analysis of the Legislation for the Vacancy of the Apostolic See and the Election of the Roman Pontiff,” in *The Jurist*, 73 (2013), pp. 29-88.

⁴⁰ Following the norms of CCEO, c. 1, and CIC/83, c. 1.

⁴¹ JOHN PAUL II, Allocution *Memori animo*, no. 8.

⁴² Ibid.

⁴³ *Comm.*, 25 (1993), pp. 13-14.

canonical interpretation.⁴⁴ Comparative law is also a source for legal reform and development, as has been discussed. Finally, the interrelationship of the Latin and Eastern codes results in distinct legal frameworks belonging to a common system of law. Several canons in the Eastern Code refer to the Latin Church, either expressly or by implication. As such, these two bodies of law are appropriately examined in a comparative fashion.⁴⁵

“Comparative Law, then, as an academic discipline in its own right, is the study of the relationship, above all the historical relationship, between legal systems or between rules of more than one system,” as Watson observes.⁴⁶ Originally, it had an approach where the methodology was focused on contrasting systems of law, that is, in emphasizing differences between systems of law. This methodology dominated until the mid-twentieth century. However, by the end of the twentieth century comparative law adopted a new methodology of emphasizing similarities, largely reflecting modern globalization.⁴⁷ Comparative law now forms a discipline that has many methodologies, largely reflecting the multiplicity of aims of comparative law.⁴⁸

Most basically, comparative legal study is divided into two subfields, each with its own purpose. First, macro-comparison studies the style of different legal systems, its methods, and procedures. This approach deals with comparative analysis of a legal system

⁴⁴ On the use of comparative norms as a manner of interpretation, see Jobe ABBASS, “Canonical Interpretation by Recourse to ‘Parallel Passages’: A Comparative Study of the Latin and Eastern Codes,” in *The Jurist*, 51 (1991), pp. 293-310.

⁴⁵ See ABBASS, “*CCEO* and *CIC* in Comparison,” pp. 845-896.

⁴⁶ WATSON, “Legal Transplants: An Approach to Comparative Law,” p. 7.

⁴⁷ *Ibid.* See also Gerhard DANNEMAN, “Comparative Law: Study of Similarities or Differences?,” in REIMANN and ZIMMERMANN, *The Oxford Handbook of Comparative Law*, pp. 383-419.

⁴⁸ REIMAN, “The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century,” pp. 13-23; ZWEIGERT and KÖTZ, *Introduction to Comparative Law*, pp. 32-47

or groups of legal systems as a whole. As Örüçü notes: “the macro-comparative unit, that is, the totality of the legal system in context, is the frame within which all is contained and evaluated.”⁴⁹ An example of macro-comparison is the comparative study of multiple legal systems and the role precedent plays in each.

Micro-comparison studies specific legal institutions or problems. For example, micro-comparison can examine the question of rights in different legal systems. This method deals with specific rules, cases, and institutions approached from the perspective of a particular area, problem, or conflict, as compared to macro-comparison that focuses on larger-scale questions.⁵⁰ In general, most comparative studies have elements of both types of comparison.⁵¹

Comparative law is thus a scientific methodology which examines different systems of law and establishes conclusions based on comparative analysis. This current study is an examination of two legal institutions in the common system of canon law, that is, the conference of bishops and the assembly of hierarchs. Comparative analysis of these structures will allow various conclusions to be established, especially in terms of the proper nature and functions of the assembly of hierarchs and the conference of bishops. This study examines these institutions especially from the perspective of the promotion of inter-ecclesial activity in a given region and, as such, is primarily micro-comparison.

⁴⁹ Esin ÖRÜCÜ, “Developing Comparative Law,” in Esin ÖRÜCÜ, David NELKEN (eds.), *Comparative Law: A Handbook*, Portland, Hart Publishing, 2007, p. 58.

⁵⁰ Jaakko HUSA, “Legal Families,” in Jan M. SMITS (ed.), *Elgar Encyclopedia of Comparative Law*, 2nd ed., Northampton, MA, Edward Elgar Publishing Limited, 2012, p. 491.

⁵¹ ZWEIGERT and KÖTZ, *Introduction to Comparative Law*, pp. 4-5.

4.1.2 Comparative Law Applied: Analysis of Conferences and Assemblies

The conference of bishops is a collegial structure characteristic of the Latin Code, regulated by canons 447-459 of the fourth chapter of Book II (The People of God), Part II (The Hierarchical Constitution of the Church), Section II (Particular Churches and Their Groupings), Title II (Groupings of Particular Churches). The assembly of hierarchs is a collegial structure unique to the Eastern Code, established by canon 322 and forming the entirety of Title IX: Assemblies of Hierarchs of Several Churches *sui iuris*. While these are distinct structures, they both are collaborative bodies for the local Churches of a defined territory. This section will comparatively examine these two structures by means of six general points contained within the law: i) nature and function, ii) establishment, iii) membership, iv) internal organization, v) decisions, and vi) responsibilities of officers. The goal of this comparison is to identify the strengths and limitations of each structure, with a special focus on situations where several Churches *sui iuris* coexist.

4.1.2.1 Nature and Function of Conferences and Assemblies

Episcopal conferences are permanent institutions composed of bishops who jointly exercise pastoral functions in a defined territory, generally corresponding to a political nation. These are collegial bodies established so as to promote the greater good of the Church, especially through the regulation and promotion of the Church's apostolate by means of national initiatives according to the norm of law.⁵² It is a canonical body composed of bishops of a nation or region who come together for purposes of collaboration, coordination, and communication. The conference of bishops belongs to the hierarchical

⁵² CIC/83, c. 447; CONGREGATION FOR BISHOPS, *Apostolorum successores*, no. 28.

constitution of the Latin Church, evident its location in the Latin Code in Book II, Chapter II: The Hierarchical Constitution of the Church. This can also be concluded by the conference of bishop having its origins in *Ecclesiae sanctae* which mandated it throughout the Latin Church.⁵³

The assembly of hierarchs of several Churches *sui iuris* is a canonical body inclusive of hierarchs of different Churches exercising their pastoral ministry in the same nation or region. These hierarchs are to be assembled for communication and common counsel so that they are able to work in unison for the common good of the Churches, religion, and ecclesiastical discipline.⁵⁴ The assembly of hierarchs includes “hierarchs” of various Churches *sui iuris*, which admits, in principle, hierarchs that are not members of the episcopate. This is distinct from conferences of bishops which primarily are restricted in its membership to bishops. Assemblies, like conferences of bishops, are collegial bodies for collaboration and communication. However, unlike conferences of bishops, the assembly is not part of the hierarchical constitution of any single Church *sui iuris*. It is, by its very nature, inter-ecclesial.

4.1.2.2 Establishment of Conferences and Assemblies

A single authority has the competency to erect conferences of bishops: the supreme authority of the Church. This is clearly indicated by canon 449. This canon also indicates this same supreme authority alone is further competent to alter or suppress these conferences. There is only one requirement for the Bishop of Rome to perform this action:

⁵³ PAUL VI, Motu proprio *Ecclesiae Sanctae* I, no. 41, §1.

⁵⁴ *CCEO*, c. 322.

hearing those bishops concerned.⁵⁵ A conference of bishops can be erected for a single nation, or, in the judgement of the Church's supreme authority, a territory larger or smaller than a political nation.⁵⁶

Assemblies of hierarchs of several Churches *sui iuris* are, like conferences of bishops, established by the Apostolic See of Rome.⁵⁷ Also, like conferences of bishops, assemblies may correspond to the territory of a political nation or instead they can correspond to some other region as determined by the Roman See.⁵⁸ This reflects that the Bishop of Rome alone functions as, in the language of the Second Vatican Council: "supreme arbiter in inter-church relations."⁵⁹ These assemblies are to be established "when it seems advisable in the judgement of the [Roman] Apostolic See."⁶⁰ As a result, this decision is entirely the prerogative of the Roman See and, strictly speaking, has no express requirement for consultation. This is a difference from conferences of bishops where the law indicates that the Holy See has the requirement of consulting the bishops involved.⁶¹

While the Roman Apostolic See alone erects conferences of bishops, they are granted juridical personality by the law itself.⁶² This juridical personality is an aggregate of persons (*universitates personarum*), not of things (*universitates rerum*). Since

⁵⁵ *CIC/83*, c. 449, §1.

⁵⁶ *CIC/83*, c. 448.

⁵⁷ *CCEO*, c. 322, §1.

⁵⁸ *Ibid.*

⁵⁹ *OE*, no. 4.

⁶⁰ *CCEO*, c. 322, §1.

⁶¹ *CCEO*, c. 449, §1.

⁶² *CIC/83*, c. 449, §2.

conferences are granted this juridical personality by the law itself, they are by their nature public juridical persons.⁶³ Further, the episcopal conference is a juridical person that is collegial, since its members determine the actions of the conference through their participation in its decision-making.⁶⁴ Conferences are public juridical persons which means they are perpetual by their nature and these structures possess rights in canon law, such as the right to acquire and use temporal goods.⁶⁵ Conferences function in the name of the Church, following their nature as public juridical persons.⁶⁶

However, the question of the juridical personality of the assembly of hierarchs is not one that is expressly provided for by the common law. As a result, the juridical personality of an assembly does not exist by the law itself. An assembly would need to be granted juridical personhood by means of grant of the competent authority, in this case, the Apostolic See of Rome.⁶⁷ The nature of this juridical person would be, as in the case of episcopal conferences, an aggregate of persons. While the conference of bishops is a public juridical person, the Eastern Code makes no distinctions between public and private juridical persons. Since a juridic person is by its nature perpetual, the conference of bishops is intrinsically a permanent institution while the assembly of hierarchs is not, by law, a juridic person and therefore not necessarily permanent in nature.

⁶³ *CIC/83*, c. 116, §2.

⁶⁴ *CIC/83*, c. 115, §3.

⁶⁵ *CIC/83*, cc. 120, §1, 447, 1255.

⁶⁶ *CIC/83*, c. 116, §1.

⁶⁷ *CCEO*, cc. 320, §4, 921, §§1, 3, 922, §1.

4.1.2.3 Membership of Conferences and Assemblies

The membership of an episcopal conference generally corresponds to all those bishops who enjoy personal jurisdiction within a given territory.⁶⁸ However, to understand properly who is a member of conferences, one must distinguish the two elements that determine membership in an episcopal conference: i) a defined territory and ii) a specified grouping of bishops from within this territory. The first of these, a defined territory, generally corresponds to the territory of a political nation. However, the Apostolic See of Rome is free to establish episcopal conferences at the level of several nations, international conferences, or at the level below a nation, infranational conferences. The Holy See, in order to deviate from the general norm of an episcopal conference corresponding to the territory of a political nation, is required to hear the diocesan bishops of the given territory in question. Any conferences that are international or infranational in character are to have special norms issued for them by the Church's supreme authority.⁶⁹

However, not all the bishops of a territory hold membership in a conference. The conference has members who belong by means of the universal law: all diocesan bishops of the defined territory as well as their juridical equivalents, all coadjutor bishops of the defined territory, all auxiliary bishops of the defined territory, and all other titular bishops who perform in the same territory a special function entrusted to them by the Apostolic See or the conference of bishops.⁷⁰ The juridical equivalents of diocesan bishops are ordinaries of military ordinariates, ordinaries of Anglican ordinariates, apostolic vicars, territorial

⁶⁸ *CIC/83*, c. 448.

⁶⁹ *CIC/83*, c. 448, §2.

⁷⁰ *CIC/83*, c. 450, §1.

prelates, territorial abbots, apostolic vicars, apostolic prefects, and apostolic administrators.⁷¹ The Latin Code indicates that other bishops in the defined territory, namely other titular bishops and the legate of the Bishop of Rome, are not by law members of the episcopal conference.⁷² However, the statutes of the conference could provide membership to other bishops, such as bishops emeriti.

The conference can have other members as defined by the statutes: ordinaries of another rite can be invited to the conference.⁷³ As a result, while conferences belong to the hierarchical constitution of the Latin Church, they can be inter-ecclesial in their membership. The canon indicates that ordinaries of another rite can be included as members and makes no mention of any requirement of these members being members of the episcopacy. An ordinary is defined in the Latin Code as diocesan bishops and their juridic equivalents, vicars general, episcopal vicars, and, for their members, both major superiors of clerical religious institutes of pontifical right and major superiors of clerical societies of apostolic life who at least possess ordinary executive power.⁷⁴ Following this definition, while Latin members of a conference are generally restricted to members of the episcopacy, the phrasing of canon 450, §1 permits that Eastern members of the episcopal conference can be inclusive of vicar generals, episcopal vicars, or, uniquely, major superiors.

⁷¹ *CIC/83*, c. 368; JOHN PAUL II, Apostolic constitution *Spirituali militum curae*, art. 3; BENEDICT XVI, Apostolic constitution *Anglicanorum coetibus*, Complimentary Norms, art. 2, §2.

⁷² *CIC/83*, c. 450, §2.

⁷³ *CIC/83*, c. 450, §1.

⁷⁴ *CIC/83*, c. 134, §1

Membership in an assembly of hierarchs, like membership in a conference, is dependent on a given geographical territory, corresponding to a nation or some other territory. This membership includes all patriarchs, metropolitans, and eparchial bishops in the given nation or region.⁷⁵ The assembly is, as a result, always inclusive of several Churches *sui iuris*, unlike a conferences of bishops which defers the question of including other Churches *sui iuris* to the statutes of the conference. The membership of an assembly includes bishops and their juridical equivalents in a given region, but, unlike conferences of bishops, it is exclusive of coadjutor and auxiliary bishops.⁷⁶ The juridical equivalent of an eparchial bishop in the Eastern Code is the exarch.⁷⁷ Coadjutor and auxiliary bishops do not possess proper power of governance and this is the basic requirement for membership by law in the assembly.⁷⁸

The statutes of the assembly can include “other local hierarchs” of various Churches *sui iuris*, including the Latin Church.⁷⁹ This provision would permit coadjutor and auxiliary bishops to be members of the assembly of hierarchs, as the law requires their appointment as either protosyncellus or syncellus.⁸⁰ This expanded membership could also include the protosyncelli and syncelli of a region who are not members of the episcopate.⁸¹ While the

⁷⁵ *CCEO*, c. 322, §1.

⁷⁶ *CIC/83*, c. 450, §1.

⁷⁷ *CCEO*, c. 313.

⁷⁸ Ordinary power of governance is proper or vicarious; auxiliary and coadjutor bishops exercise vicarious power of the eparchial bishop only if they are appointed to the office of protosyncellus or syncellus. See *CCEO*, c. 981, §2.

⁷⁹ *CCEO*, c. 322, §1.

⁸⁰ *CCEO*, c. 215, §§1-2.

⁸¹ *CCEO*, c. 984, §2.

conference of bishops admits Eastern ordinaries, the assembly of hierarchs admits ordinaries (hierarchs) of all rites. While the conference of bishops admits ordinaries, the assembly of hierarchs admits local hierarchs. The definition of a local hierarch, like the definition of a local ordinary, excludes major superiors.⁸² As a result, the conference of bishops can, in principle, include Eastern Catholic major superiors, while these superiors are not granted membership by law in an assembly of hierarchs. The reality of possibly including Eastern major superiors with no such provision for Latin major superiors is certainly a unique feature of the conference of bishops.

Considering this membership, it can be stated that the assembly of hierarchs thus places a greater emphasis upon those who enjoy proper power of governance. This is a contrast to the conference of bishops that is always inclusive of auxiliary bishops. The common law further indicates that the statutes of the assembly may extend membership to another group of prelates: hierarchs of Churches that are not in communion with the Apostolic See of Rome.⁸³ This is a category to which membership in a conference of bishops is not provided in the law and, as pertains to non-Catholic hierarchs, membership in an assembly of hierarchs is less restrictive than that of a conference of bishops. However, the assembly of hierarchs makes no provision for membership of major superiors who are hierarchs, something that is admitted in a conference of bishops.⁸⁴

⁸² *CIC/83*, c. 134, §2; *CCEO* c. 984, §3.

⁸³ *CCEO*, c. 322, §4.

⁸⁴ *CIC/83*, c. 450, §1,

4.1.2.4 Statutes of Conferences and Assemblies

The universal law requires conferences of bishops to have statutes. Canon 451 of the Latin Code clearly prescribes this requirement, indicating that these statutes are to be approved by the Holy See by means of the *recognitio*. Only those conference members who possess deliberative vote by law are able to vote on the statutes, that is, diocesan bishops, juridical equivalents of diocesan bishops, and coadjutor bishops.⁸⁵ Statutes allow each conference to adapt the universal law for their own particular circumstances.

There are explicit requirements for statutes in the Latin Code. Conference statutes are required to contain norms for the plenary meeting of the conference, the permanent council of the conference, and the offices of president, pro-president, and general secretary as well as any other offices and commissions judged to be opportune by the conference.⁸⁶ The Latin Code permits statutes to define certain aspects of the membership of the episcopal conferences and these statutes can supplement the norm of canon 450 that defines those who possess membership by law. One example of this is whether ordinaries of another Church *sui iuris* are to be members of the episcopal conference. Canon 450, §2 indicates that other titular bishops are not, by law, members of the episcopal conference. The conference statutes could extend membership to these bishops. Further, the statutes also indicate which members have deliberative vote and which members have consultative vote. The Latin Code explicitly indicates that the statutes are to address the question of the

⁸⁵ *CIC/83*, c. 454.

⁸⁶ *CIC/83*, cc. 451-453.

vote possessed by ordinaries of other Churches *sui iuris*, auxiliary bishops, and other titular bishops who hold membership in the conference.⁸⁷

Assemblies of hierarchs are, like conferences of bishops, required to have statutes. Like those of conferences, these statutes require the approval of the Holy See.⁸⁸ The Eastern Code contains significantly fewer requirements for the statutes of assemblies as compared to that which is required for conferences of bishops in the Latin Code. Canon 322 of the Eastern Code defers the question of local hierarchs holding membership in assemblies to the statutes.⁸⁹ Since the individual responsible for convoking the assembly is not identified precisely in the common law, this would reasonably be contained in the statutes.⁹⁰ Canon 322 refers to members possessing deliberative vote, meaning that the question regarding which members have deliberative and which have consultative vote should also be identified in the statutes.⁹¹ This follows the similar requirements of statutes for an episcopal conference. Finally, the common law requires any participation by non-Catholic hierarchs to be identified in the statutes.⁹² This is not a possibility provided in the law for conferences of bishops. Since the Eastern Code contains relatively few requirements for the statutes of assemblies, there is considerable flexibility for establishing particular structures within the

⁸⁷ *CIC/83*, cc. 450, §2 and 454, §2.

⁸⁸ *CCEO*, c. 322, §4.

⁸⁹ *CCEO*, c. 322, §1.

⁹⁰ *CCEO*, c. 322, §1.

⁹¹ *CCEO*, c. 322, §2.

⁹² *CCEO*, c. 322, §4.

statutes. This freedom is more extensive than that possessed by the conferences of bishops that are required by the Latin Code to have specific structures such as a permanent council.

4.1.2.5 Decisions of Conferences and Assemblies

The canons on conferences of bishops provide general requirements for the meetings of episcopal conferences. First, these meetings are to occur in plenary session at least once annually as indicated by the statutes.⁹³ At these plenary sessions, the conference of bishops is able to make decisions and issue general decrees for those matters for which it is competent either by law or by specific mandate of the Holy See.⁹⁴ These decisions require a two-thirds majority of all members possessing deliberative vote and not just those present at the meeting in order to be passed validly. Further, the decisions require the *recognitio* of the Holy See and subsequent promulgation in the manner determined by the conference.⁹⁵ Any norms that do not satisfy these conditions do not in any way juridically bind the member bishops whose individual competency remains intact.⁹⁶ These decisions are to be sent to neighbouring conferences.⁹⁷

Assemblies of hierarchs, like conferences, are able to issue decrees at their meetings. The common law does not provide any defined norms for the frequency of these

⁹³ CIC/83, c. 453.

⁹⁴ CIC/83, c. 455, §§1-2.

⁹⁵ CIC/83, cc. 455, §§2-3.

⁹⁶ CIC/83, c. 455, §4.

⁹⁷ CIC/83, c. 458, 2°.

meetings, only that they are to be “periodic” and at “stated times”.⁹⁸ This is a difference from conferences of bishops that are required to hold a plenary meeting at least once annually.⁹⁹ The common law allows for complete diversity among assemblies on this topic, a question that would appropriately be answered in the statutes of the assembly. Assemblies of hierarchs have the ability to issue “juridically binding” decrees. These decrees require a two-thirds majority of all members who have a deliberative vote as well as a subsequent approval from the Holy See.¹⁰⁰ This is a significant difference with the norms for decision making pertaining to conferences of bishops, as these decisions do not require the approval of the Apostolic See, but only the *recognitio*.¹⁰¹ Approval is a higher level of endorsement and it is unclear if a decree receiving approval remains an act of the assembly or whether it is a legislative decision of the Apostolic See.

In Title IX there is no mention as to the manner of promulgation of these decrees, but certainly general norms require promulgation in a determined manner.¹⁰² Further, these decrees must not “be prejudicial to the rite of each Church *sui iuris* or to the power of the patriarchs, of synods, of metropolitans and of the councils of hierarchs.”¹⁰³ The competence of the assembly is thus restricted to any and all manners that in no way infringe upon this lawful autonomy as defined by canon 322. This is an important distinction from

⁹⁸ *CCEO*, c. 322, §1.

⁹⁹ *CIC/83*, c. 453.

¹⁰⁰ *CCEO*, c. 322, §2.

¹⁰¹ See *CIC/83*, c. 455, §2.

¹⁰² *CCEO*, cc. 1488, 1489, §2.

¹⁰³ *CCEO*, c. 322, §2.

conferences of bishops. Conferences have a very specific competence, possessing legislative authority only for those topics that it has been given authority either by means of the universal law or by special mandate of the Holy See.¹⁰⁴ Assemblies, however, have this broader competence that leaves the members free to decide appropriate venues for common juridical action, as long as they are not prejudicial to those matters excluded by canon 322, §2. In this case, again, the common law allows for subsidiarity and the proper discretion of the members to determine the best course of action.

When a decision exceeds the competency of the assembly of hierarchs, that is, when it is prejudicial to the rite of a Church *sui iuris* or to the power of the patriarchs, of synods, of metropolitans or of the councils of hierarchs, the decision has no binding authority without the approval of the Bishop of Rome.¹⁰⁵ The Bishop of Rome, who alone acts as judge between the Churches and possesses jurisdiction throughout the Church, is able to sanate the non-competence of the assembly by providing juridical authority to an otherwise non-effective decision. This is an interesting possibility that is absent from the Latin Code. In the Latin Code, when a conference of bishops exceeds its mandate the authority of the individual bishop remains intact and, unlike the case of assemblies, there is no explicit possibility in the universal law for the Bishop of Rome to intervene and approve an action.¹⁰⁶ This likely reflects the great concern the drafters of the Latin Code had for the authority of the diocesan bishop vis-à-vis the episcopal conference, always resulting in the curbing of the authority of the episcopal conference.

¹⁰⁴ *CIC/83*, c. 455, §1.

¹⁰⁵ *CCEO*, c. 322, §3.

¹⁰⁶ *CIC/83*, c. 455.

4.1.2.6 Responsibilities of Officers in Conferences and Assemblies

As the universal law indicates, conference statutes are to define the responsibilities of conference officers.¹⁰⁷ However, the general canons on conferences do provide common norms. First, conference presidents have the responsibility of informing the Roman Apostolic See of all acts and decrees of the conference.¹⁰⁸ Second, the permanent council of the conference is responsible for preparing the agenda of the plenary assembly as well as ensuring all acts are properly executed.¹⁰⁹ Finally, the general secretariat has the responsibility of preparing a report of the conference acts and decrees, communicating this report to all conference members, informing neighbouring conferences of acts and decisions as directed by the permanent council or plenary assembly, and drawing up other acts entrusted to the secretariat.¹¹⁰

The common law on assemblies of hierarchs mentions only one officer: the individual responsible for convoking meetings of the assembly. This individual is either a patriarch or another individual designated by the Holy See, most appropriately in the case where several patriarchs are members of the same assembly.¹¹¹ Beyond this, the Eastern Code makes no mention of any roles in an assembly and the statutes of the assembly, as a result, would need to identify other ecclesiastical offices associated with the assembly,

¹⁰⁷ *CIC/83*, c. 451.

¹⁰⁸ *CIC/83*, c. 456.

¹⁰⁹ *CIC/83*, c. 457.

¹¹⁰ *CIC/83*, c. 458.

¹¹¹ *CCEO*, c. 322, §1.

especially in terms of topics such as who represents the assembly in civil and canonical matters.¹¹²

4.1.2.7 Conclusions

Conferences of bishops are collegial bodies established to facilitate the collaborative activity of bishops of a given region. These bodies possess limited legislative competence. Conferences are part of the hierarchical constitution of the Latin Church but can include the participation of non-Latin hierarchs, thus becoming inter-ecclesial bodies. Assemblies of hierarchs, however, are by their nature inter-ecclesial. They have a broad competence which can affect any matters which do not infringe upon the rites of the Churches *sui iuris* as well as the powers and prerogatives proper to the synod, council of hierarchs, patriarch, and metropolitan. Both of these structures require a two-thirds majority. While the conference requires a *recognitio* from the Apostolic See to enact decrees, the assembly requires approval by the Apostolic See. The statutes of both the conference and the assembly are approved by the Apostolic See of Rome, which is the same authority responsible for their erection, suppression, or alteration. The conference of bishops is a juridic person by law whereas an assembly of hierarchs must be granted juridic personality by a grant of the competent authority, in this case the Apostolic See of Rome.

