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Updating the Particular Law of the Maronite Church,

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Introduction

After the establishment of the *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo* (*PCCICOR*) in 1972, almost twenty years passed before the promulgation of the *Codex Canonum Ecclesiarum Orientalium* (*CCEO*). Specialized study groups within *PCCICOR*, entrusted with the elaboration of the new Eastern Code, produced eight schemas which, after being revised again (*denua recognitio*), were systematically brought together by the *Coetus de coordinatione* in the 1986 *Schema Codici Iuris Canonici Orientalis* (*SCICO*). After a review

of the 1986 *SCICO* was conducted by the *Coetus de expensione observationum*, further amendments were made to the proposed Eastern draft before, during and after the 1988 second plenary assembly of *PCCICOR*, which subsequently submitted the *Schema novissimum* to the Holy Father on January 28, 1989. On October 18, 1990, John Paul II ultimately promulgated *CCEO*, which constituted a first, complete code of law common to the Eastern Catholic Churches. For the great benefit of canonical research, most of the work detailing the legislative history of the *CCEO* canons has been recorded in *Nuntia*, the official organ of *PCCICOR*.

Although the 1990 *CCEO* constituted a first, complete code of common law for the Eastern Catholic Churches, its promulgation did not signal the completion of the canonical ordering for these Churches. In a broad application of the principle of subsidiarity, in fact, *CCEO* allows for each of the Eastern Churches *sui iuris* to adopt a code of particular law attuned to that Church's specific conditions and traditions.[1] Now twenty years since the promulgation of *CCEO*, one might expect each Church *sui iuris* to have its own particular law. However, for any number of reasons, including a lack of resources and personnel, that is not always the case and rarely do we find reported proceedings, like *Nuntia*, to describe the work involved in elaborating the particular law. In an exemplary fashion, the Maronite patriarchal Church quickly undertook the task of producing a code of particular law, which the patriarch promulgated on June 4, 1996.[2] Subsequently, in the context of a patriarchal assembly celebrated from 2003-2006, the Maronites again began a process to review and update that particular law. The final results of this process have yet to be published and, unfortunately, there is very little material available concerning the legislative history behind either the update to the 1996 legislation or the 1996 code, itself, which has only been published in Arabic notwithstanding the patriarchal assembly's adoption of a tri-lingual policy (Arabic, French and English).[3]

Those things said, the answers to the questions posed in this paper evidently will not be as exhaustive as one would have hoped. In any case, within the framework of this study meeting's round table discussion of the legislative activity of the various Churches *sui iuris*, five issues or questions have been identified for examination. With particular regard to the Maronite patriarchal Church *sui iuris*, this brief study endeavours to respond to the five questions raised under five corresponding headings.

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[1] For a detailed study, see J. ABBASS, *Subsidiarity and the Eastern Code,* in L. OKULIK (ed.), *Le Chiese* sui iuris: *Criteri di individuazione e delimitazione* (Studium Generale Marcianum 1), Venice 2005, pp. 41-65.

[2] See *La revue patriarcale* 15 (1996) 41-52 (in Arabic).

[3] With the gracious permission of the eparchy of St. Maron (Brooklyn, NY), the writer has been able to consult an unofficial English translation of the 1996 Maronite particular law. The articles of the 1996 law quoted in this paper are taken from that translation. Otherwise, the English translations in this paper are the writer's.

1. Actual State of Preparation/Promulgation of the Particular Law

In the Foreword to the 1990 Maronite particular law, Father Paul Sfeir, custodian of the patriarchal archives, provided a brief sketch of the legislative history behind the promulgated text. It was soon after the promulgation of *CCEO* that the Maronite patriarch, Mar Nasrallah Boutros Sfeir, asked a commission of three bishops (Harb, Joubeir, and Rahi) formed by the synod to prepare a preliminary draft of the particular law of the Maronite Church. After first gathering the written and unwritten sources, the commission's aim was to identify all the *CCEO* canons which referred to the implementation of particular law on the part of each Church *sui iuris*. Already in May 1991, the commission presented its first draft of the particular law to the Maronite patriarch and synod. On February 25, 1992, the commission completed the text of this preliminary draft and presented a second schema of 147 articles and presented it to the bishops for their review and suggestions. Subsequently, both before and after the June, 1992 synod meeting, the commission received observations which resulted in amendments to the schema. Reduced to 105 articles, a third modified schema was then submitted to the Maronite synod on September 7, 1992. The patriarch asked for further written observations by December 1992 and considered the text, together with the bishops' observations, in successive meetings of the synod until February 1993. According to the Foreword, the synod reviewed the text one last time, approved it, and then sent it to the Congregation for the Eastern Churches in Rome.

Although the Foreword does not explicitly state when the synod gave the text final approval, it would seem that it had to occur at least after May 1993. The Maronite episcopal commission apparently prepared a May 1993 draft containing 109 articles.[4] After being published, that draft was examined by this writer in another study.[5] It may well be that the particular law draft of 109 articles was sent to the Congregation for Eastern Churches and Rome made recommendations that slightly reduced the text to 105 articles. Alternatively, the modified September 1992 draft, containing 105 articles, could have been sent to the Congregation. While it remains unclear exactly which text was sent to Rome, in any event, the synod was not obliged to forward the schema of particular law before its promulgation. *CCEO* canon 112 §1 states: «The promulgation of laws and the publication of decisions of the synod of bishops of the patriarchal Church is the competence of the patriarch».[6] Of course, after its promulgation, the particular law needed to be sent to the Roman Pontiff as

[4] The 1993 draft was published in K. BHARANIKULANGARA, *Particular Law of the Eastern Catholic Churches* (Maronite Rite Series IV), New York 1996, pp. 197-208.