4.1.3 Conclusions

Comparative legal analysis allows for the examination of similarities and differences between the canonical structures of an episcopal conference and an assembly

¹¹² *CCEO*, c. 922, §2, 4°.

of hierarchs. Both the conference of bishops and the assembly of hierarchs facilitate the collaborative efforts of local Churches in a given nation or region. The most fundamental difference between the two models is that a conference of bishops is inter-ecclesial by exception as it is a structure of the Latin Church, while an assembly of hierarchs is inter-ecclesial by its very nature. Further, the conference of bishops can include “ordinaries” of another rite, which in principle opens membership to not only vicars general (protosyncelli) and episcopal vicars (syncelli), but also those Eastern major superiors of both clerical religious institutes of pontifical right and clerical societies of apostolic life who at least possess ordinary executive power.

In the assembly of hierarchs there exists the possibility of expanding the membership to include all local hierarchs as well as non-Catholic hierarchs. While the conference of bishops allows ordinaries of only the Eastern Churches to attend, the assembly of hierarchs makes no such distinction and thus Latin local ordinaries can also be included as members. However, the assembly of hierarchs refers to “local ordinaries” which excludes major superiors. The expanded membership of an assembly thus can include as members local hierarchs that are not in episcopal orders in a manner that is much broader than the episcopal conference. This also vastly increases the potential size of the membership of an assembly as compared to an episcopal conference in the same region. The possibility of including all local hierarchs is a major contrast between conferences and assemblies.

Returning to the object of this comparison: what do these models offer in terms of collaboration in an inter-ecclesial environment? Certainly, the conference of bishops is able to incorporate and include Eastern Catholic hierarchs in its structure. As such, they are able to participate in the functions of the Latin episcopal conference and make norms for

common pastoral activity in a defined region. However, in such a situation, they would remain part of the Latin body and restricted to the competencies of episcopal conferences provided by the Latin Code or a grant of the Bishop of Rome.

The assembly of hierarchs, on the other hand, is an inter-ecclesial assembly. This body is inclusive of all Churches *sui iuris* in a given region and does not belong to the hierarchical constitution of any single Church. In such a model, all Churches are equal members and an agenda should only reflect topics of inter-ecclesial importance. This is a contrast to the episcopal conference where matters of importance for the Latin Church are reflected and the Eastern hierarchs are, to some extent, guests in the Latin conference. The assembly of hierarchs has far fewer requirements in terms of structure and required officers, allowing the local context to be reflected in the assembly. Finally, the competencies of an assembly of hierarchs are not limited to those specific competencies provided in the Latin Code for episcopal conferences. This means that the agenda of an assembly and its decisions can, again, reflect the local context, provided that it does not infringe upon the proper authority of the hierarchical constitution of the Churches as well as their rites.

4.2 Examination of Statutes for Inter-Ecclesial Collaboration

Among the stably established models of episcopal collegiality within the Church's current system of canon law are conferences of bishops and assemblies of hierarchs of several Churches *sui iuris*. Assemblies of hierarchs are, by their nature, inter-ecclesial. However, conferences of bishops, in virtue of canon 450, §1 of the Latin Code, can be, by exception, inter-ecclesial when the statutes include members from other Churches *sui iuris*. Current models of inter-ecclesial collaboration will now be examined to compare the concrete application of these canonical structures as they currently exist within the Catholic

Church. Statutes of various conferences of bishops will first be examined, followed by those of assemblies of hierarchs of several Churches *sui iuris*.

4.2.1 Eastern Hierarchs in Conferences of Bishops

Canon 450, §1 allows conferences of bishops to admit “ordinaries of another rite” if so provided by the conference statutes. This has primarily been the case in territories where Eastern Christians have immigrated into the so-called diaspora. Five episcopal conferences will be examined for inter-ecclesial activity: Australia, Canada, India, Slovakia, and the United States. The membership of Eastern hierarchs in each of these conferences is unique as they constitute a significant percentage of total membership. While Australia, Canada, and the United States involve diaspora communities, both Slovakia and India have native Churches *sui iuris*: Slovakia has the Slovak metropolitan Church *sui iuris* and India has two indigenous major archiepiscopal Churches *sui iuris*. In this section, the conference statutes will be individually examined for their particular content regarding inter-ecclesial activity. These statutes are all clearly situated within the context of the Latin Code and the competencies for episcopal conferences as described in canons 447-459.

4.2.1.1 Australia

Australia has four Eastern Catholic jurisdictions immediately subject to the Holy See: the Maronite Eparchy of Saint Maron of Sydney, the Melkite Eparchy of Saint Michael’s of Sydney, the Syro-Malabar Eparchy of Saint Thomas of Melbourne, and the Chaldean Eparchy of Saint Thomas the Apostle of Sydney. Additionally, the Ukrainian Catholic Eparchy of Saints Peter and Paul of Melbourne is part of the Melbourne

ecclesiastical province *ad instar*.¹¹³ These five Eastern Catholic jurisdictions are alongside twenty-eight Latin dioceses and two ordinariates, meaning 14% of the Catholic jurisdictions in Australia are not Latin Catholic.

The bishops of Australia are members of the Australian Catholic Bishops' Conference (ACBC). The membership of this conference includes all diocesan bishops, their juridical equivalents, coadjutors and auxiliaries, as well as other titular bishops in the territory of Australia who exercise a task entrusted to them by the Holy See or the ACBC.¹¹⁴ The ACBC further includes as members all eparchial bishops of Eastern Catholic Churches as well as exarchs of these Churches.¹¹⁵ Since the conference statutes do not extend membership to them, ACBC membership excludes auxiliary bishops of these Eastern Churches *sui iuris*, whereas their Latin counterparts do possess membership in the conference.¹¹⁶

In the Australian conference, diocesan bishops, their juridical equivalents, and coadjutor bishops have a deliberative vote.¹¹⁷ Further, as indicated by the ACBC statutes, Eastern Catholic hierarchs also possess a deliberative vote.¹¹⁸ However, the statutes do indicate that: "the hierarchs will not vote on matters outside their jurisdiction or

¹¹³ JOHN PAUL II, Apostolic Constitution *Christum Iesum*, 24 June 1982, in *AAS*, 74 (1982), p. 979.

¹¹⁴ AUSTRALIAN CATHOLIC BISHOPS' CONFERENCE, *Statutes of the Australian Bishops' Conference*, 28 June 2001, art. 3. See Appendix I.

¹¹⁵ *Ibid.*, art. 4.

¹¹⁶ *Ibid.*, arts. 3-4. This may be an oversight and there are currently no auxiliaries of Eastern jurisdictions in Australia.

¹¹⁷ *Ibid.*, art. 9.

¹¹⁸ *Ibid.*, art. 10.

competence, e.g. liturgical matters of the Latin rite.”¹¹⁹ The statutes of the ACBC also explicitly mention that the conference president and vice-president are to be “chosen only from among the members who are diocesan bishops, including eparchs and episcopal exarchs of Eastern Catholic Churches.”¹²⁰ This explicitly provides the possibility of an Eastern Catholic president of the ACBC. The Eastern Catholic bishop-members also have the ability to vote on the statutes of this conference along with diocesan bishops, their juridical equivalents, and coadjutors. Finally, the Latin auxiliary bishops have deliberative vote in all things excluding the conference statutes.¹²¹

4.2.1.2 Canada

As of 2014, there are nine Canadian Eastern Catholic jurisdictions as well as five Eastern Catholic jurisdictions in the United States that extend into Canada. Four Eastern Catholic eparchies in Canada are directly subject to the Holy See: the Chaldean Eparchy of Mar Addai of Toronto, the Maronite Eparchy of Saint-Maroun of Montreal, the Melkite Eparchy of Saint-Saveur of Montreal, and the Slovak Eparchy of Sts Cyril and Methodius of Toronto. Additionally, there is one Ukrainian Catholic metropolitan province of five episcopal sees: the Archeparchy of Winnipeg, and the eparchies of New Westminster, Edmonton, Saskatoon, and Toronto and Eastern Canada. There is an apostolic exarchate for Syro-Malabar faithful in Canada, erected in 2015. There are three Eastern eparchies based in the United States which include Canada in their jurisdictions: the Armenian

¹¹⁹ AUSTRALIAN CATHOLIC BISHOPS’ CONFERENCE, *Statutes of the Australian Bishops’ Conference*, art.10.

¹²⁰ *Ibid.*, art. 7, no. 1.

¹²¹ *Ibid.*, arts.9-11.

Catholic Eparchy of Our Lady of Nareg in New York, the Syriac Catholic Eparchy of Our Lady of Deliverance of Newark, and the Romanian Catholic Eparchy of Saint George in Canton. Further, the hierarch of the Syro-Malankar exarchate of the United States is apostolic visitor for the faithful of his Churches *sui iuris* in Canada. As a result, there are fourteen Eastern Catholic jurisdictions in Canada alongside sixty-three Latin Catholic jurisdictions, meaning 19% of the country's ecclesial circumscriptions are Eastern Catholic.¹²²

Bishops in Canada are members of the Canadian Conference of Catholic Bishops (CCCCB). The statutes of this conference extend membership to three groups of bishops: i) all diocesan bishops in Canada, their juridical equivalents, and their auxiliary bishops, ii) all eparchial bishops in Canada, their juridical equivalents, and their auxiliary bishops, and iii) all other titular bishops who exercise a special function for the Holy See or the CCCC in the territory of Canada.¹²³ All members of the conference possess deliberative vote.¹²⁴ Other titular bishops and bishops emeriti are able to attend the conference with consultative vote.¹²⁵ In this structure, while conferences of bishops belong to the hierarchical constitution of the Latin Church, Eastern Catholic bishops are nearly full-voting members.

There are two limitations to the membership of Eastern hierarchs in the CCCC, however. First, article five restricts voting on matters specific to a single Church: "A

¹²² The Canadian Church has 61 dioceses and archdioceses as well as the Canadian military ordinariate and the personal ordinariate of the Chair of St Peter in the United States (which also includes Canada).

¹²³ CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 3. See Appendix II.

¹²⁴ *Ibid.*, art. 5, §1.

¹²⁵ *Ibid.*, art. 5, §2.

deliberative vote on canonical, disciplinary or liturgical matters that involve a Church *sui iuris* or its rite is limited to the Bishops of that Church.”¹²⁶ For example, a theoretical vote on a Byzantine-Ukrainian liturgical issue would entail the non-participation of all non-Byzantine-Ukrainian bishops. Second, any vote on the statutes of the conference is restricted to diocesan bishops and their juridical equivalents along with coadjutor bishops.¹²⁷ Since at other points the statutes make the distinction between diocesan and eparchial bishops, it would follow that since the distinction is not made at this point, Eastern Catholic hierarchs would not vote in approving the conference statutes, reflecting the conference’s nature as part of the structure of the Latin Church. Further, Eastern Catholic bishops are not eligible to serve as either president or vice-president of the Canadian Conference, these offices having been explicitly restricted to a candidate selected from among the diocesan bishops.¹²⁸

4.2.1.3 United States of America

The United States of America has two metropolitan provinces of Eastern Catholic Churches *sui iuris*. The first of these, the Ruthenian (Byzantine) Catholic metropolia of Pittsburgh, has three suffragan sees: Phoenix, Parma, and Passaic. The second of these, the Ukrainian Catholic metropolia of Philadelphia, also has three suffragan sees: Parma, Stamford, and Chicago. There are also nine Eastern Catholic eparchies that do not belong to any ecclesiastical province: the Melkite Eparchy of Newton, the Syrian Eparchy Our

¹²⁶ CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 5, §4.

¹²⁷ *Ibid.*, art. 22, §1.

¹²⁸ *Ibid.*, art. 7, §2.

Lady of Deliverance of Newark, the Maronite Eparchy of Our Lady of Lebanon of Los Angeles, the Maronite Eparchy of Saint Maron of Brooklyn, the Armenian Eparchy of Our Lady of Nareg in New York, the Romanian Eparchy of Saint George's in Canton, the Chaldean Eparchy of Saint Peter the Apostle of San Diego, the Syro-Malabar Eparchy of Saint Thomas the Apostle of Chicago, and the Chaldean Eparchy of Saint Thomas the Apostle of Detroit. Finally, there is one Apostolic Exarchate in the United States which belongs to an Eastern Catholic Church *sui iuris*: the Syro-Malankar Apostolic Exarchate of the United States of America. In total there are therefore eighteen Eastern Catholic ecclesiastical jurisdictions in the United States of America. As there are 176 Latin dioceses in the United States as well as the military ordinariate and the personal ordinariate of the Chair of Saint Peter, nine percent of Catholic jurisdictions in the United States are Eastern Catholic.

The United States Conference of Catholic Bishops (USCCB) is the conference for Catholic bishops in the United States of America. However, this conference's region is not synonymous with the political entity of the United States. First, the Commonwealth of Puerto-Rico has its own episcopal conference: the Puerto Rican Episcopal Conference. The bishops of this commonwealth are not members of the USCCB. Second, the bishops in the Mariana Islands, American Samoa, and Guam all belong to the Episcopal Conference of the Pacific. The USCCB's territory thus corresponds to the fifty states of the United States and the US Virgin Islands.¹²⁹ The conference membership includes all Latin and Eastern Catholic diocesan/eparchial bishops, auxiliary bishops, and coadjutor bishops holding

¹²⁹ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, 28 November 2000, art. 1, in RENKEN, pp. 316-322. See Appendix III.

ecclesiastical offices in the particular churches in this territory “and who belong to no other episcopal conference”.¹³⁰ This membership also includes the juridical equivalent of diocesan and eparchial bishops as well as any Catholic bishops performing a special task entrusted by the Holy See or the USCCB in the United States or its territories and who also belong to no other conference.¹³¹

All members of the conference of bishops have deliberative vote.¹³² However, the offices of president and vice-president are restricted to diocesan bishops, meaning Eastern hierarchs cannot be elected to these offices.¹³³ Further, these Eastern bishops who belong to the conference do not possess deliberative vote in matters concerning only the Latin Church; in these matters they have consultative vote and do not count towards the required quorum.¹³⁴ The conference is subdivided into fifteen regions, fourteen of which are geographic groupings of Latin dioceses, while one region (region XV) includes all the eastern circumscriptions belonging to the conference.

4.2.1.4 Slovakia

There is one Eastern Catholic Church *sui iuris* located within Slovakia: the Slovak Catholic Church *sui iuris*. This Church has its metropolitan see in Prešov and two eparchies: Bratislava and Košice. There are five Latin dioceses and three archdioceses as

¹³⁰ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 2, no. a1.

¹³¹ *Ibid.*, art. 2, nn. a2-3.

¹³² *Ibid.*, art. 4, nn. a-b.

¹³³ *Ibid.*, art. 4, no. a.

¹³⁴ *Ibid.*, art. 4, no. b.

well as the military ordinariate. Eastern Catholics jurisdictions are thus 25% of the Catholic jurisdictions in Slovakia. Catholic bishops in Slovakia belong to the Slovak Bishops' Conference (Konferencie biskupov Slovenska, KBS).

The membership of the KBS includes the following bishops residing in the Slovak Republic: all diocesan bishops, coadjutor bishops, auxiliary bishops, and all other titular bishops performing a task entrusted to them by either the Apostolic See of Rome or the KBS.¹³⁵ Further, all eparchial bishops as well as any Eastern Catholic auxiliary bishops and coadjutor bishops are members of the KBS.¹³⁶ All conference members have deliberative vote, but Eastern Catholic bishops, auxiliary bishops, and other titular bishops are excluded from having deliberative vote when voting on the statutes or matters declared to be of "greater importance" by the plenary assembly.¹³⁷ As a result, only diocesan bishops and coadjutor bishops have decisive vote in terms of the statutes and these matters of greater importance. The statutes explicitly restrict these matters of importance to members who are diocesan bishops and coadjutors of the Latin rite.¹³⁸

With respect to the offices of the conference, it is only from diocesan bishops and coadjutor bishops that the president and vice-president of the KBS are to be elected.¹³⁹ Eastern Catholic hierarchs are excluded from these offices by the statutes. However, any

¹³⁵ KONFERENCIE BISKUPOV SLOVENSKA, *Štatut*, 21 June 2000, art. 3, §1. See Appendix IV.

¹³⁶ *Ibid.*, art. 3, §2.

¹³⁷ *Ibid.*, art. 5.

¹³⁸ *Ibid.*, art. 17, §2.

¹³⁹ *Ibid.*, art. 10.

member can be elected to the permanent council or as secretary general.¹⁴⁰ As a result, while Eastern Catholic bishops are excluded from being president or vice-president, they can be elected to other offices of the conference such as general secretary.

4.2.1.5 India

The Indian context is unique in that India has two Eastern Catholic major archiepiscopal Churches as well as a larger Latin Catholic community.¹⁴¹ There are 166 dioceses and eparchies in India, of which 29 (17.5%) are Syro-Malabar and 8 (5%) are Syro-Malankar. The ecclesiastical jurisdictions in the Indian context are thus 22.5% Eastern Catholic and 77.5% Latin Catholic. There are three collegial bodies in India that have membership restricted to a single Church *sui iuris*: the synod of bishops of the Syro-Malabar Church, the synod of bishops of the Syro-Malankar Church, and the Conference of Catholic Bishops of India (CCBI) for the Latin Church. At the same time, there exists the Catholic Bishops' Conference of India (CBCI) which is an inter-ecclesial conference responsible for "questions of common concern and of national and supra ritual character, e.g. Doctrine and Morals, Organizations of a national and supra-ritual character, questions involving the Catholic Church and the Government, etc."¹⁴² This function came at the explicit instruction of John Paul II himself who hoped that such a canonical body would

¹⁴⁰ KONFERENCIE BISKUPOV SLOVENSKA, *Štatut*, arts. 11, 22, §2.

¹⁴¹ For an overview of situation of the Churches in India see Xavier KOODAPUZHA, "The Inter-Ecclesial Relations in the Indian Context," in *Christian Orient*, 5 (1984), pp. 62-77.

¹⁴² JOHN PAUL II, *Letter to the Bishops of India*, 28 May 1987, no. 5, in *Christian Orient*, 8 (1987), pp. 95-98.

help avoid any rivalry between the various Churches in India, especially in terms of evangelization.¹⁴³

The CBCI began in 1944, prior to Indian independence. It was originally a organization of ordinaries who participated by their own voluntary participation. It was always inclusive of all three Churches present in India.¹⁴⁴ This conference's original statutes were approved in 1976.¹⁴⁵ Interestingly, while the CBCI is clearly intended as an inter-ecclesial assembly, it is uniquely erected as a conference of bishops.¹⁴⁶ As a result, the CCBI was erected in order to satisfy the requirements of the Latin hierarchy to have an episcopal conference following the norms of the Latin Code. The CCBI was erected as a separate canonical body exclusively for the Latin hierarchy with its statutes originally approved in 1994 and revised in 2000.¹⁴⁷ The erection of the CCBI allowed the continuation of the CBCI without giving precedence to the Latin hierarchy.¹⁴⁸ There is absolutely no Eastern involvement contained in the statutes of the CCBI; these statutes

¹⁴³ JOHN PAUL II, *Letter to the Bishops of India*, no. 5.

¹⁴⁴ On the history of the CBCI see MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, pp. 176-260.

¹⁴⁵ *Annuario Pontificio 2015*, p. 1082.

¹⁴⁶ The CBCI is listed not among the assemblies of hierarchs in the *Annuario*, but among the conferences of bishops, see *Annuario Pontificio 2015*, p. 1082. The term "conference" is certainly independent of this determination, as the Iranian Episcopal Conference is listed among assemblies of hierarchs, see *Annuario Pontificio 2015*, p. 1093. While one may conclude this decision resulted from the completion of the statutes in 1976 prior to the promulgation of the *CCEO*, this would be erroneous as the Assembly of Catholic Hierarchs in Syria, for example, is an assembly of hierarchs of several Churches *sui iuris* that had its statutes already approved in 1969, see 4.2.2.1.

¹⁴⁷ *Annuario Pontificio 2015*, p. 1082.

¹⁴⁸ For more on the historical discussions surrounding this decision, see MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, pp. 216-223.

specifically restrict membership to “bishops of the Latin rite.”¹⁴⁹ There are thus two episcopal conferences in India, one that is exclusively Latin, the CCBI, and one that is intended to be inter-ecclesial, the CBCI. The current head of the CBCI is His Beatitude Cardinal Baselios Cleemis Thottunkal, Major-Archbishop of Trivandrum of the Syro-Malankars.

All Catholic bishops in India are members of the CBCI in virtue of their episcopal consecration.¹⁵⁰ Full membership belongs to all Catholic bishops in India that are diocesan or eparchial bishops, their juridical equivalents, coadjutor and auxiliary bishops, and titular bishops performing a task entrusted to them by the Holy See or the CBCI.¹⁵¹ Honorary membership belongs to any other titular bishops as well as bishops emeriti.¹⁵² Only full members are able to propose items for both the general meetings of the conference as well as the standing committee. Full members also have active voice in elections and a deliberative vote in decisions.¹⁵³ Auxiliary bishops and other titular bishops do not possess a deliberative vote on the statutes of the conference, following *CIC* canon 454, §2, nor can they be elected president or vice-president of the conference, following the authentic interpretation of 23 May 1988.¹⁵⁴ Several guests are to be invited to the conference for the

¹⁴⁹ CONFERENCE OF CATHOLIC BISHOPS OF INDIA, *Statutes*, 3 December 2000, art. 5.

¹⁵⁰ CATHOLIC BISHOPS’ CONFERENCE OF INDIA, *Statutes*, 26 June 1990, art. 2. See Appendix V.

¹⁵¹ *Ibid.*, art. 11.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*, art. 12.

¹⁵⁴ *Ibid.*; cf. PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, Authentic interpretation, 23 May 1988, in *AAS*, 81 (1989), p. 388.

ordinary meeting, including the papal legate and representatives from the assemblies of religious priests, brothers, and sisters as well as any required lay experts.¹⁵⁵

The purpose of the CBCI is to facilitate relations between the episcopates of the different Churches *sui iuris* in India by addressing issues that are common to all Churches in the territory and that are of a “national and supra-ritual character”.¹⁵⁶ The conference is competent to issue general decrees only in those cases prescribed by the universal law or a grant of the Holy See.¹⁵⁷ Since this is a conference of bishops, the competency refers to the numerous instances of competency for episcopal conferences as enumerated in the Latin Code and extra-codal legislation.¹⁵⁸ These decrees can in no way infringe upon the autonomy of the Churches *sui iuris* or the members of the assembly, keeping the prerogatives of the individual bishops intact. Consequently, the general decrees of the assembly have no binding authority except when following the universal law concerning the general decrees of conferences of bishops.¹⁵⁹

These decisions of the CBCI are made at ordinary meetings that occur every two years and require a quorum of two-thirds of the membership.¹⁶⁰ These meetings are also where the offices of the conference are elected, namely: a president, two vice-presidents, a secretary-general, commission chairmen, and commission members.¹⁶¹ There is also a

¹⁵⁵ CATHOLIC BISHOPS’ CONFERENCE OF INDIA, *Statutes*, arts. 17-18.

¹⁵⁶ *Ibid.*, arts. 5-7.

¹⁵⁷ *Ibid.*, art. 3.

¹⁵⁸ *CIC/83*, c. 455, §1.

¹⁵⁹ *CIC/83*, c. 455; CATHOLIC BISHOPS’ CONFERENCE OF INDIA, *Statutes*, art. 4.

¹⁶⁰ CATHOLIC BISHOPS’ CONFERENCE OF INDIA, *Statutes*, arts. 13-15.

¹⁶¹ *Ibid.*, arts. 21-23.

permanent council, called the standing committee, which includes the president, vice-presidents, secretary-general, all commission chairmen, as well as the president of the CCBI, the Syro-Malankar and Syro-Malabar major archbishops, all metropolitans, and additional bishops necessary to give the Eastern Catholics a one-quarter membership on the standing committee. This standing committee deals with the overall direction of the CBCI and requires annual meetings.¹⁶² The statutes repeatedly require the ecclesial diversity of the Indian context to be reflected in offices of the CBCI.¹⁶³

The CBCI is an episcopal conference that, in many ways, is outside the general norms governing conferences of bishops contained in the Latin Code. It is intended to be an inter-ecclesial assembly and not a Latin conference as envisioned by the law. It was this juridical reality that required the erection of a second conference of bishops in India, the CCBI, to satisfy the requirements of law for the Latin hierarchy. As the CBCI follows the norms of the Latin episcopal conference, there is restricted competence as compared to the broader provisions pertaining to assemblies of hierarchs. It is, as a result, a hybrid structure which attempts to become a truly inter-ecclesial conference of bishops. It is, however, decidedly *praeter ius* when compared to the canons on conferences of bishops, something dispensed with in favour of the common good that the conference serves.

4.2.1.6 Evaluation of Inter-Ecclesial Activity in Conferences

Membership in numerous conferences of bishops includes Eastern hierarchs holding ecclesiastical offices in the territory of the conference. In the conferences

¹⁶² CATHOLIC BISHOPS' CONFERENCE OF INDIA, *Statutes*, arts. 25-30.

¹⁶³ See for example CATHOLIC BISHOPS' CONFERENCE OF INDIA, *Statutes*, arts. 28, 37.

examined, excluding the CCBI, the Eastern hierarchs possess deliberative vote, despite the conference belonging to the hierarchical constitution of the Latin Church. While all eparchial bishops and their juridical equivalents have membership in these conferences, Eastern auxiliary bishops do not hold membership in the Australian conference. Eastern hierarchs are not able to vote on the statutes in the Canadian Conference. In the Slovak conference, Eastern hierarchs are excluded not only from the statutes but also from questions determined to be of “greater importance” by the plenary assembly. Not one of the reviewed conferences admits Eastern major superiors to membership despite possibility for this in the universal law.

While the Australian conference statutes do admit the possibility of an Eastern Catholic president or vice-president, the statutes of both the USCCB and CCCB explicitly exclude this possibility. The USCCB and ACBC both exclude Eastern hierarchs from deliberatively participating in votes concerning only the Latin Church. The CCCB has a more general requirement that any decision concerning a single Church *sui iuris* or rite is limited to the bishops of that Church, meaning that Latin hierarchs do not participate in exclusively Eastern decisions. The CCCB thus has a uniquely inter-ecclesial element to its statutes. The most inclusive of the conferences is the CBCI that not only permits but also in fact requires the active participation of the three Churches in India. This structure is decidedly a conference of bishops and, to some degree, has altered the structure of an episcopal conference as envisioned by the law, attempting to make it intrinsically inter-ecclesial.

The common law of the Eastern Code includes several explicit instances of collaboration between Churches *sui iuris*. Some of these goals are possible in conferences of bishops that include all Churches *sui iuris* in a given territory. Patriarchs have the

obligation to promote unity of action with other patriarchs and eparchial bishops of other Churches *sui iuris* within the same territory.¹⁶⁴ Eparchial bishops have this same obligation.¹⁶⁵ A conference of bishops could be a body that permits this activity. However, this activity could be hindered if the patriarch himself was not the president of the conference. Further, this coordination would be limited to the specific competencies of a conference of bishops as established in the universal law and it would seem to be better for such activity to be unhindered by the enumeration of specific competencies.

Further, the Eastern Code indicates common norms are to be established among the Churches *sui iuris* on the following topics which are also competencies of conferences of bishops: general prescriptions regarding determining the requisite grave necessity for the administration of general absolution¹⁶⁶ as well as norms regarding the prenuptial investigation.¹⁶⁷ A Church *sui iuris* is able to establish a commission for ecumenical affairs which also requires consultation from other bishops in a region; the conference of bishops is likewise competent to promote ecumenical activity which could be achieved by coordinating the establishment of commissions for ecumenical affairs in the Churches *sui iuris*.¹⁶⁸ A common program for priestly formation can be established for multiple Churches *sui iuris* by mutual consent; the conference of bishops is competent to issue a program of priestly formation which could, in principle, be attentive to the various rites in

¹⁶⁴ *CCEO*, c. 84.

¹⁶⁵ *CCEO*, c. 202.

¹⁶⁶ *CCEO*, c. 720, §3; *CIC/83*, c. 961, §2.

¹⁶⁷ *CCEO*, c. 784; *CIC/83*, c. 1067.

¹⁶⁸ *CCEO*, c. 904, §2; *CIC/83*, c. 755, §2.

a nation and satisfy the requirements of the Eastern Code.¹⁶⁹ A seminary can exist for the various Churches *sui iuris* in a nation which is a norm that could arguably be satisfied by the competency of the conference of bishops to erect national seminaries.¹⁷⁰

However, several instances of the mandated collaboration in the Eastern Code are not possible within the context of an episcopal conference. Bishops are required to establish common norms regarding the taxing of specific executive actions and offerings; this is a competency of the ecclesiastical province in the Latin Code.¹⁷¹ While the particular law of a Church *sui iuris* can establish diriment impediments for marriage in consultation with other bishops of a region and the Holy See, this possibility is not contained within the Latin Code.¹⁷² Further, and more fundamentally, the conference of bishops is intended to be an assembly of the Latin Church. In the majority of conference statutes examined, restrictions limiting the participation of Eastern Catholic hierarchs exist to varying degrees. They are not full and equal members.

In his apostolic letter *Novo millennio inuente* John Paul II spoke of the task of evaluating structures for communion:

Consequently, the new century will have to see us more than ever intent on valuing and developing the forums and structures which, in accordance with the Second Vatican Council's major directives, serve to ensure and safeguard communion. [...] These are realities which have their foundation and substance in Christ's own plan for the Church, but which need to be examined constantly in order to ensure that they follow their genuinely evangelical inspiration.

¹⁶⁹ *CCEO*, c. 330, §2; *CIC/83*, c. 242, §1.

¹⁷⁰ *CCEO*, c. 332, §2; *CIC/83*, c. 237, §2.

¹⁷¹ *CCEO*, c. 1013, §2; *CIC/83*, c. 1264.

¹⁷² *CCEO*, c. 792; cf. *CIC/83*, c. 1075.

Much has also been done since the Second Vatican Council for the reform of the Roman Curia, the organization of Synods and the functioning of Episcopal Conferences. But there is certainly much more to be done, in order to realize all the potential of these instruments of communion, which are especially appropriate today in view of the need to respond promptly and effectively to the issues which the Church must face in these rapidly changing times.¹⁷³

The conference of bishops is one of these structures specifically cited as promoting the bonds of communion. As observed, however, the episcopal conference is a model that has limitations in the context of inter-ecclesial activity. As the law currently stands Eastern hierarchs do have restrictions on their involvement in the Latin Conference. Even the CBCI, an adaptation of the episcopal conference with an explicit inter-ecclesial function, is not free from challenges. These are limitations that, in a region of ecclesial plurality such as Canada, limit the full promotion of the bonds of communion. A second model of inter-ecclesial activity within the Church's law is the assembly of hierarchs of several Churches *sui iuris*, which does address some of these limitations. This model will now be examined.

4.2.2 Assemblies of Hierarchs of Several Churches *Sui iuris*

The first canonically established gatherings of multiple Churches *sui iuris* on a regional level followed the norms of *Cleri sanctitati*, which provided for interritual synods to occur in a region with the permission of the Roman Pontiff.¹⁷⁴ These gatherings were further mentioned in *Christus Dominus* with its exhortation supporting “interritual” gatherings of hierarchs.¹⁷⁵ These assemblies first developed in Egypt, Syria, and Lebanon;

¹⁷³ John Paul II, Apostolic letter *Novo millennio ineunte*, no. 44.

¹⁷⁴ *CS*, c. 340, §3.

¹⁷⁵ *CD*, no. 38, §6: “It is earnestly recommended that, in promoting the discipline of their own church in their synods, the prelates of eastern churches should, for the more efficacious encouragement of works for the good of religion, also take into account the common good of the whole territory where many churches of

overlapping Christian jurisdictions have existed in these nations for centuries.¹⁷⁶ These three assemblies, along with the later assembly for the Holy Land, will be examined as models of inter-ecclesial collaboration in regions dominated by Eastern Christians.

4.2.2.1 Syria

Syria has six Catholic Churches: Armenian, Chaldean, Latin, Maronite, Melkite, and Syrian. The assembly of hierarchs in Syria was established relatively early, with inter-ecclesial assemblies convoked by the Bishop of Rome's delegate in the 1940s and 1950s. However, Melkite Patriarch Maximos IV objected to the papal legate having this function as he felt this role belonged to the Patriarch of Antioch. With the support of the other patriarchs in Syria, Patriarch Maximos organized an inter-ecclesial assembly. Following the Second Vatican Council, the Assembly of the Catholic Hierarchy in Syria (AHCS in French) worked on several redactions of its statutes, finally approving them in 1969.¹⁷⁷ The current head of the AHCS is His Beatitude Gregory Laham, Patriarch of Antioch of the Greek-Melkites.¹⁷⁸

The purpose of the AHCS is to serve as an environment for periodic meetings for the hierarchs of the various Catholic Churches *sui iuris* of the Syrian Arab Republic. These meetings are to address ecclesial problems of common interest with the intention of

different rites exist, by exchanging views in inter-ritual meetings, according to the norms to be determined by competent authority.”

¹⁷⁶ These three assemblies were first included in the *Annuario Pontificio* 1970, p. 848.

¹⁷⁷ No date is given in the *Annuario Pontificio* for the statutes of this assembly and as a result the date is taken from MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, p. 162.

¹⁷⁸ *Annuario Pontificio* 2015, p. 1093.

promoting common and united action and activity to address the social and spiritual needs of the Syrian nation.¹⁷⁹ Its members by law are all patriarchs, archbishops, metropolitans, and bishops resident in Syria, as well as those who canonically occupy their place in cases of a vacant or impeded see. Additionally, titular bishops who habitually reside in Syria, regardless of function, are members of the assembly.¹⁸⁰ The assembly meets both in plenary sessions as well as meetings of the various episcopal commissions.¹⁸¹

These plenary sessions include the entire membership of the AHCS.¹⁸² The plenary sessions are explicitly stated to be entirely consultative in nature and are to occur at least twice annually, generally in the autumn and spring, in Aleppo, Damascus, or some other appropriate city at the invitation of that place's ordinary.¹⁸³ An extraordinary session can be convoked when deemed necessary by the request of at least one third of the AHCS members.¹⁸⁴ Members are to consider themselves obligated to participate but can send a representative when legitimately impeded, such as the vicar general.¹⁸⁵ The papal legate is invited to all assembly meetings.¹⁸⁶

¹⁷⁹ ASSEMBLÉE DE LA HIÉRARCHIE CATHOLIQUE DE SYRIE, *Statuts*, 1969, art. 1, in George MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, Kerala, Oriental Institute of Religious Studies India Publications, 1995, pp. 266-269. See Appendix VI.

¹⁸⁰ *Ibid.*, art. 2.

¹⁸¹ *Ibid.*, art. 3.

¹⁸² *Ibid.*, art. 4.

¹⁸³ *Ibid.*, arts. 5-6.

¹⁸⁴ *Ibid.*, art. 6.

¹⁸⁵ *Ibid.*, art. 7.

¹⁸⁶ *Ibid.*, art. 8.

The plenary assembly of the AHCS is to have its agenda established by means of proposals from its membership.¹⁸⁷ These proposals are to be sent to the president-moderator as well as the papal legate at least a month prior to the meeting.¹⁸⁸ The plenary assembly has the responsibility of appointing members to the episcopal commissions for terms of three years.¹⁸⁹ The members of these commissions make use of experts and are to designate a secretary for the individual commissions that study particular problems and propose issues for discussion at the plenary assembly.¹⁹⁰ Commissions are to examine questions relevant to the entire nation, especially catechesis, the apostolate, and schools.¹⁹¹

The plenary assembly is also to elect a secretary general, who must be a priest, for a term of three years, renewable.¹⁹² An adjutant secretary is to be also appointed at the same time for the same term.¹⁹³ The secretary has the responsibility of providing information to members, episcopal commissions, and the episcopates of other countries.¹⁹⁴ The secretary performs his tasks under the authority of the moderator of the assembly.¹⁹⁵ The general secretary resides in Damascus while the adjutant resides in Aleppo.¹⁹⁶ The secretary signs

¹⁸⁷ ASSEMBLÉE DE LA HIÉRARCHIE CATHOLIQUE DE SYRIE, *Statuts*, art. 11.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, art. 10.

¹⁹⁰ *Ibid.*, arts. 10, 13.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*, art. 10.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*, art. 14.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

all meeting minutes along with the president-moderator and these minutes are to be sent to the papal legate as well as all members.¹⁹⁷

The AHCS is entirely consultative in nature. It examines questions of common challenges that face the entire Church in Syria. This assembly is a venue for bishops to communicate with each other and plan common responses to pastoral challenges. It has, however, no jurisdiction to issue norms for its members, focusing instead on communication, consultation, and collaboration.

4.2.2.2 Egypt

Egypt has seven Catholic Churches: Armenian, Chaldean, Coptic, Latin, Maronite, Melkite, and Syrian. In 1966, seeing the productivity of the Syrian model of inter-ecclesial collaboration, the Egyptian hierarchs established an inter-ecclesial assembly for the Egyptian context: the Assembly of the Catholic Hierarchy of Egypt (AHCE in French).¹⁹⁸ While this assembly was listed already in the 1970 *Annuario*, the statutes of this assembly were first approved in 1983. The current head of this assembly is His Beatitude Ibrahim Isaac Sedrak, Patriarch of Alexandria of the Copts.¹⁹⁹

The membership of this assembly includes all Catholic ordinaries, coadjutor bishops, patriarchal vicars, auxiliary bishops, and titular bishops located in Egypt.²⁰⁰

¹⁹⁷ ASSEMBLÉE DE LA HIÉRARCHIE CATHOLIQUE DE SYRIE, *Statuts*, art. 12.

¹⁹⁸ MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, pp. 163-164.

¹⁹⁹ *Annuario Pontificio 2015*, p. 1093.

²⁰⁰ ASSEMBLÉE DE LA HIÉRARCHIE CATHOLIQUE D'ÉGYPTE, *Statuts*, 1983, art. 1, in George MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, Kerala, Oriental Institute of Religious Studies India Publications, 1995, pp. 261-262. See Appendix VII.

Further, a non-bishop delegate of the Assembly of Major Superiors of Male Institutes (ASMI in French) appointed for a period of three years by both the ASMI and the Assembly of Major Superiors of Female Institutes (USME in French).²⁰¹ This membership constitutes the plenary assembly.²⁰² In addition to the plenary assembly, the assembly includes an executive council, episcopal commissions, and a general secretary.²⁰³

The executive council has its officers designated by their ecclesiastical office in the conference statutes. The president of the assembly is the Patriarch of Alexandria of the Copts; the vice-president is the Patriarch of Alexandria of the Greek-Melkites, or, in his absence (as he resides in Syria), the patriarchal vicar of Alexandria.²⁰⁴ Other bishops can be appointed to this executive committee for a term of three years, renewable.²⁰⁵ The executive committee is responsible for establishing the agenda of plenary meetings and is required to meet at least once every two months.²⁰⁶ There is further an elected general secretary for a term of three years, renewable.²⁰⁷ This individual is responsible for serving the assembly, especially by communicating between members, ASMI, USME, and the assembly of lay organizations, as well as neighbouring episcopal conferences and assemblies of hierarchs.²⁰⁸

²⁰¹ ASSEMBLÉE DE LA HIÉRARCHIE CATHOLIQUE D'ÉGYPTÉ, *Statuts*, art. 1.

²⁰² *Ibid.*, art. 2.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*, art. 3.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*, art. 8.

²⁰⁸ *Ibid.*

The statutes indicate that the plenary meeting of the assembly is to occur annually, normally in January for a period of three days.²⁰⁹ While all members are required to attend, a legitimately impeded member can send a proxy who exercises that member's power to vote.²¹⁰ The statutes permit the participation of both major superiors and lay experts during the preparation of the plenary session and during its discussions.²¹¹ The only function of the assembly defined in the statutes is the identification of the presidents of commissions.²¹²

Considering these observations, it is noticeable that the Egyptian assembly does not have many functions defined in its statutes. It remains a coordinating body for the many Churches in Egypt to address effectively the challenges of modern culture. The statutes make no reference to the authority of assembly documents, the manner of making decisions, or the competency of the assembly. Through its commissions, such as those regarding catechesis and ecumenism, the different Churches *sui iuris* can create common policy for pastoral activity, while still respecting the rightful autonomy and distinctiveness of the individual Churches.

4.2.2.3 Lebanon

Lebanon has five Catholic Churches *sui iuris*: Armenian, Latin, Maronite, Melkite, and Syrian. Melkite Patriarch Maximos IV, an outspoken proponent for the Eastern Churches at the Second Vatican Council, insisted on the establishment of an inter-ecclesial

²⁰⁹ ASSEMBLÉE DE LA HIÉRARCHIE CATHOLIQUE D'ÉGYPTE, *Statuts*, art. 4.

²¹⁰ *Ibid.*, art. 5.

²¹¹ *Ibid.*, art. 6.

²¹² *Ibid.*, art. 7.

assembly in this region.²¹³ This assembly was erected as the Assembly of Patriarchs and Catholic Bishops in Lebanon (APECL in French) in 1967 and its statutes were approved on April 8, 1975.

The assembly's statutes designate the president of the APECL as the Maronite Patriarch.²¹⁴ As a result, the current president of the APECL is His Beatitude Cardinal Bechara Boutros Raï, Patriarch of Antioch of the Maronites.²¹⁵ APECL membership includes all patriarchs having residence in Lebanon, all Catholic diocesan and eparchial bishops, vicars, and auxiliary bishops in Lebanon, and other titular bishops exercising a function entrusted by the Holy See, the patriarchs, or the assembly itself.²¹⁶ Other bishops and the legate of the Bishop of Rome in Lebanon are not members of the assembly in virtue of the statutes.²¹⁷ The assembly can also stably invite superior-generals of institutes of consecrated life as well as two major-superiors designated by the assembly.²¹⁸ As well, in an extraordinary manner the assembly can invite priests, religious, and the laity who have a consultative vote.²¹⁹

²¹³ MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, p. 165.

²¹⁴ ASSEMBLÉE DES PATRIARCHES ET DES ÉVÊQUES CATHOLIQUES AU LIBAN, *Statuts*, 8 April 1975, art. 3, French translation in George MADATHIKANDAM, *The Catholic Bishops' Conference of India: An Interecclesial Assembly*, Kerala, Oriental Institute of Religious Studies India Publications, 1995, pp. 263-266. See Appendix VIII.

²¹⁵ *Annuario Pontificio 2015*, p. 1093.

²¹⁶ ASSEMBLÉE DES PATRIARCHES ET DES ÉVÊQUES CATHOLIQUES AU LIBAN, *Statuts*, art. 3.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

There are seven purposes of the APECL as defined by its statutes. First, the assembly has the purpose of manifesting the Catholic Churches of Lebanon as a unique community of faith. Second the assembly coordinates pastoral activity for the progress of religion and morality and reinforces clerical discipline. Third, the assembly provides pastoral and doctrinal direction to respond to the challenges of modern life. Fourth, the assembly organizes relations between the mother Churches of Lebanon and the faithful who have emigrated. Fifth, the assembly establishes relations between Catholic Churches and the non-Catholic Churches for the safeguarding of morality, spiritual values, and the common good. Sixth, the assembly is to introduce social justice principles between all citizens. Finally, seventh, the assembly has the function of coordinating Church-state relations, especially with respect to social issues and education.²²⁰ The assembly's competency is defined as all things necessary for the attainment of the assembly's objectives, while preserving the necessary autonomy proper to the rights and privileges of the patriarchal synod of each Church.²²¹

The APECL has several offices indicated in its statutes. First, there is a presiding council, which is plenipotentiary and permanent, responsible for recourse as well as serious, urgent, and unplanned problems and affairs. This council is composed of all patriarchs that are members of the APECL.²²² Second, there is a permanent council, called the Executive Commission, which is composed of nine bishops along with the Patriarch-President of the APECL. This body is responsible for proposing topics for study by the

²²⁰ ASSEMBLÉE DES PATRIARCHES ET DES ÉVÊQUES CATHOLIQUES AU LIBAN, *Statuts*, art. 2.

²²¹ *Ibid.*, art. 5.

²²² *Ibid.*, art. 6.

assembly as well as coordinating the APECL activities and ensuring the execution of its decisions.²²³ Third, there is a Statutes Commission that is responsible for interpreting the statutes of the assembly and internal rules of order as well as proposing their modification.²²⁴ There are further both permanent and temporary action committees to be established for achieving specific purposes.²²⁵ The statutes require a general secretariat without expressly providing any functions.²²⁶ Finally, an administrative council is to direct the temporal goods of the assembly and ensure proper organization in order to achieve the assembly's objectives.²²⁷

The seat of the assembly is Bkerké but meetings of the assembly can occur where appropriate.²²⁸ These meetings occur twice annually in ordinary session and in extraordinary sessions when necessary.²²⁹ The required quorum for an ordinary meeting of the assembly is two-thirds of assembly members.²³⁰ The statutes follow the universal law and indicate a required two-thirds approval for conference decisions.²³¹ In order for these decisions to receive juridical force they further must be either i) included in what is termed the "General Law", ii) promulgated by patriarchal synods, or iii) result from a special *motu*

²²³ ASSEMBLÉE DES PATRIARCHES ET DES ÉVÊQUES CATHOLIQUES AU LIBAN, *Statuts*, art. 6.

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*, arts. 6, 9.

²²⁸ *Ibid.*, art. 4.

²²⁹ *Ibid.*, art. 7.

²³⁰ *Ibid.*

²³¹ *Ibid.*; *CCEO*, c. 322, §2.

proprio from the Bishop of Rome.²³² Each bishop-member is required to implement the assembly decisions in order to ensure the common good.²³³

The APECL is an assembly of hierarchs that provides a clear model for meetings and decision-making in order to achieve defined functions. The common participation of assembly members allows for coordinated pastoral activity and shared approaches to respond to the challenges of society in order to promote the common good. The statutes also leave open the possibility of members from institutes of consecrated life and lay experts. It further gives clear precedence to the participation of patriarchs and attempts to respect the autonomy of the various Churches *sui iuris*, focusing upon questions of ultimate importance common to all Churches in Lebanon. Finally, it addresses the implementation of assembly decisions by means of the patriarchal synod, the general law, or a *motu proprio*, clearly establishing the APECL as a body that is not simply consultative in its nature.

4.2.2.4 Holy Land

The Assembly of Catholic Ordinaries of the Holy Land (AOCTS in French) is the most recently erected of the assemblies, with statutes approved on 9 December 1991 and *recognitio* granted on 27 January 1992.²³⁴ Its current president is Archbishop Fouad Twal, the Patriarch of Jerusalem of the Latins. This assembly has a territory defined as “the Holy

²³² ASSEMBLÉE DES PATRIARCHES ET DES ÉVÊQUES CATHOLIQUES AU LIBAN, *Statuts*, art. 8.

²³³ *Ibid.*

²³⁴ *Annuario Pontificio 2015*, p. 1093; CONGREGATION FOR THE EASTERN CHURCHES, *Decreto di approvazione della Santa Sede*, 26 February 1992, in *Ius Ecclesiae*, 6 (1994), pp. 835-836.

Land”.²³⁵ What is the precise geographic territory that is simply described as the “Holy Land”? This is not defined in the statutes of the assembly. However, in his commentary on the statutes of this assembly, Brogi defines “Holy Land” as the territory bordered by the Mediterranean in the West, Jordan in the east, Lebanon in the north and the Negev in the south, corresponding roughly to Israel and the Palestinian territories.²³⁶ In this territory, there are five Catholic Churches with established hierarchies: Armenian, Latin, Maronite, Melkite, and Syrian.

The AOCTS is a permanent institution that has its seat in Jerusalem. It is further a public juridical person that is collegial in its nature.²³⁷ The AOCTS statutes, approved in 1991, are the only statutes of an assembly of hierarchs which were issued after the promulgation of the Eastern Code. As such, they are the only assembly statutes that reference the Eastern Code and explicitly situate the assembly within the context of the common law on assemblies of hierarchs.²³⁸ This AOCTS is intended to serve the proclamation of the gospel and the common good by exchanging information and pastoral experience for the good of religion, the promotion of ecclesiastical discipline, and the building up of the entire Church.²³⁹ The assembly is to develop relations with non-Catholic Christians resident in the Holy Land and engage in inter-religious dialogue.²⁴⁰

²³⁵ L’ASSEMBLÉE DES ORDINAIRES CATHOLIQUES DE TERRE SAINTE, *Statuts*, 9 December 1991, art. 1, in *Ius Ecclesiae*, 6 (1994), pp. 832-835. See Appendix IX.

²³⁶ Marco BROGI, “Commento,” in *Ius Ecclesiae*, 6 (1994), p. 838.

²³⁷ *Ibid.*, art. 1, §§1, 3.

²³⁸ See L’ASSEMBLÉE DES ORDINAIRES CATHOLIQUES DE TERRE SAINTE, *Statuts*, art. 1, §2.

²³⁹ *Ibid.*, art. 2.

²⁴⁰ *Ibid.*, art. 12.

AOCTS membership is divided into those with deliberative vote and those with consultative vote. The following individuals have deliberative vote: the Latin patriarch of Jerusalem and his coadjutor and auxiliary bishops, all residential eparchial/diocesan bishops and archbishops within the Holy Land, along with any coadjutor and auxiliary bishops, any patriarchal vicars resident in the territory, and the Latin Custos of the Holy Land.²⁴¹ Retired patriarchs and bishops residing habitually in the Holy Land are members with consultative vote.²⁴² While the papal legate is invited to all assembly meetings, he is not by law a member nor does he vote.²⁴³

The assembly has several offices identified in the statutes. First, the statutes designate the Latin patriarch of Jerusalem as the president of the AOCTS.²⁴⁴ A vice-president can be elected when the assembly feels it is necessary. This individual is elected by a secret ballot of the membership at a plenary assembly for a term and purpose determined at the time of election.²⁴⁵ There are also permanent commissions to study particular questions that are headed by a member of the assembly but open to the participation of non-members.²⁴⁶ There is also a general secretary who is elected at a plenary assembly from among the members of the assembly or another “ecclesiastic” in the territory who is competent and has an ecumenical and ecclesial spirit.²⁴⁷ This individual

²⁴¹ L’ASSEMBLÉE DES ORDINAIRES CATHOLIQUES DE TERRE SAINTE, *Statuts*, art. 3, §§1-2.

²⁴² *Ibid.*, art. 3, §3.

²⁴³ *Ibid.*, art. 4.

²⁴⁴ *Ibid.*, art. 5.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*, art. 9.

²⁴⁷ *Ibid.*, art. 10, §1.

participates in assembly meetings, prepares reports of all acts for both preservation and distribution, assures commissions achieve their purposes, and accomplishes all assigned tasks.²⁴⁸ Further, a treasurer is also elected for a fixed term, renewable, at a plenary assembly who administers the temporal goods of the assembly as directed by the plenary assembly and the president.²⁴⁹

The plenary assembly of the AOCTS is either ordinary or extraordinary. An ordinary assembly occurs at least once annually and is convoked by the AOCTS president, whereas an extraordinary assembly occurs when the president or three members deem it opportune.²⁵⁰ Members are required to attend the assembly and quorum is defined as two-thirds of members. The presence of this quorum is required for the validity of decisions.²⁵¹

The AOCTS is a decision-making body. When decisions concern the internal ordering of the assembly, an absolute majority of assembly members with deliberative vote is required.²⁵² A two-thirds majority of all assembly members is required to approve or alter the statutes.²⁵³ When decisions concern the life of all Churches of the Holy Land, they require a unanimous approval of all present members with deliberative vote.²⁵⁴ When the assembly issues decrees beyond the limits of universal law or a special concession of the

²⁴⁸ L'ASSEMBLÉE DES ORDINAIRES CATHOLIQUES DE TERRE SAINTE, *Statuts*, art. 10, §2.

²⁴⁹ *Ibid.*, art. 11.

²⁵⁰ *Ibid.*, art. 6, §1.

²⁵¹ *Ibid.*, art. 6, §2.

²⁵² *Ibid.*, art. 7, §1.

²⁵³ *Ibid.*, arts. 13, §2. 14.

²⁵⁴ *Ibid.*, art. 7, §2.

Holy See, a unanimous approval of all members with deliberative vote is required.²⁵⁵ Further, the approval must be obtained from the Holy See in a request signed by the president and co-signed by the secretary.²⁵⁶ The *vacatio legis* for such decisions is one month after promulgation.²⁵⁷ The decisions of the assembly in no way interfere with the proper jurisdiction of an ordinary in his own particular church.²⁵⁸

The statutes of the AOCTS establish an inter-ecclesial body for collaboration and decision-making. These statutes reflect the model of the assembly as presented in the Eastern Code. The assembly has the potential for issuing decrees, in line with the norms of *CCEO* canon 322, §2. This is a permanent canonical body allowing for the growth of the Church in the Holy Land through common pastoral effort. Further, ecumenical and interfaith initiatives are priorities of this assembly.

4.2.2.5 Evaluation of Inter-Ecclesial Activity in Assemblies of Hierarchs

All of the assemblies of hierarchs of several Churches *sui iuris* include in their membership Catholic bishops residing in the territory of the assembly. Statutes focus more on domicile than ecclesiastical office, perhaps since many of the hierarchs reside in different territories from their historical sees, often due to violence in those regions. Both the Egyptian assembly and the assembly for the Holy Land include major superiors as full members, assigning non-episcopal members an additional role in the hierarchical

²⁵⁵ L'ASSEMBLÉE DES ORDINAIRES CATHOLIQUES DE TERRE SAINTE, *Statuts*, art. 7, §3.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*, art. 8.

constitution of the Church. Interestingly, no assembly includes any mention of including non-Catholic hierarchs in its statutes, despite exhortation for this in the common law.²⁵⁹ The Syrian assembly, the first with approved statutes, is entirely consultative in nature and makes no mention of the issuance of any decrees. The Egyptian assembly, the second to have statutes, also makes no mention of any decision-making processes, however it does not exclude any such activity. The Lebanese assembly, the third to develop statutes, provides more precise structures to engage in collaborative activities that are inter-ecclesial in nature and are common to all Christians in a region, such as clergy discipline. The assembly in the Holy Land, the last to develop statutes, places the assembly's nature clearly within the model presented by the Eastern Code.

Each of these examples is sensitive to the rights and prerogatives of the synod and the individual bishops. The assembly for the Holy Land is the only one which codified the possibilities for decision making as proposed by the common law in canon 322 of the Eastern Code. While the legislative norm of canon 322 would apply to all erected assemblies, that is, they all would have the ability to issue decrees according to the norm of law and within their competencies, the manner of such an action's occurrence is absent from these statutes. Further, it is worth establishing that of the numerous points of collaboration listed within the Eastern Code, there are no instances of collaboration explicitly mentioned in the statutes of any assembly. All the assemblies, however, recognize that certain challenges are common to all Christians and offer a venue for

²⁵⁹ See *CCEO*, c. 322, §4.

collaboration between the Churches and the promotion of common pastoral activity, following the intention of the Eastern Code.²⁶⁰

4.2.3 Conclusions

Each of the assemblies of hierarchs of several Churches *sui iuris* and episcopal conferences examined has unique features resulting from its own implementation of the common law. However, some general statements can be made. First, the conferences of bishops, arguably with the exception of the Indian CBCI, are by their nature primarily conferences for Latin hierarchs. This is manifested in different degrees. First, Eastern Catholic hierarchs are not eligible for holding the office of president or vice-president in either the CCCB or USCCB.²⁶¹ Further, in the CCCB Eastern Catholic hierarchs are ineligible to vote on the statutes of the conference.²⁶² The Slovak conference excludes Eastern hierarchs from “matters of greater importance.”²⁶³ These distinctions reflect the ultimate reality that Latin conferences belong to the constitution of the Latin Church. To varying degrees, as a result, Eastern hierarchs are not full members in these conferences. The Australian and CBCI conferences, however, do not make these same distinctions.²⁶⁴

²⁶⁰ See *CCEO*, cc. 84, 202.

²⁶¹ CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 7, §2; UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 4, no. a.

²⁶² CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 22, §1.

²⁶³ KONFERENCIE BISKUPOV SLOVENSKA, *Štatut*, arts. 5, §2, 17, §2.

²⁶⁴ The ACBC explicitly lists the possibility, in fact, of an Eastern hierarchy president, see AUSTRALIAN CATHOLIC BISHOPS' CONFERENCE, *Statutes of the Australian Bishops' Conference*, art. 7, no. 1.

The majority of conference statutes examined make an exclusion of members voting in matters outside of a Church's jurisdiction, either by excluding non-Latin bishops from voting on matters exclusive to the Latin Church or by a more general statement regarding matters restricted to a single Church *sui iuris*.²⁶⁵ The example of the CBCI is an outlier in that it is an episcopal conference that is intrinsically attempting to not be a part of the constitution of the Latin Church in India. While this has been attempted, the restriction of the CBCI competencies to those listed for conferences of bishops places the conference decidedly in a model that is designed for the Latin Church *sui iuris* and, as a result, the competencies enumerated in the Latin Code.²⁶⁶

On the other hand, the assemblies of hierarchs are clearly inter-ecclesial by their very nature. There is no distinction made between the various Churches *sui iuris* in terms of having limited participation in terms of deliberative vote, consultative vote, active voice, passive voice, or eligibility for election to any offices of the assembly. In this sense, all Churches of the territory are full and equal members of the assembly. Following the common law, the statutes of the assemblies admit a wide degree of variation. While the Eastern Code permits the assembly to issue decrees, the AOCTS is the only assembly whose statutes explicitly mention this possibility.²⁶⁷ The assembly admits local hierarchs as members, and several statutes examined admit the possibility of patriarchal vicars participating in the assembly. Further, while the Eastern Code allows non-Catholic

²⁶⁵ As an example of the former, see UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Statutes*, art. 4, no. b; as an example of the latter, see AUSTRALIAN CATHOLIC BISHOPS' CONFERENCE., *Statutes of the Australian Bishops' Conference*, art. 10.

²⁶⁶ CATHOLIC BISHOPS' CONFERENCE OF INDIA, *Statutes*, art. 4.

²⁶⁷ CCEO, c. 322, §2; L'ASSEMBLÉE DES ORDINAIRES CATHOLIQUES DE TERRE SAINTE, *Statuts*, art. 7, §3.

participation in the assembly of hierarchs, a possibility absent from the norms on conferences of bishops, no assembly explicitly admits this possibility in their statutes. While the conference members elect the president of a conference of bishops, some assemblies have a president determined by the statutes in virtue of their ecclesiastical office, in each case a patriarch.²⁶⁸ All the assemblies are, however, intrinsically inter-ecclesial and focus on common problems facing all Christians of a region, recognizing that certain topics, especially concerning morality, ecclesiastical discipline, and the state, require a common voice in order to proclaim effectively the Gospel and build up the Church.

4.3 Proposals for Future Collaboration

Among the models of inter-ecclesial activity in the Church's canon law are assemblies of hierarchs and conferences of bishops. Assemblies of hierarchs are inter-ecclesial by their nature, while conferences of bishops can be inclusive of hierarchs of Eastern Catholic Churches *sui iuris*. The first section will examine which of these models is best suited for inter-ecclesial activity, followed by a second section offering a proposed model of inter-ecclesial collaboration.

4.3.1 Inter-Ecclesial Collaboration: Assemblies or Conferences?

As established in the law, conferences of bishops are collegial assemblies that are part of the hierarchical constitution of the Latin Church. The question arises, then, why are

²⁶⁸ L'ASSEMBLÉE DES ORDINAIRES CATHOLIQUES DE TERRE SAINTE, *Statuts*, art. 5; ASSEMBLÉE DE LA HIÉRARCHIE CATHOLIQUE D'ÉGYPTE, *Statuts*, art. 3.

these bodies being used as inter-ecclesial assemblies when they are part of the constitution of the Latin Church? The concept of canonical territory is seemingly the principal factor. In territories considered “Latin” conferences of bishops have been the dominant collaborative regional structures that, in the majority of cases, admit non-Latin members to varying degrees of membership. At the same time, “Eastern” territories generally have assemblies of hierarchs.

How have these territories been determined? The praxis of the Roman Curia can shed light on this question. The ecclesiastical regions of the world can be divided into various groupings. First, there are those ecclesiastical regions subject to the appropriate Latin congregations, namely, the Congregation for Bishops and the Congregation for Evangelization of Peoples.²⁶⁹ In these territories, conferences of bishops are the dominant structure. When Eastern Catholic communities do exist, they are integrated into the local Latin conference in varying degrees of membership.

Second, there are those territories that are primarily subject to the jurisdiction of the Congregation for the Eastern Churches. These, and only these territories, are where the current six assemblies of hierarchs exist.²⁷⁰ Egypt, Lebanon, Syria, the Holy Land, Iraq, and Iran meet the requirements of *Pastor bonus*, “regions where Oriental rights have been preponderant from ancient times”.²⁷¹ These are regions, further, with patriarchs.

The third category, Eastern territories without patriarchal Churches, have until now lacked these assemblies, despite the ancient provenance of their Churches *sui iuris*,

²⁶⁹ *PB*, arts. 76, 89.

²⁷⁰ Seven assemblies listed in the appropriate section of the *Annuario 2015*, p. 1093.

²⁷¹ *PB*, art. 60.

especially in the case of the Thomas Christians of India and the Byzantines in Ukraine. These latter regions are not under the primary jurisdiction of the Congregation for the Eastern Churches.

The question thus is simple: is the restriction for assemblies of hierarchs to territories under the jurisdiction of the Congregation for Eastern Churches justified? While some canonists, such as Szabó, indicate in the affirmative, the law does not support this conclusion.²⁷² The reasoning for this is simple. *Christus Dominus*, which provides conciliar foundation for “inter-ritual” assemblies, places no such geographic limitation upon this canonical structure.²⁷³ The same can be said for the similar proposal contained in the decree *Orientalium Ecclesiarum*.²⁷⁴

With respect to the Eastern Code, the *praenotanda* of the 1984 *Schema* indicated the intention of the original drafters: assemblies are “to be erected in Eastern regions” (*in Orientalibus regionibus constitutas esse*).²⁷⁵ Szabó cites the discussions of the *coetus* as indicating that the *mens* of the canon is to circumscribe these assemblies to regions where the Eastern Churches are predominant.²⁷⁶ However, this ignores that the result of this cited discussion was the addition of the clause “Where it seems advisable in the judgement of

²⁷² SZABÓ, “Convento dei Gerarchi ‘plurium Ecclesiarum sui iuris’ (CCEO can. 322): Figura canonica dello ius commune e la sua adattabilità alla situazione dell’Europa Centro-orientale,” p. 593; this same argument is taken up by Pablo GEFAELL, “L’Attenzione agli orientali cattolici nei documenti delle Conferenze episcopali,” in Pablo GEFAELL (ed.), *Cristiani orientali e pastori latini*, Pontificia Università della Santa Croce Monografie Giuridiche, no. 42, Milan, Giuffrè Editore, 2012, pp. 372-373.

²⁷³ *CD*, no. 38, §6.

²⁷⁴ *OE*, no. 4.

²⁷⁵ *Nuntia*, 19 (1984), p. 19.

²⁷⁶ SZABÓ, “Convento dei Gerarchi ‘plurium Ecclesiarum sui iuris’ (CCEO can. 322): Figura canonica dello ius commune e la sua adattabilità alla situazione dell’Europa Centro-orientale,” p. 593; *Nuntia*, 28 (1989), p. 58.

the Apostolic See” to *CCEO* canon 322, §1, so as to leave the determination as to the possibility of an assembly’s erection to the judgment of the Holy See.²⁷⁷ This expressed in juridical language the drafters’ desire to only establish assemblies in territories where the Eastern Churches are “prevalent”.²⁷⁸

Abbass reasonably understands this clause as deferring the question of possible location to the judgement of the Holy See and, as such, not restricting them to any one region. As he points out, if it was not possible to erect assemblies outside of traditionally Eastern territories this clause would be unnecessary as the phrase in fact permits the expansion of this ecclesiastical structure.²⁷⁹ It is thus reasonable to conclude that assemblies *can* be erected in other territories if the Holy See judges it opportune. This also follows the general norms on canonical interpretation: “Laws must be understood according to the proper meaning of the words considered in their text and context.”²⁸⁰ It is only when the meaning of canons is doubtful that recourse must be made to the “purpose and circumstances of the law and to the mind of the legislator.”²⁸¹ Further, canonical interpretation maintains the historic Roman Law principle that favours are to be multiplied: “*Odia restringi, et favores convenit ampliari.*”²⁸² In this context, the conclusion offered by Abbass follows the general principles of canonical interpretation while that offered by

²⁷⁷ *Nuntia*, 28 (1989), p. 58.

²⁷⁸ *Ibid.*

²⁷⁹ ABBASS, “Assemblies of Hierarchs for Eastern Catholic Bishops in the Diaspora,” p. 389.

²⁸⁰ *CCEO*, c. 1499.

²⁸¹ *Ibid.*

²⁸² *RJ 15 in VI^o.*

Szabó not only ignores the plain meaning of the canon but also restricts what should be considered as a favour. Undoubtedly the law indicates that these structures *can* be erected outside the territories of the ancient patriarchates.

The more basic question, perhaps, is: *should* these assemblies be erected in these territories where several Churches *sui iuris* are present outside the ancient patriarchal territories? Certainly collaborative activity benefits the common good. Perhaps conferences of bishops should continue to be the common structure for inter-ecclesial collaboration in so-called Latin territories? The answer to such a question requires one to examine the purposes of each structure. The episcopal conference is a canonical body of the Latin episcopate in a given region established for common pastoral activity. Its membership can be expanded to include bishops of Eastern Churches *sui iuris*. This body has legislative competencies as provided by the Latin Code as well as the grant of the Holy See. These conferences are part of the hierarchical constitution of the Latin Church. Even the Indian assembly, despite its explicit attempts to equitably include all Churches, by necessity refers to the competencies for conferences of bishops in the Latin Code, making it a structure which is functioning clearly *praeter ius*.

The assembly of hierarchs of several Churches *sui iuris*, on the other hand, is an inter-ecclesial gathering for hierarchs of various Churches to gather and consider matters of inter-ecclesial importance. By its nature, this structure admits members of all Churches in some region as full and equal members, allows the coordination of matters which are common to all Christians, and would effectively allow the proclamation of the Gospel in a particular national context. Such an assembly should focus upon the purposes as identified in the common law, namely: permitting collaborative activity to work for the common good of the Churches, by fostering unity of action, facilitating common endeavours, promoting

the good of religion, and preserving ecclesiastical discipline.²⁸³ The use of assemblies would further allow Latin conferences to function as the law envisions them, namely, primarily as conferences of the Latin Church, also a preservation of ecclesiastical discipline.

It is understandable that Eastern hierarchs could fear losing their participation in a Latin conference. This participation may not only develop inter-personal relationships that aid in pastoral activity, but could also result in financial support. There can also be a sense of prestige associated with involvement in the Latin conference. Certainly, the erection of a canonical assembly of hierarchs does not exclude continued participation of Eastern hierarchs in the Latin episcopal conference. The promotion of assemblies of hierarchs would allow the flourishing of both the assembly and the conference as canonical structures, respecting their proper purposes, natures, and ends, for the greater proclamation of the Gospel and the common good.

Assemblies of hierarchs are able to promote the common good precisely by addressing issues common to all Churches in a given region. There are several issues of inter-ecclesial collaboration listed in the Eastern Code and these can be made accomplished in the context of the assembly of hierarchs. For example, the Eastern Code contains a provision for the establishment of an inter-ecclesial catechetical commission in a territory or social-cultural region.²⁸⁴ In a pluralist environment such as Canada, establishing a common catechetical commission to deal with the challenges of secularism would benefit all Churches *sui iuris*. In the establishment of an ecumenical commission, bishops of a

²⁸³ *CCEO*, c. 322, §1.

²⁸⁴ *CCEO*, c. 622, §1.

Church *sui iuris* are to consult bishops of other Churches *sui iuris* in the same territory.²⁸⁵ Again, the assembly of hierarchs would permit this consultation and common pastoral action.

As another example, bishops in a same region are to establish common norms with hierarchs of other Churches *sui iuris* regarding several points of ecclesiastical discipline, namely: general absolution, prenuptial investigations, taxes, stipends, stole fees, and the establishment of diriment impediments.²⁸⁶ The assembly of hierarchs would be an ideal context out of which these common norms could emerge to promote a certain uniformity of pastoral activity.

There are numerous other instances of common collaboration that are envisioned by the Eastern Code. Bishops can enter into a common agreement for a formation program for several Churches *sui iuris* in a region.²⁸⁷ Bishops can establish a single seminary for multiple Churches *sui iuris*.²⁸⁸ Even when seminaries are for a single Church *sui iuris*, bishops are to not exclude the admission of candidates of other Churches *sui iuris*.²⁸⁹ Seminary students, regardless of the rite of the seminary, are to be formed in their own rite.²⁹⁰ The laity have an obligation to foster good will, esteem, and unity of action between

²⁸⁵ *CCEO*, c. 904, §2.

²⁸⁶ *CCEO*, cc. 720, §3, 784, 792, 1013, §2.

²⁸⁷ *CCEO*, c. 330, §2.

²⁸⁸ *CCEO*, c. 332, §2.

²⁸⁹ *CCEO*, c. 333.

²⁹⁰ *CCEO*, c. 343.

the various Churches *sui iuris*.²⁹¹ The assembly of hierarchs is an ideal structure for the discussion of how these possibilities can be implemented in a region.

The patriarchal assembly is to take into account the entire territory of a region in its deliberations, inclusive of all Churches *sui iuris*.²⁹² This can be accomplished by involving persons of other Churches *sui iuris* to the patriarchal assembly.²⁹³ The Eastern Code also grants the eparchial bishop discretion to invite members of other Churches *sui iuris* to an eparchial assembly.²⁹⁴ The eparchial bishop is also to decide whether to include members of other Churches *sui iuris* in the eparchial pastoral council.²⁹⁵ The discussion regarding possible inclusion of members of other Churches *sui iuris* in these Eastern structures could, as well, take place at the meeting of the assembly of hierarchs.

The modification and establishment of the canonical territory of a patriarchal Church *sui iuris* is the exclusive right of the Roman Pontiff.²⁹⁶ Within this territory, the patriarch can have an acquired right of erecting provinces, eparchies, and exarchates.²⁹⁷ In order to answer a doubt regarding this territory or to modify this territory, the Synod must petition the Holy See, after having heard the superior administrative authority of each Church *sui iuris* concerned.²⁹⁸ The assembly of hierarchs brings Christians of various

²⁹¹ *CCEO*, c. 405.

²⁹² *CCEO*, c. 140.

²⁹³ *CCEO*, c. 143, §3.

²⁹⁴ *CCEO*, c. 238, §2.

²⁹⁵ *CCEO*, c. 273, §3.

²⁹⁶ *CCEO*, c. 146, §2.

²⁹⁷ *CCEO*, c. 146, §1. It is not defined where these rights have been legitimately acquired.

²⁹⁸ *CCEO*, c. 146, §2.

Churches together in a forum where each rite is treated equally and these decisions of inter-ecclesial importance can be discussed.

The competencies of the assembly of hierarchs, however, should not be limited to simply those instances of explicit collaboration enumerated in the Eastern Code. Bishops have a general obligation to gather in periodic meetings to ensure the promotion of unity of action with other bishops in the same territory.²⁹⁹ Numerous instances of inter-ecclesial importance exist. For example, an assembly can have an important role in addressing questions of the relationship between the Church and State. As most civil court decisions would impact all Churches equally, an inter-ecclesial venue would be a most appropriate context for their discussion. For example, an assembly would be a venue where hierarchs could discuss an appropriate response to civil proposals such as euthanasia. The assembly could also discuss the question of the legal status of the Church in a given country. The assembly could also offer concrete pastoral direction in these challenging circumstances of secularism, addressing these trials with common activity and witness.

Another area of common interest would be education. In Ontario, for example, the Catholic separate school system includes several schools intended for Byzantine-rite Eastern Catholics. In this context, government decisions related to funding and curriculum would in no way only impact the Latin faithful and should be considered in an environment that is inter-ecclesial. The presence of Eastern Catholics in the local Latin-rite schools only amplifies the need to have proper awareness and involvement of the relevant Eastern authorities. The adoption of common religious education programs in school systems is of incredible importance, especially as the Eastern Catholic faithful frequently risk absorption

²⁹⁹ *CCEO*, c. 202.

into the Latin Church. Additionally, in the area of higher education the assembly would appropriately address the issue of any civil recognition of sacred sciences and pontifical degrees as well as any public funding for ecclesiastical academic institutions.

The assembly of hierarchs can coordinate pastoral activities. While each Church maintains its clergy according to its own proper authority, common programs would be of benefit to all clergy regardless of Church *sui iuris*, especially in terms of inculturation. Further, continuing education such as preaching could be offered in a manner that included several Churches *sui iuris*. While some Churches have a large disparity in terms of their liturgical praxis, other Churches have much in common. For example, Canada has three established hierarchies (Ukrainian, Slovak, and Melkite) that follow the Byzantine rite, as well as the Romanian Byzantine parishes belonging to the Eparchy of St George in Canton and Hungarian Byzantine parishes lacking a hierarchy. All of these clergy could appropriately share in continued liturgical training and spiritual exercises to reflect on their common traditions.

The assembly can and should participate in ecumenical activity. The statutes of an assembly can allow the participation of non-Catholic hierarchs.³⁰⁰ However, beyond this, the assembly itself should engage in ecumenical dialogue. Currently, the majority of dialogues occur as an extension of an episcopal conference's ecumenical commission. As a result, these are primarily dialogues including theologians and hierarchs of the Latin Church. While some episcopal conferences do make a point of including Eastern Catholic members on these dialogues, having the assembly share in this ecumenical task would

³⁰⁰ *CCEO*, c. 322, §4.

enshrine a diversity of membership and offer a more diverse and fuller presentation of the Catholic faith.

The assembly should engage in issues of social justice and charity. All the Christian faithful have an obligation to engage in spiritual and corporal acts of mercy and this should not be a task attributed only to the Latin Church. The assembly of hierarchs could assist in this task by having a commission responsible for social justice issues. Inter-ecclesial input in charitable activities would be of benefit, especially in terms of aiding in international charitable activities.

These numerous possibilities are examples of how the assembly of hierarchs is a model of inter-ecclesial activity in which hierarchs of various Churches *sui iuris* exercising their authority in the same territory can come together for common council and the promotion of the common good. It is an effective venue that addresses topics of concern for all the Churches *sui iuris* in a given territory. A proposed model for assemblies of hierarchs existing in an expanded number of territories will now be examined.

4.3.2 Assemblies of Hierarchs and Conferences Coexisting: A Proposed Model

A proposal for collaboration would be that in regions of ecclesial plurality the Holy See should erect a canonical assembly of hierarchs of several Churches *sui iuris*. These assemblies should also exist in territories such as Canada and the United States where significant numbers of Churches *sui iuris* exist in the so-called diaspora. The assembly should be erected in line with the norms of *CCEO* canon 322 that is, an assembly with the ability to make decisions of an inter-ecclesial nature, including the promulgation of decrees. The assembly would deal with matters of inter-ecclesial importance. A diversity of canonical structures would permit dedicated structures for specific purposes, following

the norms of canon law, for the promotion of the Catholic Church as a unity of diverse Churches and institutions effectively proclaiming one Truth. This reflects John Paul II's exhortation in *Novo millennio ineunte*: "There is certainly much more to be done, in order to realize all the potential of these instruments of communion, which are especially appropriate today in view of the need to respond promptly and effectively to the issues which the Church must face in these rapidly changing times."³⁰¹ If *Novo millennio ineunte* is to be followed, the Church's canonical structures must be utilized to the fullest extent possible for the promotion of the common good.

With respect to the continued activity of Eastern hierarchs in the Latin episcopal conference, this can have many laudable purposes. First, the episcopal conference exercises numerous functions related to the teaching, sanctifying, and governing functions of the Church. In all of these cases, it would be extremely beneficial to have input from Eastern hierarchs who offer a different perspective on the theology, spirituality, liturgy, discipline, and history of the Church. This would make the participation of Eastern hierarchs of invaluable importance on episcopal commissions such as in the doctrine or canon law commissions of an episcopal conference.

Second, the episcopal conference exercises numerous competencies as provided in the law. For example, the episcopal conference can be responsible for liturgical translations for Latin Catholics. It would be beneficial for common liturgical texts, such as the creed, to be consistent with other Churches in the same territory. The conference of bishops frequently is responsible for the allocation of charitable funds (for example Caritas, support of the missions, etc.) and Eastern hierarchs may not only like to make use of these

³⁰¹ JOHN PAUL II, Apostolic letter *Novo millennio ineunte*, no. 44.

resources, but also can provide important input into the discussions. Certainly having Eastern hierarchs involved in a conference's ecumenical commission would offer important input to discussions with Eastern non-Catholic hierarchs. These activities, as only a few examples, could all continue when Eastern hierarchs participate in the Latin episcopal conference.

Some hierarchs could object to a further multiplication of ecclesiastical bureaucracy with increased costs on limited temporal goods and another set of meetings to which hierarchs would be obliged to attend. However, the conference of bishops and assembly of hierarchs have distinct purposes. While the episcopal conference has defined functions and competencies in the Latin Code for the Latin Church, the assembly of hierarchs engages in common activities in a structure that equally treats all Churches *sui iuris*. The concurrently erected assembly would permit dedicated activity to questions of an inter-ecclesial nature. This is not possible in the same manner in an episcopal conference.

As examined, several episcopal conferences are open to active participation of Eastern Catholic hierarchs. However, these hierarchs always remain guests on the conference. For example, in Canada nearly 20% of hierarchs are Eastern Catholic.³⁰² The CCCB actively promotes the involvement of Eastern hierarchs in numerous commissions, including *ex officio* membership on the permanent council. However, the commissions of the CCCB remain commissions of the Latin Church, its charitable projects remain directed by the Latin Church, and its national "liturgy office" is concerned solely with the liturgy of the Latin Church. These are just a few examples of how Latin conferences absorb Eastern hierarchs who lose their distinctiveness in this structure which has defined

³⁰² See 4.2.1.2.

functions as part of the hierarchical function of the Latin Church. Just as bishops have found it beneficial to engage in regional gatherings at a level beneath that of the episcopal conference (for example the Assembly of Catholic Bishops of Ontario), so too would they find it beneficial to gather at a level above that of the episcopal conference, namely the assembly of hierarchs. In fact, given that the assembly of hierarchs is such a beneficial structure in situations of ecclesial plurality and it expressly includes Latin ordinaries, it would seem most appropriate if a corresponding canon was included in a future revision of the Latin Code.

The assembly has a radically different role and does not belong to any single Church *sui iuris*. In this structure the various Churches can engage in common work on topics that are solely of an inter-ecclesial nature and common to all Catholics in a given territory. The assembly has broad competencies in the common law and can be customized for its specific purposes given the local context. Such a model will now be examined in its nature and function, membership, officers, and competence.

4.3.2.1 Nature and Function of the Assembly

The assembly of hierarchs of several Churches *sui iuris* is a gathering of Catholic hierarchs of a given region. This body is intended for common counsel, work for the common good of the Churches, the fostering of unity of action, the facilitating of common endeavours, and the promotion of the good of religion and ecclesiastical discipline. This assembly could address many issues that are of concern to all Churches in a given territory. In a country of ecclesial plurality, such as Canada or the United States, it would offer a canonical venue for collaborative activity for hierarchs of all Churches *sui iuris* who are

able to issue decisions within the norms of canon law. This assembly would be governed by canon 322 of the Eastern Code as well as the statutes of the assembly.

The Holy See is the juridical superior of the assembly and is responsible for its erection, the approval of its statutes, the granting of the approval for its decisions, and any alteration or suppression of this structure. Since it requires the use of temporal goods to perform its functions and is also capable of issuing decrees, it is most opportune for the assembly to be erected as a juridical person. This is not done by the law itself but would need to occur by a grant of the Apostolic See of Rome. This juridical person is a collegial aggregate of persons that is neither public nor private as no such distinctions are made in the Eastern Code.

4.3.2.2 Membership of the Assembly

Membership in an assembly by the common law includes all patriarchs, metropolitans, and eparchial bishops of all Churches *sui iuris* in a given area.³⁰³ The law does leave provision for the statutes to expand this membership to include all local hierarchs of all Churches *sui iuris* in the territory, even the Latin Church.³⁰⁴ It would be beneficial for the membership of the assembly to be as inclusive as possible of all Churches *sui iuris* in the nation. The assembly of hierarchs is not a structure constitutive to any single Church *sui iuris* and should treat all members equally. In the Canadian context, this membership would include all diocesan and eparchial bishops.

³⁰³ *CCEO*, c. 322, §1.

³⁰⁴ *CCEO*, c. 322, §1.

If there was a concern for the large number of Latin hierarchs in a given region dominating discussions, the statutes could accommodate this problem by, for example, including a number of local hierarchs of Eastern Churches *sui iuris* while not doing the same for Latin local ordinaries. Or, the statutes could restrict some Latin members to consultative vote, such as granting deliberative vote only to Latin archbishops. This would again not allow the Latin Church to dominate discussions. The flexibility of the assembly of hierarchs permits this structure to be attuned to accommodate the specific conditions of the local Church. Further, as the common law permits, non-Catholic hierarchs should be invited to at least portions of these meetings.³⁰⁵ These non-Catholic bishops could offer counsel on common pastoral challenges facing all Churches in a given area, both Catholic and non-Catholic, especially as concerns relations between the Church and the State as well as a common moral witness. In today's society, this could facilitate common Christian witness to the challenges of secularism. Further, this setting would also be an appropriate venue for the discussion of pastoral care of those in mixed marriages.

4.3.2.3 Officers of the Assembly

Any juridical person requires an individual who is competent to act as its legal representative in both the canonical and civil spheres.³⁰⁶ Following this principle of canon law, the assembly requires a president. This individual would be designated by the statutes as a patriarch or some other individual as designated by the Apostolic See and this

³⁰⁵ *CCEO*, c. 322, §4.

³⁰⁶ *CCEO*, c. 922, §2, 4°.

individual would have the responsibility of convoking the assembly.³⁰⁷ Since the president could become impeded, a vice-president is most appropriate, as well as a secretary who can ensure the preservation of all records and proper communication of documents to all assembly members. As much as possible, it would seem beneficial for the offices of president and vice-president to reflect the diversity of Churches in a given area and as a result these officers should be bishops from different Churches *sui iuris*. In territories where there is a historic see of pre-eminence, such as a patriarchal see or a primatial see, it would seem opportune for the individual holding this ecclesiastical office to be the president of the assembly. As there is only one Eastern Catholic Church *sui iuris* with a metropolitan province in Canada, it would seem appropriate for the Ukrainian Metropolitan of Winnipeg to have a key role in the assembly. Canon 322 does not exclude the appointment of a Latin authority as the president of an assembly. When such possibilities related to preeminent ecclesiastical sees are lacking, an election by the members would suffice.

Further, commissions that are headed by the various members of different Churches *sui iuris* would be an appropriate venue by means of which the goals of the assembly can be achieved. The heads of these commissions should most appropriately reflect the diversity of the Churches in the territory and not be predominantly from any single Church *sui iuris*. Respecting such diversity in commissions would not only treat the individual Churches *sui iuris* equitably but also bring diversity of the Catholic Faith into the various works of the commissions.

³⁰⁷ CCEO, c. 322, §1.

4.3.2.4 Competencies of the Assembly

The juridically binding competencies of the assembly of hierarchs are anything that is not prejudicial to each rite or to the authority of the patriarch, synod, or the metropolitan and council of hierarchs.³⁰⁸ A rite is defined as the liturgical, theological, spiritual and disciplinary patrimony, culture and historical circumstances of a distinct people, which is manifested by the manner of living the faith in an individual Church *sui iuris*.³⁰⁹ As Faris summarizes: “A *rite* is the specific manner of living the faith which is observed by each autonomous church.”³¹⁰ It is not only the liturgical, theological, spiritual, and disciplinary heritage of the community, but also additionally the historical and cultural circumstances of that same community.³¹¹ As a result, the decisions of an assembly cannot usurp the proper authority of the patriarch, synod, metropolitan, or council of hierarchs nor can it in any way impact elements of a Church’s ritual identity. The Eastern Code has numerous instances of collaboration that would appropriately be the subject of the assembly’s decisions. Examples of these include the development of common norms for general

³⁰⁸ CCEO, c. 322, §2.

³⁰⁹ CCEO, c. 28, §1.

³¹⁰ FARIS, *Eastern Catholic Churches: Constitution and Governance: According to the Code of Canons of the Eastern Churches*, p. 149; George NEDUNGATT, “Churches *sui iuris* and Rites (cc. 27-41),” in George NEDUNGATT (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Kanonika, no. 10, Rome, Pontifical Oriental Institute, 2002, pp. 111-112.

³¹¹ FARIS, *Eastern Catholic Churches: Constitution and Governance: According to the Code of Canons of the Eastern Churches*, p. 149.

absolution,³¹² prenuptial investigations,³¹³ and the setting of amounts for taxes and offerings.³¹⁴

The assembly of hierarchs would be an appropriate venue for the coordination of common pastoral activity between the Churches.³¹⁵ It is at the meetings of the assembly that preparatory work for participation of members of other Churches *sui iuris* in an eparchial or patriarchal assembly can be discussed.³¹⁶ The establishment of inter-ecclesial tribunals,³¹⁷ seminaries,³¹⁸ programs of priestly formation,³¹⁹ and catechetical commissions³²⁰ can all occur in the context of this assembly. The assembly is a venue for deciding elements of pastoral life which could be common to all Churches in a territory, such as feast days and days of penance,³²¹ and activity in the eparchial pastoral council of another Church *sui iuris*.³²² The assembly can debate doubts concerning or modifications to a patriarchal territory.³²³ Further, the required consultation of hierarchs from other

³¹² CCEO, c. 720, §3

³¹³ CCEO, c. 784.

³¹⁴ CCEO, c. 1013, §2.

³¹⁵ CCEO, cc. 84, 202.

³¹⁶ CCEO, cc. 140, 143, §3, 238, §2.

³¹⁷ CCEO, c. 1068, §1.

³¹⁸ CCEO, cc. 332, §2, 333.

³¹⁹ CCEO, c. 330, §2, 343.

³²⁰ CCEO, c. 622, §1.

³²¹ CCEO, c. 880, §2.

³²² CCEO, c. 273, §3.

³²³ CCEO, c. 146, §2.

Churches *sui iuris* for actions such as the establishment of an ecumenical commission could occur within the assembly.³²⁴ The assembly can design programs for the laity of all Churches *sui iuris* to effectively promote the common good in society.³²⁵ The assembly could also be a venue for a unified Catholic and Christian witness in situations of Church-state relations.

Even projects that do not explicitly include all Churches *sui iuris* could be addressed by the assembly. For example, the Eastern Code exhorts patriarchs and local hierarchs to promote fixed meetings of religious superiors. This is done so that apostolic works can be carried out in a spirit of cooperation and harmony.³²⁶ Would this not even more cooperation and harmony be achieved if religious superiors of several Churches *sui iuris* gathered in these meetings? The assembly of hierarchs would allow patriarchs and local hierarchs to address individual responsibilities in a collegial setting for greater effectiveness.

The broad-ranging competencies of the assembly would permit decrees concerning any topics the assembly deemed appropriate, provided they do not infringe upon the legitimate autonomy of the Churches as indicated by canon 322, §2. These decisions require a two-thirds majority of all members as well as the approval of the Apostolic See in order to gain juridical force.³²⁷ The competence of the assembly of hierarchs is in reality quite flexible, even admitting exceptions to the restrictions of the common law when

³²⁴ *CCEO*, c. 904, §2.

³²⁵ *CCEO*, c. 405.

³²⁶ *CCEO*, c. 416.

³²⁷ *CCEO*, c. 322, §§2-3.

permission is sought from the Holy See. This flexibility allows the bishops of a given territory to exercise common pastoral ministry as they see appropriate.³²⁸

4.3.3 Conclusions

The assembly of hierarchs of several Churches *sui iuris* is a structure which permits the bishops of all Churches *sui iuris* in a given region to coordinate their pastoral ministry for the greater good of the entire Church. This canonical structure does not exclude the participation of Eastern hierarchs in the Latin conference of bishops. The assembly of hierarchs recognizes the reality of ecclesial plurality in a single territory and promotes the collaboration of all bishops within this territory while attempting to respect their rightful autonomy as well as the proper authority of their Church *sui iuris*. It is a structure at the service of communion. Its wide implementation in territories of ecclesial plurality, especially in the so-called diaspora, would be of incredible benefit by allowing the hierarchs of all Churches *sui iuris* to gather as equals in a canonical body intended to be inter-ecclesial concerned with matters common to all Churches, such as concerns relations with states. The assembly of hierarchs promotes common activity and allows for not only the explicit instances of inter-ecclesial collaboration as numerated in the Eastern Code but also any other activities determined appropriate by the assembly members.

Conclusions

Comparative analysis of the canons concerning assemblies of hierarchs of several Churches *sui iuris* and conferences of bishops allows one to examine the nature of these

³²⁸ CCEO, c. 322, §3.

bodies in terms of their collaborative functions. Conferences of bishops and assemblies of hierarchs have several commonalities in terms of being collaborative structures including the episcopacy of a given region. Both of these structures are able to issue general decrees within the limits of their competence. While inter-ecclesial collaboration is admitted as a possibility with the model of conferences of bishops in the Latin Code, this collaboration is the nature of the structure of the assembly of hierarchs of several Churches *sui iuris*. The conference and assembly have their own respective nature and ends, and this should be respected in the Church's pastoral practice. An examination of the statutes of both conferences and assemblies demonstrates how there is considerable diversity with respect to the implementation of the two models, reflecting the large potential for subsidiarity and reflection of local situations. The assembly statutes examined largely limit the broad competencies provided to the assembly in the Eastern Code.

While conferences of bishops have become the *de facto* structures for inter-ecclesial collaboration in regions of ecclesial plurality outside the territories of the ancient patriarchates, this is a decision that does not reflect the purpose and nature of the conference. Recognizing their nature as part of the hierarchical constitution of the Latin Church, Eastern hierarchs are admitted to conferences in various degrees of membership. They are excluded from certain offices or topics of discussion such as voting on the statutes of the conference. One extreme example of a conference neglecting its proper function as a part of the Latin Church is the CBCI, which required the erection of a second conference in the same country, the CCBI, exclusively for members of the Latin hierarchy.

Assemblies of hierarchs, however, are by their nature intrinsically inter-ecclesial. They have not been implemented outside the territory of the ancient patriarchates. Even countries that have indigenous Eastern Christian populations, such as India and Ukraine,

lack these structures. However, their implementation would not only be beneficial in terms of inter-ecclesial dialogue and collaboration, they would permit the already existing canonical structures, foremost among them the conference of bishops and the patriarchal synods, to perform their proper functions. This can be done without excluding the continued and beneficial participation of Eastern hierarchs within the Latin conference. This would be entirely faithful to the conciliar foundation upon which these structures are based. Further, these structures coexisting would promote collegiality while clearly respecting the equality and autonomy of the individual Churches *sui iuris*. The expansion of an already existing canonical structure into new territories would, following the call of John Paul II, serve to “realize all the potential of these instruments of communion.”³²⁹

³²⁹ JOHN PAUL II, Apostolic letter *Novo millennio ineunte*, no. 44.

GENERAL CONCLUSION

The purpose of this study was to comparatively examine two distinct models of collegial activity in the one *Corpus iuris canonici* of the Catholic Church. While inter-ecclesial activity has, until now, generally occurred within the canonical structure of the conference of bishops, the structure of the assembly of hierarchs of several Churches *sui iuris* was examined as an alternative to the episcopal conference which properly belongs to the hierarchical constitution of the Latin Church. The four chapters of this thesis have examined these two canonical structures in order to better establish each structure's distinct nature and function. This study further examined the limitations of these structures and their place within the canonical tradition of the Church. Through an analysis of these two structures we have been able to draw general conclusions, which, if applied, would permit greater collaborative activity in an inter-ecclesial assembly inclusive of all Catholic Churches in a given region, something of great importance given the continued migration of Christians outside their traditional territories.

The first chapter began with an examination of the foundation for collegial activity. First, theological foundations were examined so as to properly situate collegial activity, especially in the context of the decrees of the Second Vatican Council. Second, collegial bodies were historically examined within the Church's canonical tradition. Third, the Church's current collegial structures as defined within the Latin and Eastern codes were described. This first chapter served to define collegial activity and place the canonical structures of conferences of bishops and assemblies of hierarchs within the larger hierarchical constitution of the Church, both in its historical development and its current expression. To different degrees both the episcopal conference and the assembly of hierarchs can include priests as full members. However, these collegial structures are

primarily manifestations of the collaborative activity of bishops, an element of the Church's pastoral activity present in the earliest Christian traditions.

The second chapter explored the canonical structure of conferences of bishops as contained in the 1983 Latin Code. First, the legislative history of these canons was explored, and we observed the gradual restriction of competencies for the conference of bishops during the process of revision prior to the promulgation of the Latin Code. Second, canons 447-459 of the Latin Code were analyzed so as to establish the proper understanding of the nature of this form of collegial activity. While membership in conferences can be opened to ordinaries (hierarchs) from Eastern Catholic Churches *sui iuris*, we observed how the episcopal conference is a structure which belongs to the Latin Church. It was established that the conference of bishops can be inclusive of other Churches *sui iuris* if its statutes so permit. Regardless of its membership including Eastern Catholic hierarchs, the conference of bishops functions according to the Latin Code as well as the competencies provided by the Latin Code.

The third chapter examined the structure of assemblies of hierarchs of several Churches *sui iuris* in canon 322 of the Eastern Code. This structure is a response to the need to promote collaborative activity despite the emergence of multiple hierarchies within a single territory. As such, after defining the notion of the Church *sui iuris* the historical phenomenon of the emergence of multiple hierarchies was examined. This established the context for the development of the assembly of hierarchs of several Churches *sui iuris* as a canonical structure for collaborative activity between hierarchs of numerous Churches coexisting in the same territory. The legislative history of the drafting of canon 322 of the Eastern Code was first examined before a detailed analysis of this single canon. This structure, as was seen, is inter-ecclesial by its nature and has relatively flexible requirements

for its structure and competencies, allowing for appropriate customization given the distinct circumstances and composition of each local Church. While the assemblies of hierarchs that have been canonically established exist in the traditional territories of the patriarchal Churches, we observed how canon 322 of the Eastern Code makes no prohibition against establishing these structures in territories not traditionally considered as Eastern Christian.

The fourth chapter comparatively examined the canonical structures of conferences of bishops and assemblies of hierarchs of several Churches *sui iuris*. This chapter first defined comparative law as a legal methodology and situated it within legal science in general and then specifically within canon law. The canons on conferences of bishops and assemblies of hierarchs of several Churches *sui iuris* were then comparatively examined. As part of this examination statutes from various conferences and assemblies were examined for their content in view of critically analyzing the current structures and making proposals for future inter-ritual collaboration.

This comparative study resulted in several observations. First, we established the greater flexibility in the Eastern Code whereby canon 322 provides less specific requirements for assemblies as compared to conferences of bishops. Assemblies are able to have diverse structures and competencies, as appropriate to the local circumstances and subject to the approval of the supreme authority of the Church. While conferences of bishops are positively given specific competencies within the 1983 Latin Code, assemblies of hierarchs have their competencies phrased in terms of those items that are not prejudicial to the Churches, resulting in the possibility of expanded competency for an assembly. These competencies, while broad, specifically protect the individual rights of the individual Churches, something not expressed explicitly in the canons of conferences of bishops. The assembly of hierarchs is clearly at the service of the preservation of the rites. Further, there

are fewer required structures in an assembly of hierarchs as compared to a conference of bishops and this fact, again, allows for appropriate reflection of the situation of the local Churches.

Second, while conferences of bishops have been the venue for inter-ecclesial activity in territories not traditionally “Eastern”, this model faces several challenges. Fundamentally, conferences of bishops are part of the hierarchical constitution of the Latin Church. As such, as we observed there is a wide diversity in the participation of Eastern hierarchs in these bodies. While many conferences include non-Latin bishops among the membership, their participation, that is, their possession of deliberative and consultative vote, differs from conference to conference. Further, the ability of Eastern hierarchs to hold ecclesiastical offices within the conference also varies, such as the exclusion of Eastern hierarchs from the office of president or vice-president. The preference for conferences of bishops as the body for collaborative activity continues to reflect an understanding as the West as being the territory of the Latin Church. With the exclusion of Eastern hierarchs from participation in a structure in which they would be full members there continues to exist a reality in which the Eastern Churches remain, to a degree, under the tutelage of the Church of Rome.

Third, in those territories which are traditionally “Eastern” and in which assemblies of hierarchs have been erected, they generally have limited competencies. The majority of these statutes were promulgated prior to the promulgation of the Eastern Code and, as such, are primarily consultative following the general precepts of *Christus Dominus*, no. 36. No assembly has competencies that reflect the broad possibilities contained in canon 322 of the Eastern Code. As such, it has been observed that the assembly of hierarchs is not only a structure that has not been sufficiently implemented even in those territories considered

Eastern (ex. India and Ukraine both contain multiple Churches *sui iuris* and have no such structure) but even in those territories where they do exist the competency of these assemblies has been significantly limited as compared to the common law. Assemblies are both under-implemented and, where they have been implemented, assemblies are under-utilized.

Fourth, the restriction of assemblies of hierarchs to territories that are traditionally Eastern ignores areas such as Canada and the United States that, due to immigration, contain a larger number of Churches *sui iuris* as compared to any traditionally Eastern territories. This, as we have explored, is a limitation of the possibilities of the assembly of hierarchs. Canon 322 of the Eastern Code in no way excludes this possibility. A new reality exists in the Church where, resulting from various factors, increasing numbers of Eastern Christians are migrating outside of their traditional territories. In the case of the Chaldeans, for example, the statistics in the *Annuario* indicate migration as resulting in nearly more faithful in the West than remain in the patriarchal territory. The assembly of hierarchs is inter-ecclesial by its nature and is a canonical structure designed to promote collaboration and common pastoral activity between the Churches *sui iuris* while at the same time preserving their distinctiveness. The development of assemblies does not in any way entail the termination of Eastern Catholic bishops participating in the Latin episcopal conference as they are parallel structures.

The proper integration of Eastern Christians into new territories is one of the major challenges facing the Churches *sui iuris* at this moment in Church history. In the previous century, numerous Eastern Catholic communities have declined by great proportions in the so-called diaspora, whether by secularization or absorption of the faithful into the Latin Church. However, these declines were always balanced by a continued presence of these

Churches in the traditional territories. For example, Ukrainian and Slovak Catholics have declined in Canada but flourished in their traditional territories.

However, with a near total migration of Christians from numerous territories, primarily the Arab world, the failure to support and integrate these Churches, while at the same time respecting their distinctiveness and facilitating their continued existence, now risks the extinction of some Churches. This is a radically new situation with serious consequences should the pastors of the Church fail in their ability to maintain these Churches in their new territories, something which is certainly a permanent situation.

Assemblies also should be erected in territories that are traditionally “Eastern”. In his audience with the bishops of Ukraine in February 2015, Pope Francis expressed his discontent with the continued conflict between the various Churches *sui iuris* in that country. Instead of providing a common witness during a period of war, there are “misunderstandings and injuries” that are resulting from complex histories and personal conflicts.¹ In response to this situation, Pope Francis was clear: “I see, therefore, that the joint meetings of the Bishops of all the Churches *sui iuris* present in Ukraine are of paramount importance.”² This is an explicit call for an inter-ecclesial assembly to facilitate episcopal unity in a country divided by violence.

The proposal of this study is thus two-fold. First, in those territories where assemblies have not been erected but a plurality of Churches coexists, both in traditional “Eastern” territories and the diaspora, assemblies of hierarchs should be explored as a model

¹ FRANCIS, *Address to the Ukrainian Bishops on Their “Ad limina” Visit (Bishops of the Ukrainian Greek Catholic Church, Bishops of Byzantine Rite, and Bishops of the Ukrainian Episcopal Conference*, 20 February 2015, no 4, https://w2.vatican.va/content/francesco/en/speeches/2015/february/documents/papa-francesco_20150220_ad-limina-ucraina.html (27. February 2015).

² Ibid.

of collegial activity. This fully respects the idea of the equality of the rites and the individual Churches. These structures can coexist along the already existing collegial bodies proper to the individual Churches, such as the patriarchal synod, council of hierarchs, or episcopal conference. Further, inter-ecclesial activity can simultaneously occur in the context of the conference of bishops; this is not redundant as conference and assemblies have different purposes.

Second, these assemblies should be given competencies that reflect the broad possibilities of canon 322 of the Eastern Code. The assembly should be free to address all questions that are common to all the Churches *sui iuris* in a given nation in a manner that is both deliberative and respects the limitations provided by the common law. In that sense this thesis does not argue for any new promulgation of law but, instead, for an implementation of that law which already exists. “The unity of the Episcopate, as well as giving a good example to the People of God, renders an inestimable service to the Nation, both on the cultural and social planes and, above all, on the spiritual plane.”³ Common pastoral activity is of foremost importance and the assembly of hierarchs facilitates this activity in a spirit of collaboration and, importantly, equality. Promotion of these Churches must be made a priority in the Church’s ecclesial mission and the failure to do so risks detracting from that diversity which, far from subtracting from the Church’s splendour, contributes to its unity.

³ FRANCIS, *Address to the Ukrainian Bishops on Their “Ad limina” Visit (Bishops of the Ukrainian Greek Catholic Church, Bishops of Byzantine Rite, and Bishops of the Ukrainian Episcopal Conference)*, no. 4.

APPENDIX I

Statutes of the Australian Catholic Bishops Conference

28 June 2001

- Art. 1 The Australian Catholic Bishops Conference, a permanent institution, is the assembly of the bishops of Australia, exercising together certain pastoral offices for Christ's faithful of that territory. By forms and means of the apostolate suited to the circumstances of time and place, it is to promote, in accordance with the law, that greater good which the Church offers to humankind. (From can.447)
- Art. 2 The Australian Catholic Bishops' Conference is composed of the Plenary Meeting, the Permanent Committee, Episcopal Commissions and the General Secretariat. (From can.451)

1. MEMBERSHIP

- Art. 3 Those who belong to the Australian Catholic Bishops' Conference by virtue of the universal law of the Church are all diocesan bishops in the territory and those equivalent to them in law, all coadjutor bishops, auxiliary bishops and other titular bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the Bishops' Conference. (From can.450, #1)
- Art. 4 By virtue of these statutes, hierarchs of Eastern Catholic Church dioceses, eparchies or exarchies established by the Holy See within Australia are also members of the Australian Catholic Bishops' Conference (From can.450 #1)

2. THE PRESIDENT AND THE VICE-PRESIDENT

- Art. 5 The Conference shall elect a president and vice-president according to the prescriptions of cann.119 and 164ff., with the following provisions:
- 1 The election cannot be made by compromise as set out in can. 174;
2. The election shall be by secret ballot without previous nomination.
- Art. 6 #1 The election of both president and vice-president shall be for a period of two years. They may hold their office for a maximum of three consecutive two year terms, unless in a particular case the plenary decides otherwise.
- #2 Should the office of president become vacant during the two year term, the vice-president shall assume the presidency until the next plenary meeting, when a new president shall be elected to complete the two year term.
- #3 Should the office of vice-president become vacant during the two year term, the members of the Permanent Committee shall elect a diocesan bishop to assume

the vice-presidency until the next plenary meeting, when a new vice- president shall be elected for a term lasting until the completion of the president's term.

- Art. 7 #1 The president and vice-president must be chosen only from among the members who are diocesan bishops, including eparchs and episcopal exarchs of Eastern Catholic Churches. (*Apostolos suos*, no. 17)
- #2 Should either cease to exercise the office of diocesan bishop, his presidency or vice-presidency of the Conference lapses from the day of the publication of the acceptance of his resignation by the Roman Pontiff. (Letter of the Congregation for Bishops, 13 May 1999)

3. THE PLENARY MEETING

- Art. 8 Plenary meetings are to be held at least once a year. An extraordinary plenary meeting may be held when special circumstances so require, at the written request of the majority of the members of the Conference or of two thirds of the members of the Permanent Committee. (From can.453).

VOTING RIGHTS

- Art. 9 By virtue of the law diocesan bishops, those equivalent to them in law, and coadjutor bishops have a deliberative vote in plenary meetings of the Bishops' Conference. (From can.454, #1)
- Art. 10 By virtue of these statutes, hierarchs in charge of Eastern Catholic Church dioceses, eparchies and exarchies established by the Holy See within Australia have a deliberative vote in plenary meetings of the Conference. It is understood that the hierarchs will not vote on matters outside their jurisdiction or competence, e.g. liturgical matters of the Latin rite. (From can.450, #1)
- Art. 11 Auxiliary bishops and other titular bishop members have only a consultative vote in the making or changing of these statutes. By virtue of these statutes, they have a deliberative vote on all other matters. (From can. 454, #2)
- Art. 12 Retired bishops have the right to attend plenary meetings and are invited to make available to the Conference their special wisdom and experience. They have a consultative vote. (Letter of the Congregation for Bishops of 13 May 1999)
- Art. 13 All persons who have a deliberative vote are obliged to attend plenary meetings.

THE APOSTOLIC NUNCIO

- Art. 14 #1 While the Apostolic Nuncio does not belong to the Conference, he shall be invited to attend a session of each plenary meeting and address the Conference.

- #2 He may participate in other sessions of a plenary meeting, either by special mandate of the Apostolic See, or by the invitation of a majority of the members of the Conference present or a majority of the members of the Permanent Committee.

THE MEETING

- Art. 15 The agenda papers are prepared by the secretary in consultation with the president and forwarded to all members of the conference as early as is convenient before the plenary meeting.
- Art. 16 The president of the Conference or, when he is lawfully impeded, the vice-president, presides over the plenary meetings of the Bishops' Conference (From can.452, #2).
- Art. 17 The plenary meeting normally makes decisions by a simple majority vote of those present, without prejudice to the provisions of Articles 18 and 19. Should two members so request, a vote shall be taken by secret ballot.

DOCTRINAL DECLARATIONS

- Art. 18 #1 In order that the doctrinal declarations of the Australian Catholic Bishops' Conference may constitute authentic magisterium and be published in the name of the Conference itself, they must be unanimously approved by the bishops who are members, or receive the recognitio of the Apostolic See if approved in plenary meeting by at least two thirds of the bishops belonging to the Conference and having a deliberative vote. (*Apostolos suos*, IV, art. I)
- #2 No body of the Bishops' Conference, outside of the plenary meeting, has the power to carry out acts of authentic magisterium. The Bishops' Conference cannot grant such powers to the committees or commissions or other bodies it establishes. (*Apostolos suos*, IV, art. 2)

GENERAL DECREES

- Art. 19 The binding force of the decisions of the Bishops' Conference shall be in accordance with canon 455.
- Art. 20 When a plenary meeting of the Bishops' Conference has been concluded, its minutes are to be sent by the president to the Apostolic See for information and its decrees, if any, for review. (From can.456)
- Art. 21 Decrees of the Conference, after they have been reviewed by the Apostolic See, are promulgated by publication in the Australasian Catholic Record, though in a particular case another manner of promulgation may be prescribed. They shall come into force only on the expiry of one full calendar month after the last day of the month of publication appearing on the particular issue of the Record, unless because of the nature of the case they bind at once, or unless a shorter or

longer interval has been expressly prescribed in the decree itself.

RELATIONSHIP WITH OTHER CONFERENCES

- Art. 22 In order to promote and defend whatever is for the greater good of the peoples of Oceania, each of the other bishops' conferences in Oceania — the Episcopal Conference of the Pacific, the Catholic Bishops' Conference of Papua New Guinea and Solomon Islands and the New Zealand Catholic Bishops' Conference — shall be given a standing invitation to send a member as an observer to each plenary meeting of the Australian Catholic Bishops Conference.

4. THE PERMANENT COMMITTEE

- Art. 23 The Permanent Committee comprises the president, the vice-president and six other bishops. Among these eight bishops there shall be at least one from each of the five ecclesiastical provinces of Australia.¹
- Art. 24 The six members other than the president and vice-president shall be elected at a plenary meeting for a period of two years, in such manner that each year half of them retire. Retiring members shall be eligible for re- election.
- Art. 25 The elections shall be conducted according to the prescriptions of cann.119 and 164 ff., with the following provisions:
1. Elections cannot be made by compromise as set out in can. 17
 2. Elections shall be by secret ballot without previous nomination
 3. In the later ballots, should no one from a particular province or provinces have obtained membership of the Committee, only members from that province or those provinces shall be eligible to receive votes.
- Art. 26 If for any reason an elected member of the Permanent Committee ceases to be a member of the Bishops' Conference, the next plenary meeting shall elect another member to complete the remainder of his term.
- Art. 27 The Permanent Committee is presided over by the president or, in his absence, the vice-president.
- Art. 28 The Permanent Committee approves the agenda for the plenary meetings of the Conference and ensures that the decisions taken at those meetings are duly executed.

¹ For the purpose of these elections, the Archdiocese of Canberra and Goulburn, the Maronite diocese, the Melkite eparchy and the Military Ordinariate shall be considered together with the other dioceses in the Province of Sydney, and the Archdiocese of Hobart and the Ukrainian eparchy shall be considered together with the other dioceses in the Province of Melbourne.

- Art. 29 The Permanent Committee shall decide only matters that cannot be deferred to the next plenary meeting. It shall seek to ensure that its decisions conform to Conference policy.
- Art. 30 All members of Conference shall be informed immediately of any urgent and major decision that the Permanent Committee has felt obliged to make.
- Art. 31 #1 The Permanent Committee encourages and coordinates cooperation between the various bishops' commissions.
- #2 When a matter arises which involves the competence of more than one bishops' commission, the Permanent Committee may, after consultation with the relevant commissions, decide which commission or commissions shall deal with the matter, or even reserve the matter to itself.
- Art. 32 Meetings of the Permanent Committee shall take place at regular intervals throughout the year. When circumstances dictate, available communications technology may be used. The president, after consultation with the vice-president, may convene a special meeting at any time.
- Art. 33 The secretary of the Conference is ipso facto secretary to the Permanent Committee.
- Art. 34 The General Secretariat of the Conference is accountable to the Permanent Committee.

5. EPISCOPAL COMMISSIONS

- Art. 35 The Australian Catholic Bishops Conference shall establish various episcopal commissions, for example those recommended by the Second Vatican Council², the Holy See³ and the Code of Canon Law⁴, in such a manner that the commissions shall cover the full range of the Church's pastoral responsibilities at a national level in Australia.
- Art. 36 The plenary meeting shall determine the number of commissions and approve the mandate of each commission. It shall also determine the number of members on each commission and elect the members by secret ballot.
- Art. 37 All appointments shall be for a definite period, to be determined by the plenary

² Committees for the Liturgy and for the Media.

³ Committees for Ecumenism, the Missions, Migrants, Distribution of the Clergy, Religious Life, Seminaries and Doctrine.

⁴ Committee of Censors.

meeting.

- Art. 38 Commissions shall act within their sphere of competence and in matters referred to them by the Conference. If a dispute arises as to which of two or more commissions is competent in a certain issue, the matter shall be referred to the Permanent Committee.
- Art. 39 #1 Membership of episcopal commissions shall be restricted to those who are members of the Australian Catholic Bishops Conference in accordance with articles 3 and 4.
- #2 Observers may be invited to attend all or part of a commission meeting with a consultative vote.
- Art. 40 The bishops in plenary session will elect the chairmen of commissions by secret ballot.

6. THE GENERAL SECRETARIAT

- Art. 41 The General Secretariat of the Conference shall comprise the Secretary and necessary staff.
- [art. 42 absent from the promulgated text]
- Art. 43 The General Secretariat shall be accountable to the Permanent Committee, and through it to the entire Bishops' Conference.
- Art. 44 The General Secretariat shall:
1. prepare an account of the acts and decrees of the plenary meetings of the Conference, as well as of the acts of the Permanent Committee, and communicate these to all members of the Conference, and likewise record whatever other acts are entrusted to it by the Conference, the Permanent Committee or the president;
 2. communicate to the other Bishops' Conferences of Oceania and to the Secretariat of the Federation of Catholic Bishops' Conferences of Oceania such acts and documents as the Conference at a plenary meeting or the Permanent Committee decides to send to them;
 3. maintain the archives of the Conference.

7. VARIOUS NORMS

- Art. 45 #1 The Conference is supported financially by a levy paid by each diocese and by donations received from time to time. As a rule, the levy is to correspond to the percentage of Australian Catholics living in each diocese according to the most recent Commonwealth census, but the bishop of a financially disadvantaged diocese may request of a plenary meeting a reduction in his levy.

- #2 The temporal goods of the Conference shall be administered in accordance with the provisions of Book V of the Code of Canon Law.
- Art. 46 These statutes may be altered only at a plenary meeting by the majority vote of those members mentioned in Articles 6 and 7. Such changes to the statutes do not take effect until reviewed by the Apostolic See and lawfully promulgated.

APPENDIX II

Statutes of the Canadian Conference of Catholic Bishops

1 September 2008

GENERAL PRINCIPLES

- Art. 1 The Canadian Conference of Catholic Bishops (CCCCB) is the assembly of the Catholic Bishops of Canada, by which they jointly exercise certain pastoral functions for Christ's faithful in Canada. The Conference is established to promote that greater good which the Church offers to all people by forms and means of the apostolate that are appropriately adapted to the circumstances of time and place.
- Art. 2 An explicit delegation from the Conference is required for any person or office to act in the name of the Catholic Bishops of Canada.

I – MEMBERSHIP

- Art. 3 The members of the Conference are:
- 1° all the diocesan Bishops of Canada and those equivalent to them in law as well as all coadjutor Bishops and auxiliary Bishops;
- 2° all eparchial Bishops and those equivalent to them in law with jurisdiction in Canada as well as all coadjutor Bishops and auxiliary Bishops;
- 3° other titular Bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the Episcopal Conference.
- Art. 4 § 1. The Conference functions through a Plenary Assembly, a Permanent Council, and an Executive Committee.
- § 2. The Conference is assisted by the services of a General Secretariat.
- § 3. The Conference establishes permanent or ad hoc structures as needed for its effective operation or delegates the Permanent Council to do so.
- § 4. When an activity or organization has a significant doctrinal or pastoral character for the Church in Canada which comes within the competence of the Conference, it is to be connected to the Conference by means of one or other of its episcopal structures.
- Art. 5 § 1. Unless otherwise provided by universal law or the Statutes of the Conference, all members of the Conference have a deliberative vote.
- § 2. Titular Bishops who are not members of the Conference by law and Bishops

emeriti have a consultative voice, without prejudice to the provisions of article 3.

§ 3. In addition to the regular voting in the Plenary Assembly, the members can, if needed, be asked by the President, Executive Committee or Permanent Council to vote by correspondence, without prejudice to the provisions of articles 10 and 11.

§ 4. A deliberative vote on canonical, disciplinary or liturgical matters that involve a Church *sui iuris* or its rite is limited to the Bishops of that Church.

II – PLENARY ASSEMBLY

Art. 6 § 1. The Plenary Assembly of the members constitutes the essential structure and the highest authority within the Conference.

§ 2. In order to hold a deliberative meeting of the Plenary Assembly, it is necessary for two-thirds of the members to be present.

Art. 7 § 1. It belongs to the Plenary Assembly to elect the President, Vice President, Co-Treasurers of the Conference, and one or more General Secretaries.

§ 2. The President and the Vice President are elected from among the diocesan Bishops.

§ 3. The Co-Treasurers are elected from among the episcopal members of the Conference.

§ 4. General Secretaries are elected from among candidates presented by the Permanent Council.

Art. 8 § 1. The Plenary Assembly meets at least once a year.

§ 2. Because of his office, the Papal Legate is invited by the President of the Conference of Bishops to address the members in Plenary Assembly.

Art. 9 § 1. Decisions are made by an absolute majority of votes of those Bishops present having a deliberative vote, unless the universal law or the Bylaws of the Conference provide otherwise, and without prejudice to the provisions of articles 10 and 11.

§ 2. Voting is by secret ballot if requested by a member or as required by law. All elections are by secret ballot

Art. 10 § 1. Decisions of the Conference have the force of law only in cases determined by universal law or when a special mandate has been given to the Conference by the Apostolic See, either on its own initiative or at the request of the

Conference.

§ 2. These decisions are to receive in the Plenary Assembly a majority of at least two-thirds of the votes of the members of the Conference with a deliberative vote. These decrees do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated.

§ 3. The manner of promulgation and the time they come into force are determined by the Episcopal Conference.

- Art. 11 In order to constitute authentic magisterium and be published in the name of the Conference, doctrinal declarations must be approved in the Plenary Assembly by all the Bishop members of the Conference holding a deliberative vote, or by a majority of at least two thirds of the Bishops holding a deliberative vote. In the latter case, the *recognitio* of the Holy See must precede promulgation.

III – THE PRESIDENT AND VICE-PRESIDENT

- Art. 12 § 1. It belongs to the President of the Conference or, when he is lawfully impeded, the Vice-President, to convene and to preside not only over the Plenary Assembly of the Conference but also over the Permanent Council and its Executive Committee.

§ 2. If both are impeded, this duty is assumed by the member of the Executive Council who has liturgical precedence.

IV – THE PERMANENT COUNCIL

- Art. 13 § 1. The Permanent Council holds its authority from the Conference of Bishops to which it is accountable.

§ 2. Between Plenary Assemblies of the Conference of Bishops, the Permanent Council is responsible for the overall orientation and operation of the Conference. It oversees preparations for the Plenary Assembly and follow-up to its major decisions, in close collaboration with the appropriate episcopal and non-episcopal structures concerned.

- Art. 14 The Permanent Council is made up of at least twelve (12) members.

- Art. 15 The Permanent Council meets at least twice a year.

V – THE EXECUTIVE COMMITTEE

- Art. 16 § 1. The Executive Committee holds its authority from the Permanent Council to which it is accountable.

§ 2. Between meetings of the Permanent Council, the Executive Committee has principal responsibility for promoting and coordinating the initiatives of the

Conference. It sees to the execution of the decisions of the Conference and the Permanent Council, and oversees the financial affairs of the Conference as well as current and urgent matters.

Art. 17 The Executive Committee of the Conference is made up of the President, Vice President and the Co-Treasurers.

Art. 18 The Executive Committee meets at least four times a year.

VI – GENERAL SECRETARIAT

Art. 19 § 1. General Secretaries hold their authority from the Conference of Bishops to which they are accountable.

§ 2. In exercising their functions, General Secretaries report to the President of the Conference of Bishops.

Art. 20 The General Secretariat carries out its activities under the responsibility of at least one General Secretary.

VII – SUPPLEMENTARY PROVISIONS

Art. 21 § 1. These Statutes are supplemented by Bylaws adopted by a two-thirds majority of the members on presentation by the Permanent Council.

§ 2. The Bylaws may be complemented as needed by procedural norms which are promulgated by the Permanent Council on presentation by the Executive Committee.

Art. 22 § 1. The statutes and any amendment, drafted in accord with the provisions of the law of the Latin Church, are to be approved by the Conference in a secret vote with a two-thirds majority of diocesan Bishops, those equivalent to them in law and coadjutor Bishops.

§ 2. The statutes and amendments take effect when recognized by the Apostolic See and promulgated by the Conference.

APPENDIX III

Statutes of the United States Conference of Catholic Bishops

28 November 2010

Article I: Nature and Purpose

The United States Conference of Catholic Bishops (USCCB) is an assembly of the Hierarchy of the United States and the U.S. Virgin Islands who jointly exercise certain pastoral functions on behalf of the Christian faithful of their territory. The purpose of the Conference is to promote the greater good which the Church offers humankind, especially through forms and programs of the apostolate fittingly adapted to circumstances of time and place (c. 447).

Article II: Membership

a) The members of the Conference are:

- 1) Bishops of the Latin and Eastern Catholic Churches who are diocesan or eparchial bishops, coadjutors, or auxiliaries in the service of the particular Churches in the United States or the U.S. Virgin Islands and who belong to no other episcopal conference (c. 450§1; AS 17);
 - 2) bishops who are performing work entrusted to them by the Episcopal Conference or by the Holy See in the service of the Church in the United States or its territories and who belong to no other episcopal conference (AS 17);
 - 3) those equivalent to diocesan and eparchial bishops in law (CIC, cc. 381, 368; CCEO, cc. 178, 313).
- b) Bishops *emeriti* have a consultative voice but not a deliberative vote in the Conference. They are encouraged and invited to attend all sessions of the Plenary Assembly and to make available to the Conference their special wisdom and experience by speaking to issues at hand (AS 17).
- c) A diocesan or eparchial bishop assumes membership in the Conference when he has taken possession of his diocese (cc. 382; CCEO, c. 189) or, if a coadjutor or auxiliary bishop, when he has taken possession of his office (c. 404§§1, 2).

Article III - Officers and Committees

The Conference shall have as elected officers: a President, a Vice President, a Treasurer, and a Secretary; it shall function through a Plenary Assembly, an Administrative Committee (Permanent Council), an Executive Committee, other standing and ad hoc committees deemed necessary by the Conference, and a General Secretariat (cc. 451-452).

Article IV- Voting

- a) Except as otherwise provided for by these Statutes or by the universal law of the Church, all members of the Conference have a deliberative vote in Conference elections and in other matters that come before the Plenary Assembly for action (c. 454; AS 17). Apart from the offices of President and Vice President of the Conference, for which only diocesan bishops are eligible, all members of the Conference are eligible for election to any other office (AS 17). Conference elections are likewise subject to conditions to be established in the Bylaws.
- b) Members of the Conference who are bishops of the Eastern Catholic Churches have a deliberative vote in the Conference except in those matters affecting only the Latin Church. In such matters, they have a consultative voice and are not counted as part of the quorum.

Article V – Plenary Assembly: Meetings

A Plenary Assembly of the Conference is to be held at least once a year (c. 453). Additional sessions may, with approval of the Administrative Committee, be convened by the President when such are deemed necessary or opportune. The President of the Conference presides at the Plenary Assemblies (c. 452§2). When in session, under terms and conditions set forth in its Bylaws, this Assembly possesses the full authority of the Conference. All officers and committees of the Conference, therefore, are answerable to it.

Article VI – Plenary Assembly: Members

In a spirit of collegial concern for the needs of the Church, especially in the United States, all members of the Conference have a responsibility to attend Plenary Assemblies unless impeded for serious reason.

Article VII – Plenary Assembly: Apostolic Nuncio

The Apostolic Nuncio, though not a member of the USCCB, may be present at all sessions of the general assembly and shall be invited by the President to address the general membership (c. 450§2).

Article VIII: Plenary Assembly: Observers

Non-members of the Conference may, with the express approval of the Administrative Committee, attend the public sessions of the plenary assembly as official observers and may also be granted the opportunity to speak. Guests and those involved in the work of the Conference are authorized to attend a particular session by the Conference President or the General Secretary. Members of the media may be present for public sessions of the Plenary Assembly with the approval of the Conference President in consultation with the Chairman of the Committee on Communications.

Article IX: Administrative Committee

The President presides at meetings of the Administrative Committee (c. 452§2). It is the duty of the Administrative Committee to carry on the work of the Conference between Plenary Assemblies, to prepare the program for these sessions, to prepare and present for approval by the general membership the actual agenda of the Plenary Assembly, to review actions taken by the Executive Committee, and to moderate the work of the General Secretariat of the Conference (c. 457).

Article X: Executive Committee

The Executive Committee is composed of the Conference officers and one bishop elected by and from the members of the Administrative Committee. It is the duty of the Executive Committee to deal with urgent Conference matters, such as corporate and financial issues and relations with the federal government, when the Administrative Committee or Plenary Assembly is not in session.

Article XI: Standing, Ad Hoc, Subcommittees

Within the Conference, to help it achieve its purpose, there shall be standing committees, ad hoc committees, and subcommittees (c. 451) whose membership is selected from the members of the Conference and the bishops emeriti. The nature of Conference committees shall be consistent with the purpose of the Conference as stated in Article I of the Statutes and in canon 447. Conference committees operate in accord with the provisions set forth in the USCCB Bylaws and the *Committee Handbook*.

Article XII: General Secretariat

All administrative matters proper to the Conference and its activity shall be coordinated through the USCCB General Secretariat. The Office of the General Secretary will follow closely the work of the Conference committees and will be responsible for the coordination of their activities and staff. The General Secretariat is also responsible for the preparation and arrangements for meetings of the Administrative Committee and of the general membership and for the maintenance of the Conference files and archives (c. 458).

Article XIII: Non-Binding Decisions

Decisions of the Conference are normally devoid of juridical binding force. Nonetheless, when passed by a majority of the members who have a deliberative vote in the Conference, they should, as a rule, be observed by all members as an expression of collegial responsibility and in a spirit of unity and charity with their brother bishops, with due regard for the competence of each diocesan bishop (cc. 381§1, 455§4).

Article XIV: Binding Decisions

The Conference can issue general decrees only in cases where universal law has so prescribed, or by special mandate of the Holy See, either on its own initiative or at the

request of the Conference itself. These decrees are validly enacted when they are approved by at least a two-thirds vote of those members of the Conference with a deliberative vote. They have the force of law after they have been granted the recognitio of the Holy See and lawfully promulgated (cc. 29, 455§§1-3).

Article XV: Acts of the Authentic Magisterium

In order to constitute an act of the authentic magisterium and be issued in the name of the Conference, doctrinal declarations must be approved in the Plenary Assembly by unanimous vote of the members, or by a majority of at least two-thirds of the bishops holding a deliberative vote. In the latter case, the recognitio of the Holy See must precede promulgation (AS 22).

Article XVI: Financial Matters

The determination of diocesan quotas or of special assessments in individual dioceses, or special collections not prescribed by the Holy See must be made lawfully by a two-thirds vote of the diocesan and eparchial bishops and their equivalents in law.

Article XVII: Quorum of the Conference

Two-thirds of the membership shall constitute a quorum in the Conference except as provided in Article IV, b) concerning members of the Conference who are bishops of the Eastern Catholic Churches.

Article XVIII: Making and Amending Statutes

Diocesan and eparchial bishops, their equivalents in law, and coadjutor bishops have deliberative vote in the approval of USCCB Statutes. Amendments to these statutes shall be reviewed by the Administrative Committee and approved by two-thirds of the diocesan and eparchial bishops, their equivalents in law, and coadjutor bishops (cc.450§1, 454§2).

Article XIX: Approval of Statutes

The statutes and amendments thereto of the United States Conference of Catholic Bishops require recognitio by the Holy See (c. 451).

APPENDIX IV

Statutes of the Slovak Bishops' Conference (translated from Slovak by the author)

21 June 2000

CHAPTER I: DEFINITION AND STRUCTURE

- Art. 1 The Slovak Bishops' Conference, established by the Apostolic See, is the Assembly of Bishops of the Slovak Republic who jointly fulfill certain pastoral duties for the faithful of their territory in order to increasingly promote the good which the Church gives to people, especially through the forms and methods of apostolate, suitably adapted to the circumstances of time and place accordance with the law (*cf.* cc. 447 and 449, § 1, *CIC*).
- Art. 2 The Slovak Bishops' Conference has juridical personality by the law itself (*cf.* c. 449, § 2, *CIC*).
- Art. 3 § 1. The Slovak Bishops' Conference includes [as members] all the diocesan Bishops of the Slovak Republic and their equivalents in law, coadjutor bishops and auxiliary bishops and other titular bishops who in that territory or outside perform specific tasks entrusted to them by the Apostolic See or the Episcopal Conference for the common good of the country (*cf.* c. 450, § 1, *CIC*).
- § 2. The members of the Slovak Bishops' Conference are the eparchial bishops and their equivalents in law, coadjutor bishop and auxiliary bishops of the Eastern rite in the Slovak Republic who do not belong to another Bishops' Conference.
- § 3. Bishops emeriti are not members of the Conference of Bishops of Slovakia, but they may be invited as consultants to the plenary sessions and some may be members of the episcopal commissions.
- Art. 4 The Slovak Bishops' Conference consists of: plenary session, the Permanent Council, General Secretariat, Council for Economic Affairs and the Commission and Council established by the Conference for the definition of objectives (*cf.* c. 451 *CIC*).

CHAPTER II: PLENARY ASSEMBLIES

- Art. 5 § 1. The plenary assembly is attended by all those referred to in art. 3, § 1, and they have a deliberative vote (*cf.* c. 454, § 1 *CIC*).
- § 2. Auxiliary bishops and other titular bishops as well as Eastern Rite bishops do not have a deliberative vote when it comes to drafting or changing the statutes

and of things of more importance, which are identified in plenary assembly (*cf.* c. 454, § 2, *CIC*).

- Art. 6 All members of the Slovak Bishops' Conference must be present at the plenary assembly. If someone is legally impeded, he must notify the President of the Conference of his absence; he [the absent bishop] has the ability to authorize another bishop to exercise his voice and sign decisions. However, the proxy cannot vote on behalf of the absent bishop.

- Art. 7 For all plenary assemblies the legate of the Roman Pontiff shall be invited so that the connection between the Episcopal Conference and the Apostolic See can be as close as possible (*cf.* c. 364, §3, *CIC*).

- Art. 8 For some plenary assemblies other clerics and laity, or members of institutes of consecrated life may be exceptionally and in special cases also invited in an advisory capacity (*cf. Letter from the Congregation for Bishops and the Congregation for the Evangelization of Peoples* on 13 May 1999, no. 12).

- Art. 9 Plenary assemblies are held at least twice a year. However, if specific circumstances arise the President may convene several meetings with the approval of at least a third of the members of the Conference, (*cf.* c. 453 *CIC*).

- Art. 10 It is for the plenary assembly to select from among the diocesan bishops or archbishops a president and vice-president of the Conference of Bishops of Slovakia for a term of three years.

- Art. 11 Furthermore, the same plenary assembly has the right to appoint bishops to the Permanent Council, the commissions, as well as the Secretary General for a term of five years.

- Art. 12 The president chairs the plenary assembly or, if the president is legally impeded, the vice-president of the Conference of Slovak Bishops (*cf.* c. 452, § 2, *CIC*) under the Rules of Procedure.

CHAPTER III: DECISIONS AND VOTING

- Art. 13 Voting takes place according to the *Code of Canon Law*.

- Art. 14 The plenary assembly of the Slovak Bishops' Conference may be held if a simple majority is present. The session, however, is able to take a decision only if the requisite majority of those with deliberative voice are present.

- Art. 15 § 1. The Slovak Bishops' Conference can issue general decrees only in cases where the universal law prescribes or where a special mandate of the Apostolic See has been received, either on its own initiative or at the request of the Conference (c. 455, § 1 *CIC*).

§ 2. In order for such decrees to be validly enacted they must have been passed in plenary session by at least a two-thirds majority of the members who belong to the Conference with a deliberative vote. Decrees however, do not enter into binding force until approved by the Apostolic See and are promulgated in the declared the manner and time, the manner of which is defined by the Conference in each case (*cf.* c. 455, §§ 2-3, *CIC*).

§ 3. In cases where neither the universal law nor a special mandate of the Apostolic See has granted to the Conference of Bishops of Slovakia the competency described in § 1, the competence of individual diocesan bishop remains intact. Neither the Conference nor its chairman can act on behalf of all the bishops, if each individual bishop did not give his consent (c. 455, § 4 *CIC*).

Art. 16 § 1. In order for doctrinal declarations of the Slovak Conference of Bishops to constitute authentic magisterium and to be published in the name of the Conference, they must be approved either by all members of the Conference of Bishops or by the plenary assembly with the approval at least two-thirds of the Bishops belonging to the Conference with deliberative vote and the subsequent approval of the Apostolic See (*cf.* John Paul II, Apostolic letter *Apostolos suos*, Art. 1).

§ 2. No institution of the Episcopal Conference except the plenary assembly has the power to perform acts of authoritative Magisterium. The Episcopal Conference can not entrust this power to one commission or another in the context of the founding institutions (*Ibid.*, Art. 2).

Art. 17 § 1. Decisions on matters of more importance are enacted in the plenary assembly by secret ballot and by a two-thirds majority of members present with deliberative vote without prejudice to the provision of Article 5, § 2.

§ 2. Cases of more importance are those that have declared as such by the plenary session with an absolute majority of the diocesan bishops of the Latin rite.

Art. 18 § 1. The vote is usually held in public. The vote is secret if at least one of the members asks for such.

§ 2. Elections for the various roles of the Slovak Bishops' Conference shall be held by secret ballot.

CHAPTER IV: THE PERMANENT COUNCIL

Art. 19 The Permanent Council of the Slovak Bishops' Conference consists of the President, Vice-President, Secretary General and two bishops elected by the plenary assembly for three years.

- Art. 20 § 1. The role of the Permanent Council is to take care to prepare topics to be discussed at the plenary assembly and to prepare the agenda. The General Secretary sends it promptly to the bishops informs the agenda to the legate of the Roman Pontiff.
- § 2. Its mission is to see to it that decisions set out in plenary assembly are properly carried out, and perform other matters entrusted to it by the plenary assembly (*cf. c. 457 CIC*).
- § 3. A suitable number of copies of the minutes approved at a plenary meeting are to be signed by the President and Secretary General. These are also to be sent through the legate of the Roman Pontiff to the Apostolic See.
- § 4. Whenever bishops have, outside the plenary session, enacted extraordinary decisions or public statements and urgent opinions, it shall notify the Apostolic See and consult with her.
- Art. 21 The Permanent Council shall meet at least twice a year.

CHAPTER V: THE PRESIDENT, VICE-PRESIDENT AND SECRETARY GENERAL

- Art. 22 § 1. The plenary assembly shall elect the President and Vice-President of the Conference of Slovak Bishops from the diocesan bishops for three years.
- § 2. The General Secretary shall be elected from among the bishops for five years.
- Art. 23 The President is the legal representative of the Conference of Slovak Bishops and acts on its behalf if plenary assemblies in individual cases did not provide otherwise.
- Art. 24 The mandate of the President and Vice-President of the Conference of Slovak Bishops ends with the expiry of the term of office, termination of membership in the Conference of Bishops, or resignation accepted at the plenary assembly by at least a two-thirds majority of bishops.
- Art. 25 The President represents the Vice-President of the Conference of Bishops of Slovakia whenever the implementation of his mandate is lawfully impeded.
- Art. 26 § 1. The General Secretariat consists of the Secretary General, Executive Secretary and his colleagues.
- § 2. The task of the Secretariat is to:

1. Compile a report on the deliberations and decrees of the plenary assemblies of the Conference as well as meetings of the Permanent Council of Bishops, and to familiarize them to all members of the Conference and to also prepare other writings whose execution has been entrusted to him by the President of the Conference or the Permanent Council;
2. Notify neighbouring Episcopal Conference of files and documents the plenary session of the Conference or the Permanent Council of Bishops decided to send to them (*cf.* c. 458 *CIC*).

- Art. 27 The Secretary General of the Bishops' Conference of Slovakia fulfills the role of secretary of the Permanent Council and preserves the Conference archives.
- Art. 28 § 1. An Executive Secretariat, who is a priest, assists the Secretary General. During the absence of the Secretary General this individual leads the Secretariat.
- § 2. The Executive Secretary, on the recommendation and after consultation with the Permanent Council, appoints and removes the President of the Slovak Bishops' Conference.
- § 3. All who work in the Secretariat need the approval of the Permanent Council.

CHAPTER VI: EPISCOPAL COMMISSIONS

- Art. 29 The Slovak Bishops' Conference determines at its plenary assembly the necessary episcopal commissions for examining specific issues and to prepare documents for the meeting.
- Art. 30 § 1. A bishop elected by the plenary assembly for five years chairs each episcopal commission.
- § 2. Each commission is composed of the president-chair and at least two bishops elected by the plenary session.
- § 3. The commission appoints experts from various dioceses at the proposal of the diocesan bishop.
- § 4. Experts are not members of the commission, yet they may be invited to some meetings in an advisory capacity, on an exceptional basis and in specific cases.
- Art. 31 Each of the commissions annually prepares reports on its activities and submits it to the plenary assembly.

- Art. 32 § 1. The Slovak Bishops' Conference is to explore and address some of the issues established by the council (*cf. Letter from the Congregation for Bishops and the Congregation for the Evangelization of Peoples of May 13, 1999, no. 9*).
- § 2. The council carries out its activities under the leadership of a president elected from among the bishops in plenary assembly.
- § 3. Diocesan bishops appoint members of the council and its chairman from among the faithful and clergy as well as lay people who are characterized by proper scholarship, prudence and integrity.

CHAPTER VII: THE FINANCE COUNCIL

- Art. 33 The finance council shall consist of a Chairman and two bishop experts elected by the plenary meeting for three years.
- Art. 34 The role of the finance council is to prepare an annual budget of income and expenditure, which is foreseen for next year, and at year-end to approve the revenue and expenditure account and submit it to the plenary assembly
- Art. 35 Administering church property of the Conference is governed by norms of the canons of the *Code of Canon Law* and this Statute.
- Art. 36 The plenary session of the Conference of Slovak Bishops elects a treasurer from among those proposed by the Permanent Council. The treasurer is to be truly expert in economic matters and should be characterized by complete integrity (*cf. c. 1284*).
- Art. 37 Income for the Conference of Slovak Bishops come from contributions made by individual dioceses established by the number of faithful Catholics in every diocese, and from other potential sources, and is to be conscientiously managed by the finance council, assisted by the Secretariat.

CHAPTER VIII: RELATIONS WITH OTHER EPISCOPAL CONFERENCES

- Art. 38 The Conference of Slovak Bishops is to develop relationships with other bishops' conferences, especially with neighbouring conferences in order to assist and promote the greater good (*cf. c. 459, § 1, CIC*).

CHAPTER IX: GENERAL NORMS

- Art. 39 Anyone can be elected a second time in the same office.

- Art. 40 The statutes, duly examined by the Apostolic See, cannot be changed unless it is again examined the Apostolic See (*cf.* c. 451 *CIC*).
- Art. 41 An authentic interpretation of the statute it belongs to the plenary assembly, but this has no binding force if, after examination of the Apostolic See, it has not been legally promulgated.

These status of the Slovak Bishops' Conference have been approved by the Congregation for Bishops on 21 June 2000 under the number 221/93.

APPENDIX V

Statutes of the Catholic Bishops' Conference of India

June 26, 1990

PREAMBLE

In the light of the letter of the Holy Father dated May 28, 1987 which requires that “the National Conference of all the Catholic Bishops of India” continue “for questions of common concern and of a national and supra-ritual character” with revised Statutes, we give ourselves the following statutes.

NAME

- Art. 1 The name of the Organization shall be “Catholic Bishops’ Conference of India” (CBCI), hereafter to be referred to as “the Conference”.

NATURE

- Art. 2 The Conference is an Association in which all the Catholic bishops of India, conscious of their unity and solidarity “received by virtue of their consecration” (*CD*, 3); “jointly exercise their pastoral office by way of promoting that good which the Church offers mankind” (*CD*, 38); “and thus foster unity of action and strive together to meet their common tasks” (*OE*, 4).
- Art. 3 The Conference can make general decrees only in the cases where the universal law has so prescribed, or by special mandate of the Apostolic See, either on its own initiative or at the request of the Conference itself (Canon 455 para 1 *CIC*).
- Art. 4 The Conference, in any of its functions, shall in no way interfere:
- a) with the life and work of the Episcopal Bodies of the different Churches, respecting their legitimate autonomy to the full and on every point;
 - b) with the rights of its own members. Consequently:
 - i. it shall not limit, prejudice or interfere with the authority or work of the Local Ordinaries in their respective jurisdictions;
 - ii. its decisions and resolutions shall have by themselves no binding force on the members or their subjects, except for what is laid down in Canon 455 para 1 *CIC*, concerning the general decrees which, if approved in accordance with the norms of the same Canon, are binding for all;
 - iii. the competence of each diocesan bishop remains intact.

PURPOSE

- Art. 5 The Conference will maintain cordial relations with the Episcopal Bodies of the different Rites in India.
- Art. 6 The general purpose of the Conference is to facilitate for its members the co-ordinated study and discussion of questions of common concern and of a national and supra-ritual character affecting the Church in India and the prosecution of a common policy and concerted action. In this way it is intended to witness to Christ more effectively in the service of the people of India.
- Art. 7 In particular the Conference intends:
- a) to promote, among its members, and through them in the Church at large:
 - i. a constant on-going process of self-renewal in Christian living;
 - ii. fidelity to Christian living and Catholic Doctrine and Morals;
 - iii. greater knowledge of all aspects of the life of the Church in all territories of India;
 - b) to express through statements and representation, the common standpoint of all its members on matters of common concern falling within the limits of their jurisdiction;
 - c) to promote concerted action with regard to and guidance on, among other things:
 - i. the integration of Christian education into the whole pattern of human life in India in all its aspects;
 - ii. the adaptation of priestly life and formation to the special needs and challenges of our modern times;
 - iii. an increasing participation of our laity in the mission of the Church and strengthening of Christian values in family life;
 - iv. a deeper Christian consciousness of the human needs of our society, together with a serious study of its problems and a selfless and courageous contribution to the common effort to solve them;
 - v. a greater appreciation of the religious values contained in other Churches and faiths and of the sincere quest of the people for things divine, with a view to better mutual understanding, fruitful dialogue and finally, unity in the Kingdom of God;
 - vi. recognizing the rights and obligations of the different Churches, the organization and co-ordination of the missionary activity in the country in such a way as to promote an evangelization that is truly effective (*Cf.*

Letter of the Holy Father to the Bishops of India, May 28, 1987);

- vii. a farseeing training in the full and proper use of the modern means of social communication to obtain from them the greatest advantage for the apostolate of the Church and the welfare of the country;
- d) to deal with issues relating to the Central and State Governments, as also other national and international Organizations as and when required;
- e) to establish, supervise and control the National Centres and Organizations set up by the Conference;
- f) to deal with other National Catholic Organizations;
- g) to assist its members in matters of common concern, to help, when so requested, Catholic works and movements, and to provide reliable information on questions affecting the life and work of the Church;
- h) to attend all other assignments envisaged in the Vatican Council documents and in subsequent documents of a similar nature, for Episcopal Conferences.

ORGANIZATION AND SPIRIT

Art. 8 The Conference comprises:

- a) The General Body;
- b) The Standing Committee;
- c) The Office-bearers;
- d) The Secretariat;
- e) The Commissions and Committees.

Art. 9 The Conference and its Secretariat as well as all its Commissions and Committees should be animated by a spirit of understanding and helpfulness and not of juridicism, a desire to extend the members' concern for the common good beyond particular interests, and an effort, in joint discernment, to find God's Will rather than the merely prudential consensus of the largest numbers.

Art. 10 The better to assist this finding of God's will, all members should, prior to the Meeting, study with great care and prayerfully reflect over the issues to be discussed; the Meeting itself should be conducted in a prayerful atmosphere. Openness of mind and readiness to listen as well as humble sincerity in interventions will facilitate the working of the Holy Spirit in the Conference.

THE GENERAL BODY

a) *Members*

Art. 11 All the Catholic bishops of India, i.e. all diocesan bishops of whatever Rite in India, and those considered equal to them by law, as well as co-adjutor and auxiliary bishops, and other titular bishops performing a special work in India

entrusted to them by the Apostolic See or by the Conference shall be Members of the General Body.

Retired bishops and other titular bishops and those considered equal to them by law not include above and residing in India shall be Honorary Members.

Art. 12 Only members shall be entitled:

- a) to propose items for the Agenda at the General Meetings of the Conference, and for consideration by the Standing Committee when the Conference is not in session;
- b) to an active voice in all the elections and to one deliberative vote on decisions or resolutions proposed to the Conference, except for what is laid down in Canon 454, para 2, *CIC* in regard to auxiliary bishops;
- c) to be elected to any office of the Conference, with the exception of the offices of President and Vice-President which cannot be exercised by auxiliary bishops (*Cf.* Interpretation of the Pontifical Commission for the Authentic interpretation of the *CIC*, given May 23, 1988).

b) *Meetings*

Art. 13 Ordinary General Meetings of the Conference shall be held every two years at the time and place decided by the members, ordinarily at the previous biennial Meeting.

Art. 14 Extraordinary General Meetings shall be held as decided by at least a two-thirds majority of the members of the Standing Committee.

- Art. 15
- a) Every member of the Conference shall attend all its General Meetings. Any member prevented from doing so, may appoint another member of the Conference to deputize for him, also in the matter of voting.
 - b) Two-thirds of all members of the Conference shall form a “quorum” for all General Meetings, Ordinary and Extraordinary.

Art. 16 Honorary members of the Conference shall be invited to attend and participate in General Meetings, but shall not enjoy the rights of members contained in Art. 12.

- Art. 17
- a) The Holy Father’s representative in India shall be invited to attend the inaugural session of the General Meetings and to address the Conference.
 - b) Through the Office of the Papal Representative the Agenda and Minutes of the General Meetings shall be sent on to the Holy See.

Art. 18 The President of the CRI (Priests), the President of the CRI (Sisters), the President of CRI (Brothers), and the National Secretary of the CRI shall be invited to attend all General Meetings.

Representatives of other Organizations and a few experts may also be invited by the Secretary General in consultation with the President.

Both the representatives and the experts may be called upon by the Chairman of the Meeting to intervene during the Sessions.

- Art. 19 The Meetings shall be presided over by the President or Vice-President I or Vice-President II, as provided in Art. 39, c) and 40, a) i, and 40, b) i. If all three are unable to attend, the members shall choose a Chairman for the meeting from among those present.
- Art. 20 At General Meetings, the Conference shall review the situation and assess the progress of the Church in India, and in light of its own purposes, decide on plans that may be necessary and action that may be called for, with particular reference to:
- a) the Church Universal and the Apostolic See;
 - b) other National Episcopal Conferences;
 - c) international Organizations;
 - d) the Union and State Governments of India;
 - e) the special needs of the people of India, Catholics and non-Catholics;
 - f) the work and structures of its own Commissions and Committees;
 - g) setting up Centres for study and training wherever necessary (Appendix VI gives the Guidelines to be observed in this connection).
- Art. 21 Voting at General Meetings shall be as follows:
- a) for elections of individual persons always by secret ballot
 - b) on other matters by a show of hands; unless two members present ask (before the voting begins) for a secret ballot.
- Art. 22 At Ordinary General Meetings the election shall be held as follows:
- a) of the President and the Vice-Presidents, by a majority of not less than two-thirds of the members present and more than half the total number of the Conference. If this majority is not obtained at the first scrutiny, the voting shall be repeated. After four inconclusive scrutinies in the case of the President, and two in the case of the Vice-Presidents, a majority of more than half the total number of the members of the Conference shall suffice;
 - b) of the Secretary General by a majority of more than half the total number of the members of the Conference;
 - c) of the Chairman and, where required, of members of Commissions and permanent Committees by a relative majority.
- Art. 23 a) the President, the Vice-President, and the Secretary General are elected for a period of two years;

- b) the Chairmen and the members of Commissions and permanent Committees for a period of four years;
- c) if an Ordinary General Meeting cannot be held, the Office-bearers and the Chairmen and the members of the Commissions and Committees shall continue to function until the next General Meeting takes place.

Art. 24 Persons elected to the posts mentioned in Art. 22 may be re-elected to the same posts as follows:

- a) The President, the Vice-Presidents, and the Secretary General may be re-elected to the same post only once consecutively;
- b) The Chairmen and members of Commissions and permanent Committees may be re-elected to the same posts only once consecutively.

Art. 25 In cases not specifically referred to in any of the above articles, all elections, decisions and resolutions at General Meetings shall be by a majority of more than half the number of members present.

Art. 26 If a decision is to be taken by the Conference between sessions, the members will be asked through a circular to express their vote in writing and the same majority shall be required, as at a General Meeting.

STANDING COMMITTEE

a) *Members*

Art. 27 The Standing Committee shall be the permanent executive body of the Conference.

Art. 28 It shall consist of:

- a) The Office-bearers of the Conference, mentioned in Art. 37, a);
- b) The Presidents of the three Ritual Bodies of Bishops;
- c) The Metropolitans;
- d) The Chairmen of the Commissions;
- e) Co-opted members by the President of then Conference up to a maximum of four so that representation of the Orientals is about one fourth of the total membership of the Standing Committee.

Art. 29 The functions of the Standing Committee shall be:

- a) to prepare the General Meetings of the Conference ordinarily through the Office-bearers;
- b) to present draft statements, representations and plans of action related to items on the agenda, deserving, in their opinion, a special consideration;
- c) to see to it that the decisions, resolutions and recommendations of the Conference are duly implemented;
- d) in keeping with the above, to form policy and direct the activities of the Conference, as may be required, between sessions, issuing statements,

making representations, approving plans and proposals, setting up temporary Committees, sanctioning expenditure, giving guidelines for the disbursement of funds and taking whatever other action as may be necessary;

- e) to elect every two years six representatives of the Conference on the CBCI-CRI Joint Committee, referred to in Appendix III;
- f) to appoint for a fixed period of time:
 - i. The Deputy Secretary General and the Secretaries at the Headquarters referred to in Art. 45 b) & c) after previous consultation with the President and the Secretary General;
 - ii. Directors of Societies, Associations, Institutions, Centres, etc., under the ultimate responsibility of the CBCI or any of its Commissions or Committees;
 - iii. National Chaplains and Ecclesiastical Assistants or Advisers whenever required after previous consultations with the President of the Organizations concerned;
- g) to designate, wherever it may be required, the representative or representatives of the Conference at national or international meetings or Organizations.

Art. 39 The President shall:

- a) generally represent the Conference, especially vis-à-vis the Apostolic See, other National Episcopal Conferences, and the Union and State Governments;
- b) decide, in consultation with the Secretary General, the date, place, and the agenda of the Meeting of the Conference and of the Standing Committee in accordance with the wishes of the Conference and/or Standing Committee;
- c) preside at all Meetings of the Conference and of the Standing Committee and guide their deliberations, even when a Moderator, appointed by him at his own discretion, conducts the Meeting;
- d) submit for consideration by the Standing Committee proposals made by the members of the Conference;
- e) present to the members of the Standing Committee for their advice and approval, suggestions and drafts of statements and of representations, plans of action and of policy according to Article 29;
- f) be ultimately responsible that the activities of the Commissions and Committees be in conformity with the policy of the Conference and the Standing Committee according to Art. 29 and officially interpret the same in case of doubt.

Art. 40

- a) The Vice-President I shall:
 - i. assist the President in the discharge of his duties and take his place in his absence both at Meetings of the Conference and of the Standing Committee and between sessions;

- ii. be ex-officio Chairman of the CBCI-CRI Joint Committee;
 - iii. be Chairman of the Governing Board of the CBCI Society for Medical Education
- b) The Vice-President II shall:
- i. take the place of Vice-President I in his absence both at meetings of the Conference and of the Standing Committee and of the CBCI-CRI Joint Committee;
 - ii. be Chairman of Caritas India;
 - iii. be ex-officio member of the CBCI-CRI Joint Committee.

Art. 41

The Secretary General who shall be a Bishop, shall:

- a) in consultation with the President and Vice-Presidents of the Conference prepare the agenda of all Meetings of the Conference and of the Standing Committee; notify their time and place to members; and record the minutes of the Conference and of the Standing Committee. In the preparation of the agenda he shall be assisted by a small group of persons selected by him in consultation with the President; in recording the minutes he shall ordinarily be helped by the Deputy Secretary General and other Assistants;
- b) direct the executive work of the Conference and of the Standing Committee in consultation with the President whenever necessary;
- c) give effect to the decisions and resolutions of the Conference and of the Standing Committee;
- d) be in charge of the Secretariat referred to in Articles 43-47 and appoint its clerical staff;
- e) co-ordinate the activities of the various CBCI Commissions and Committees mainly through their Secretaries and see to it that reports are duly transmitted by the Commissions, Committees, Regional Councils, and CBCI-CRI Joint Committee and all bodies under the ultimate responsibility of the CBCI in accordance with the Art. 29, f) ii., 57, 58, and Appendix III, 6 and Appendix V, 7;
- f) issue all publications of the Conference on behalf of the Standing Committee, and of the Commissions, or other Committees, if necessary;
- g) keep the Holy Father's representative in India well informed of the activities of the Conference;
- h) inform of the activities of the Conference [to] the general public, and especially the clergy, the religious, and the laity;
- i) be the Treasurer of the Conference, drawing up a consolidated annual budget to be approved by the Standing Committee, disbursing funds as may be required within the approved budget, and maintaining the accounts of the Conference, seeking, whenever called for, the advice of Competent persons chosen by himself in consultation with the President;
- j) to keep the Archives and Library in good order at Headquarters;
- k) submit to the Standing Committee an annual report and statement of accounts, audited as decided by the same Committee;
- l) be ex-officio member of the CBCI-CRI Joint Committee.

- Art. 42 a) The President, the two Vice-Presidents and the Secretary General together with two other members of the Standing Committee, chosen each time by the President with reference to the subject on hand, shall act jointly for the Standing Committee in urgent cases which cannot be placed before all the members even by circular.
- b) If the emergency is such as to preclude even this procedure, the President alone shall take the necessary action.

SECRETARIAT (Headquarters)

- Art. 43 The Headquarters of the Conference shall be at the CBCI Centre, 1 Ashok Place, Near Goleedakkhana, New Delhi, 110001.
- Art. 44 The Secretariat of the Conference and of the Standing Committee shall work at the Headquarters of the Conference.
- Art. 45 The Secretariat shall consist of:
- a) the Secretary General of the Conference as laid down in Art. 41, d);
 - b) the Deputy Secretary General, who shall be a priest;
 - c) as many Secretaries as may be required for the work of the Secretariat. These posts shall be fixed by the Standing Committee on the proposal of the Secretary General.
- Art. 46 The Secretariat shall have adequate clerical staff and equipment for secretarial work and the maintenance of accounts, at the discretion of the Secretary General and within the approved budget for the purpose.
- Art. 47 The Headquarters shall contain:
- a) a well-provided Library for the work of the Secretariat and the Archives of the Conference;
 - b) a section:
 - i. for planning, research, vigilance, the study of documents; and
 - ii. for establishing public relations with Government, other Christian Churches and concerned agencies.

COMMISSIONS AND COMMITTEES

- Art. 48 The Conference shall have Commissions to deal more effectively with major spheres of its activities. Committees, permanent or temporary, may also be set up for more restricted fields that cannot conveniently be grouped under any of the existing Commissions.
- Art. 49 Only the Conference shall have the power to establish Commissions and permanent Committees, whereas temporary Committees of the Conference may be set up also by the Standing Committee between sessions.

- Art. 50 Each Commission shall consist of a Chairman and normally two members, all of whom shall be members of the Conference.
- Art. 51 Each Commission shall be assisted by:
- a) an Executive Secretary, generally a priest;
 - b) clerical, religious or lay collaborators or expert advisers.
- Art. 52 Each Committee, permanent or temporary, shall consist of one or two members of the Conference, assisted by the advisers of collaborators that may be required.
- Art. 53 The Commissions and Committees shall:
- a) appoint their own Executive Secretary for a fixed period of time. If he is to be a member of the Secretariat referred to in Art. 45, c) or reside in the CBCI Centre, the appointment shall be made in consultation with the Secretary General;
 - b) appoint, also for a fixed period of time, the official advisers that they may think desirable;
 - c) before making any appointment, consult:
 - i. the appointee's local Ordinary;
 - ii. the Major religious Superior in the case of a religious;
 - iii. and the President concerned in the case of representatives of lay Organizations.
- Art. 54 The Commission's role shall be inspirational rather than operational. Their task shall be to promote the work of others in each field of the apostolate rather than to enter themselves into this field, so to inspire existing agencies that even the earthly activities of their members will be bathed in the light of the Gospel" (*GS*, 43), and to stimulate the whole Church to render to the modern world the service and sound orientation, discerning encouragement and critical evaluation.

In this spirit, always respecting Art. 4 above, each Commission shall:

- a) conduct necessary investigations, studies and consultations; examine the necessity and expediency of action by the Conference or the Standing Committee and prepare and draw up plans of action and submit them, through the Secretary General, for approval by the Standing Committee;
- b) endeavour to bring about the fruitful collaboration of existing Catholic works and Organizations both among themselves and with those run by other Christians and non-Christians;
- c) assist local activities and movements, especially to act as a leaven in the modern world;
- d) help, whenever desirable, to set up new bodies, to start new works, and to co-ordinate dispersed efforts for the common benefit;
- e) in particular, encourage and give such help as may be required towards the work of the Commissions of the Regional Councils.

- Art. 55 It shall be open to a Commission to deal with special aspects of its work through one or more Sub-Commissions, each headed by one of its members. No Sub-Commission may take independent action, and they shall all be responsible to the Commission for their work.
- Art. 56 No Commission may take official action in the name of the Conference without the formal approval of the Standing Committee. If the Committee feels that the matter is beyond its competence, it shall refer the same to the Conference.
- Art. 57 Each Commission and permanent Committee shall:
- a) prepare an annual budget to be approved by the Secretariat of the Conference in accordance with the guidelines given by the Standing Committee;
 - b) apply to the Treasurer for any funds that may be required, within the budget approved;
 - c) be authorized to raise other funds, if it so desires, following the usual norms;
 - d) submit to the Standing Committee at its annual Meeting a statement of accounts of all amounts received whether from the Treasurer or from other sources.
- Art. 58 It shall also be the duty of all Commissions and Committees to submit:
- a) a report of their activities to the Standing Committee at its annual Meeting;
 - b) a report to the Conference at its Ordinary General Meeting.

REGIONAL COUNCILS

- Art. 59 There shall be Regional Councils to cater for the special needs of the apostolate according to the Regions suggested by the Conference.

MISCELLANEOUS

- Art. 60 Regarding Finance:
- a) The expenses of the Conference, the Standing Committee, the Commissions, the Committees and the Headquarters of the Conference shall be met from a common fund;
 - b) Each member shall contribute voluntarily a yearly sum to this fund;
 - c) The accounts shall be audited annually by an auditor authorised by the Standing Committee.
- Art. 61 Nothing in these Statutes shall be construed or understood as:
- a) to allow any interference by the Conference, the Standing Committee, the Office-bearers, the Commissions, the Committees and the Secretariat, with the administration of any diocese or other jurisdiction of any Ordinary;

- b) to limit or prejudice in any way the meetings and Councils of Ordinaries prescribed or recommended by Canon Law or any directive of the Apostolic See.

Art. 62 The Articles of these Statutes may be amended, deleted or added to as circumstances may require by at least a two-thirds majority of the members present at a General Meeting and more than half the total number of the members of the Conference. Coadjutor bishops or archbishops have a right to vote when there is a question of elaborating or modifying the statutes, but not the auxiliary bishops. The previously sent out agenda of that Meeting should have contained the amendment or amendments in question.

APPENDIX VI

Statutes of the Assembly of the Catholic Hierarchy of Syria (Spring 1967)

(Translated from French by the author)

Chapter I: Nature and Constitution

- Art. 1 The patriarchs and other ordinaries of the different Catholic communities of the Syrian Arab Republic hold their periodic meetings, with the goal of commonly studying ecclesiastical problems of common interest, which are of the competency of the local episcopate, continuing in the unity of goals and in a common action, for the best promotion of the activities and the forms of the apostolate appropriate for the spiritual needs of the country.
- Art. 2 By law the members of the meetings are:
- a) The patriarchs, archbishops (or metropolitans), bishops resident in Syria, or those who canonically occupy their place in the case of a vacancy or impeded see.
 - b) The titular bishops who are habitually resident in Syria.
- Art. 3 Besides the Plenary Assembly of members, different Episcopal Commissions and a General Secretariat are provided for.

Chapter II: Plenary Assemblies

- Art. 4 All those prelates named in Article 2 are part of the Plenary Assembly.
- Art. 5 The meeting has only a consultative goal.
- Art. 6 The Ordinary Plenary Assembly occurs normally twice annually, once in the autumn and once in the spring, sometimes in Aleppo, sometimes in Damascus, and in the other cities of Syria, at the invitation of the ordinary of the place. An Extraordinary Plenary Assembly is convoked all the times when it has been deemed necessary, and at the demand of at least one third of members.
- Art. 7 The members of these Assemblies are considered obligated to take part in them. If there is a legitimate impediment he can represent himself with his Vicar General or by another with membership by law.
- Art. 8 The representative of His Holiness the Pope in the country is to be invited to participate in these episcopal meetings.

- Art. 9 The Plenary Assembly, at its first session, will establish a list of its members, according to their precedence, following the rules of canon law. The direction of meetings is entrusted annually, on a rotating basis, to one bishop, according to the list of precedence. If the bishop of the turn is unable or does not desire to have this charge, he who comes after him in precedence automatically assumes the direction.
- Art. 10 The Plenary Assembly elects by a majority of votes a priest as secretary general, not one of the members. He will remain for a term of three years. He can be re-elected. Likewise, the Plenary Assembly elects for the same duration an adjutant secretary.
- The Plenary Assembly elects equally, for a period of three years, the members who comprise the diverse permanent episcopal commissions. They are able to be re-elected and can, to aid themselves in their works, make use of experts and a secretary chosen by themselves, according to their proper rules.
- Art. 11 The agenda of the Plenary Meeting is prepared according to the suggestions received by members. It will be communicated to them one month in advance by the Moderator of that turn, who will communicate also with the representative of His Holiness the Pope.
- Art. 12 The minutes of meetings, approved by the Plenary Assembly and signed by the Moderator and the Secretary, will be sent to all members and to the representative of the Holy See.

Chapter III: Permanent Episcopal Commissions

- Art. 13 The permanent episcopal commissions are for the goal of studying and to propose to the Plenary Assembly the particular problems, related to the determined activities of the Church in the country. They are governed by the particular regulations approved by the Plenary Assembly. They include: a Commission for Catholic Schools, a Commission for the Apostolate of the Laity, and a Commission for the Catechesis.

Chapter IV: Permanent Episcopal Commissions

- Art. 14 The Secretary General is at the service of the episcopal meetings for all information, contacts with the episcopal commissions and the future relations with the episcopates of other countries. For all of their activities, it depends on the Moderator of the turn of the meeting. The Secretary's residence is in Damascus, while the adjutant secretary will have his residence in Aleppo.

Chapter V: Various Provisions

- Art. 15 The costs of the secretariat are to be covered by the obligatory annual contributions of each ecclesiastical circumscription according to the scheme establish once for all at the first Plenary Assembly of the Council.

APPENDIX VII

Statutes of the Assembly of the Catholic Hierarchy of Egypt

(Translated from French by the author)

In accord with the recommendations of the Second Vatican Council (*OE*, no 4; *CD*, no. 38, §6), the Catholic Bishops of Egypt have decided to reorganize their periodic meetings in the view of a better common action and for the promotion of a common pastoral activity.

It is for this purpose that the present statutes, which intend, naturally to respect that which is proper for each bishop in his membership in the Patriarchal Synod of his rite.

- Art. 1 Taking part of the Assembly of the Catholic Hierarchy of Egypt (AHCE) are the patriarchs present, the ordinaries of the different rites, the coadjutor bishops, the patriarchal vicar generals (bishops), the auxiliary bishops, the titular bishops in Egypt, even those resigned, and a delegate of the Assembly of Major-Superiors of Institutes (ASMI), nominated for three years by them and by the Union of Major-Superiors of Religious of Egypt (USME).
- Art. 2 The assembly is comprised of:
- the Plenary Assembly and its members (*cf.* art. 1);
 - an Executive Council (*cf.* art. 3);
 - the Episcopal Commissions (*cf.* art. 7)
 - the General Secretariat (*cf.* art. 8).
- Art. 3 The presidency of the Assembly belongs by law to His Beatitude the Coptic Catholic Patriarch of Alexandria, the vice-presidency to His Beatitude the Greco-Catholic Patriarch or, in his absence, to his Patriarchal Vicar General. The Assembly designates two other bishops, for a term of three years, renewable, who, with the President and the Vice-President, form the Executive Council, whose role is to prepare the agenda of the Plenary assemblies.
- Art. 4 The Plenary Assembly occurs, in principle, at the end of January in Cairo and lasts three days. For this purpose the Secretary will seek the input of members and their suggestions.
- Art. 5 All of the members of the Assembly are required to take part in the Plenary Assembly. In the case of an impediment (illness, prolonged travel) they are able to delegate a proxy who has the right to vote.
- Art. 6 For the preparation of the Plenary Assembly, or for particular moments of their progress, use of the collaboration of the Major-Superiors (or their delegates) and lay experts, as well, can be provided for.
- Art. 7 The Assembly names the Presidents of its Commissions: Ecumenism, Youth Catechesis, Social Action and Charity, and Means of Social Communication.

Art. 8 The General Secretariat is at the service of the Assembly of the Hierarchy for all things concerned. He is responsible for: the communications of all matters with the members of the Assembly, the establishment of relations among the Episcopal Commissions and the assemblies of Major-Superiors, and with the Assembly of Lay Organizations.

He is to remain – to the degree that is possible – in contact with the Secretariats of Episcopal Conferences or Assemblies of Hierarchs of other countries.

The Secretary is to have his collaborator(s) – both stable and occasional – necessary for the proper functioning of the organization.

The costs of materials and operation of the Secretariat are to be defrayed.

The Secretary is elected for a period of three years, renewable.

APPENDIX VIII

Statutes of the Assembly of Catholic Patriarchs and Bishops of Lebanon

Approved in Bkerké on April 8, 1975.

(Translated from French by the author)

- Art. 1 To implement the recommendations of the Second Vatican Council (*OE*, no. 4, *CD*, nos. 37-38), their Beatitudes and Excellencies the patriarchs and bishops of the Catholic communities of Lebanon institute an assembly called “The Assembly of Catholic Patriarchs and Bishops of Lebanon” and designate it with the term “The Assembly” in the present statutes.
- Art. 2 The Assembly pursues the objects and goals, as follows:
- 1- To manifest the diverse Catholic Churches of Lebanon as a unique Community of Faith, watching over the deposit of this Faith and over the spiritual and moral patrimony, preserving the marks, distinctive qualities, and proper laws of each of them.
 - 2- To coordinate the pastoral activities in common with a view to the progress of religion and morality, in individuals and groups, and the affirmation of clerical and ecclesiastical discipline in a most efficient manner.
 - 3- To give directives the most appropriate in the areas of doctrine and pastoral work, with the subject of the problems of both individual and common life, and to take in common the most effective positions and dispositions.
 - 4- To organize the relations and strengthen the bonds between the Mother-Churches of Lebanon and the emigrant faithful thereunder.
 - 5- To establish the relations of friendship and solidarity between the Catholic Churches and the other Christian Churches, as well as the spiritual families and the diverse civil agencies, for the safeguarding of morality and spiritual values, at the service of the common good.
 - 6- To be preoccupied with the institution of social justice and equity between all the categories of citizens, by making justice for those without and in abolishing misery and suffering.
 - 7- To act in co-responsibility to contribute to the solution of problems and difficulties that may arise with the civil authorities in all areas and especially educational and social order, for the means of the protection of the rights of the Church, of the country, and of the citizens.
- Art. 3 The assembly membership, presided over by the Maronite Patriarch, is composed by:
1. Their Beatitudes the patriarchs having residence in Lebanon;
 2. Their Excellencies the bishops of the Catholic dioceses of Lebanon;
 3. Their Excellencies the bishops, vicars or auxiliaries, and all titular bishops exercising a particular charge assigned to them by the Holy See, by the patriarchs, or by the Assembly itself.

Concerning other bishops and the legates of the Roman Pontiff – for the reason of the special mission they exercise in the territory – they are not members of the Assembly.

But the Assembly can invite to its meetings in a stable manner the religious superior-generals and two major-superiors delegated by the Assembly. The Assembly can also assign them, according to the circumstances, either deliberative or passive voice. It can also, in an exceptional manner, invite to its meetings priests, religious, and equally the laity, who, in all occurrences, have only consultative voice and never deliberative.

Art. 4 The official seat of the Assembly is the patriarchal see of Bkerké, but the meetings can occur in other locations according to the need and the facilities.

Art. 5 The Assembly enjoys moral personality for all which concerns the realization of its objectives, keeping perfectly sound and intact the rights and privileges of the patriarchal synods of each Church, by virtue of the laws and regulations which are proper to them.

Art. 6 In view of the distribution and regulation of activities, the Assembly constitutes within it the following organisms:

1. A *Presiding Council*, composed of their Beatitudes the patriarchs. This council constitutes an organism of recourse, permanent and plenipotentiary, to see the facts and problems grave, inopportune, and urgent.
2. A Permanent council or the *Executive Commission*, composed of nine bishops and presided by the delegate of the President of the Assembly. This council is for the goal of proposing the themes of study, the coordination of activities and the supervision of the execution of decisions.
3. A *Commission for Statutes* that has for its mission the interpretation of the texts of the Statutes and the internal rules, and the proposition of the modifications and redesigns judged necessary.
4. The *Commissions for action* permanent and diverse according to the habitual needs, as well as *committees for action* that are temporary.
5. A *General Secretariat*.
6. A *Council of Administration* for the assurance of the necessary financial means and to ensure their proper administration.

The prerogatives of these diverse organisms and their obligations, such as the number of members composing them, the manner of their election, the distribution of their activities amongst themselves, their manner of functioning and continuing and the manner to be taken to realize their objectives... All of these are determined by the internal rules.

- Art. 7 The Assembly meets in *Ordinary Session* twice annually and in extraordinary sessions each time that a need for such is felt. For the regulation of sessions the presence of two-thirds of members is required.
- Art. 8 For the lawfulness of decisions, the two-thirds of votes of members present is required. Nonetheless, the decisions have juridical force only if they are included in the General Law or if they are taken by the patriarchal synod or a special *motu proprio*.
- However, such decisions, when adopted by an absolute majority of votes, always include a moral obligation for each bishop to ensure their execution, seeing the necessity of united action to the assurance of the common good.
- Art. 9 Membership fees, donations, and offerings constitute the finances of the Assembly. They are administered by a Council of Administration indicated by the internal rules.
- Art. 10 The time limits of the different organisms of the Assembly, besides the Presiding Council, are for three years and the members of these organisms are renewable.
- Art. 11 The present statutes are in force after one month from the date of their approval.

ORGANISMS OF THE ASSEMBLY (Governed by the Internal Rules)

- 1 – Presiding Council, permanently composed of patriarchs;
- 2 – Executive Commission where all the communities are represented;
- 3 – Commission for Statutes
- 4 – Permanent Commission for Activities (in view of revisions)
- 5 – Occasional working groups
- 6 – Administrative organisms:
 - General Secretariat
 - Financial Committee
 - Central Secretariat

APPENDIX IX

Statutes of the Assembly of Catholic Ordinaries of the Holy Land

(9 December 1991)

(Translated from French by the author)

- Art. 1 §1. The Assembly of Catholic Ordinaries of the Holy Land is an institution that is permanent in its nature formed for the ordinaries of the different Catholic Churches of the Holy Land mentioned in Article 3, having jurisdiction in the territory of the “Holy Land”.
§2. The Assembly of Catholic Ordinaries of the Holy Land is constituted according to canon 322 of the *Code of Canons of the Eastern Churches*, in which is defined the essence, limits, and procedures of work.
§3. The Assembly has its seat in Jerusalem. It enjoys juridical personality, collegial and public in virtue of canon law, after formal erection by the Holy See.
- Art. 2 The goals of the assembly are to coordinate in the Catholic Church the witness of the Gospel and service for the community, to study together the problems of the territory, to encourage the exchange of information and common experiences, to establish a common pastoral action for the good of the entire Church, for the promotion of initiatives and collective actions for the common good, the promotion and the defense of religion and the better achievement of its rights, and so that the observation of ecclesiastical discipline may be more easily favoured.
- Art. 3 §1. The members of the Assembly of Catholic Ordinaries of the Holy Land with deliberative voice are:
- The Latin Patriarch of Jerusalem, his coadjutor – if he exists – and his auxiliary bishops.
- The residential archbishops and bishops of the dioceses and eparchies of the territory, and their coadjutors and auxiliaries if they exist.
- The permanent patriarchal vicars in the Holy Land, of patriarchs residing elsewhere.
§2. The Custos of the Holy See, as a result of the specificity of his responsibility and his particular competence, is also a permanent member of the Assembly of Catholic Ordinaries of the Holy Land with deliberative voice.
§3. Retired patriarchs and bishops in the territory who are stably resident in the territory are members with consultative voice.
- Art. 4 Although the representative of the Holy See in the Holy Land is not a member by law of the Assembly of Catholic Ordinaries of the Holy Land, as a result of his specific character, nonetheless, with the goal of establishing a useful and fraternal dialogue with the ordinaries of the territory, he will be always invited to the sessions of the Assembly, without the right to vote.

- Art. 5 The Latin Patriarch of Jerusalem is the President of the Assembly of Ordinaries. If it is considered necessary, a vice-president can be elected by a secret vote of the General Assembly, which will establish the particulars and the duration of the mandate.
- Art. 6 §1. An ordinary plenary assembly is to occur at least once annually, after convocation by the President. Extraordinary plenary assemblies will be convoked each time it seems opportune to the President, or at the request of three members.
 §2. The members of the Assembly of Ordinaries are required to take part personally in assemblies. For the validity of decisions, the presence of two-thirds of members having deliberative voice is required.
 §3. To the Assembly can be invited other persons to be consulted, without the right to vote.
- Art. 7 §1. The decisions that concern the internal organization and functioning of the Assembly of Ordinaries will be taken in the plenary assembly according to an absolute majority of votes of those present.
 §2. The decisions that concern the life of the entire Church in the Holy Land will be taken with the unanimity of the present members with deliberative voice.
 §3. The general decrees will be voted by the unanimity of members with deliberative voice. They will be implemented only when they are provided by the common law or a specially provided mandate of the Holy See, whether *motu proprio* or at the request of the Assembly itself. They are promulgated, after the approval of the Holy See, by an act signed by the President and co-signed by the Secretary. They enter into force one month after the date of their promulgation and are to be clearly drafted in the acts.
- Art. 8 In the case where neither the common law nor a decision of the Holy See has granted the Assembly of Ordinaries the power to promulgate a general decree, the competence of each ordinary remains intact in his jurisdiction.
- Art. 9 §1. The plenary assembly can establish permanent commissions, as well as those that are *ad hoc*, whether to take care of a special charge or a sector or work established by the same assembly.
 §2. The same members of the Assembly of Ordinaries normally will form the commissions. The commissions can also be constituted with the participation of individuals particularly competent in determined areas.
 §3. The commissions will always be presided over by a member of the Assembly of Ordinaries and their work will be guided by a regulation approved by the assembly. The commission presidents will regularly refer the fruit of their work to the assembly, or to the President of the Assembly of Ordinaries in case of necessity.
- Art. 10 §1. The plenary assembly will elect a general secretary of the Assembly of Ordinaries who remains in office for the time that has been established and can be re-elected. He will be chosen from among the members of the Assembly of

Ordinaries, or from among the ecclesiastics resident in the territory that can accomplish such a task with competence and who is endowed with a good ecclesial and ecumenical spirit.

§2. It belongs to the secretary general to:

- a) participate in all assemblies;
- b) draw up the report of acts, ensure their conservation in order, and their sending each time to all the members of the Assembly of Ordinaries;
- c) draw up the documents whose redaction is entrusted to him by the President or by the assembly;
- d) to send, with the agreement of the President, the invitations and agendas one month in advance to all members and the representative of the Holy Father;
- e) to watch that the different commissions can fulfil their tasks, and ensure their coordination when it is deemed necessary;
- f) to accomplish all that the internal rules assigns him.

Art. 11 The plenary assembly will elect also a treasurer who administers the common funds, according to the instructions given to him by the assembly, or by the President. The treasurer remains in office for the time that has been established and can be re-elected. His office is to be directed by the Secretary.

Art. 12 §1. The Assembly of Ordinaries will promote particularly the contacts and consultations with the other Christian Churches present in the Holy Land, who are no longer in communion with the Catholic Church, for the goal to establish or to maintain a useful exchange of information, to promote the study in common of well-determined problems, and eventually to promote positions and initiatives to put in practice a common accord.

Art. 13 §1. An internal rule will be established to fix the norms of work of the Assembly of Ordinaries, the assemblies, the commissions, the offices of secretary general and treasurer, as well as financial aspects and the administration of the organization.
 §2. For the approval or, if any, modification of the internal rules a majority of two-thirds of members of the Assembly of Ordinaries is required.

Art. 14 The Holy See will approve all modification of the present statutes, after having obtained the favourable vote of at least two-thirds of members of the Assembly of Ordinaries gathered in assembly.

Jerusalem, the 9th of December 1991.

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BIOGRAPHICAL NOTE

Alexander Laschuk was born in Oshawa, Ontario. After fourteen years of Catholic education in Ontario, he completed a degree in Forensic Science (B.F.Sc.) at the University of Windsor. He entered Holy Spirit Seminary in 2006, graduating with a B.Th./S.T.B. (Eastern Christian Studies) *summa cum laude* from the Metropolitan Andrey Sheptytsky Institute of Eastern Christian Studies at Saint Paul University in 2009, earning the Governor General's Silver Academic Medal. He began studies in canon law at Saint Paul University and the University of Ottawa in the fall of 2009, earning a Master's in Canon Law (2011), a graduate certificate in ecclesiastical administration (2011), and an ecclesiastical licentiate (2011). He began doctoral studies in canon law at this same institution in January 2012 and was director of Eastern Christian Studies from 2013-2014. Alexander is a priest of the Ukrainian Catholic Eparchy of Toronto and Eastern Canada and serves in numerous ministries in that city, including Parochial Vicar at St Nicholas Parish, Associate Judicial Vicar of the Toronto Regional Marriage Tribunal, and Judicial Vicar and Vice-Chancellor of the Eparchy of Toronto and Eastern Canada. He is married to Olena and they have one child, Osanna Seraphima.