[5] See J. ABBASS, «A *Codex particularis* for the Maronite Church», *Iura Orientalia* 3 (2007) 14-36.

[6] English translations for the *CCEO* canons have been taken from: CANON LAW SOCIETY OF AMERICA, *Code of Canons of the Eastern Churches: Latin-English Edition*, Washington 2001.

soon as possible (see *CCEO* can. 111 §3).[7] Promulgated on June 4, 1996 and still in force, the Maronite particular law, which contains 105 articles, does not differ substantially from the 1993 draft.[8]

2. Issues (Questions) Defined and Yet to be Developed

The Foreword to the 1996 Maronite particular law indicates that the aim of the commission elaborating the code was to identify all the *CCEO* canons which refer to the implementation of the Church's particular law. In substantially the same way as the 1993 draft, the 1996 particular code basically legislates only with regard to explicit (direct) references in *CCEO* to particular law. However, even in those cases, the 1996 legislation often does not legislate when that option is available, deferring instead to the *CCEO* common law provisions. From this perspective, while the 1996 code had the merit of being promulgated soon after *CCEO*, it might have been more comprehensive given that *CCEO* expressly allows for a variety of particular laws. In some other cases, where *CCEO* proposes that a matter be governed either by particular law or by the patriarch with the consent of the permanent synod, the 1996 legislation generally chooses the latter solution over the establishment of a particular law. Finally, there is the area of particular law expressly (implicitly) intended by the omission in *CCEO* of more detailed, prior Eastern norms. The 1996 code seems to have missed this component of particular law completely and has yet to develop it. These considerations are now illustrated in the following four sections.

2.1. Deferring to the Common Law

The following list of *CCEO* norms, together with their related subjects, refer to matters that the 1996 particular law does not define or otherwise qualify, deferring instead to the common law.[9]

CCEO Subject
89 §2 Appointing a cleric/religious to a patriarchal office
107 §1 Quorum (majority) established for synod of bishops
127 Choosing administrator for vacant patriarchal
128, 2°Duties of administrator of vacant patriarchal see

[7] *CCEO* can. 111 §3 states: «Acts regarding laws and decisions are to be sent to the Roman Pontiff as soon as possible; certain acts, or even all of them, are to be communicated to the patriarchs of the other Eastern Churches according to the judgment of the synod».

[8] While it goes beyond the scope of this paper to compare the 1993 draft to the promulgated 1996 text, at least the total number of 105 articles is easily reconciled. In the 1993 draft, artt. 22 and 23 are combined in the 1996 text, art. 68 of the 1993 draft is incorporated into the 1996 art. 65, and artt. 76 and 104 of the 1993 draft are omitted in the promulgated text of the Maronite particular law.

[9] See also: A. MINA, «Sviluppo del diritto particolare nelle Chiese "sui iuris"», in *Ius Ecclesiarum Vehiculum Caritatis (Atti del simposio internazionale per il decennale dell'entrata in vigore del* Codex Canonum Ecclesiarum Orientalium), Vatican City 2001, pp. 547-553.

CCEO	Subject
220, 2°	Re: vacant eparchial see, interim power transfers to patriarch
224 §3	Auxiliary bishops retain power during vacant eparchial see
252 §1	Regarding a chancellor's principal duties
284 §2	Re: appointment of a religious as parish priest
302 §1	Regarding a parochial vicar's general obligations
357 §2	Re: ascription of clerics
689 §3	Recording the names of adoptive parents
699 §3	Participation of Christian faithful in the Divine Liturgy
792	Re: diriment impediments (none established in 1996 code)
864 §2	Establishing other reasons for legitimate separation
879	Register of the dead
898 §2	Right of the pastor to receive individuals into the Church
910 §2	Appointing guardians
934 §1	Re: authorities required to seek counsel
948 §1	Re: presider's duty to convoke electors
1002	Sixty-day time-limit for deciding a recourse
1004	On recourse, a higher authority cannot amend a decree
1063 §4, 5°	Cases reserved to the ordinary tribunal of the patriarchal Church
1084 §1, 4°	Cases reserved to a collegiate tribunal of three judges
1129 §1	Court/judge determines the persons to be admitted to a trial
1152 §2, 3°	Other time-limits of prescription in penal actions
1242	Judges question witnesses
1420 §2	Remitting a penalty imposed by law
1427 §1	Regarding how a public rebuke is to occur
1518	Sixty-day time-limit for issuing an extra-judicial decree

2.2. Though Permitted in CCEO, No Additional Particular Law in Maronite Code

With regard to other *CCEO* canons which expressly allow for particular law to further regulate certain matters, the Maronite particular law of 1996 often adds nothing to those common law norms. In the context of establishing causes for the legal separation of spouses, for example, *CCEO* canon 864 §2 foresees that particular law can establish other reasons for legitimate separation. As the 1996 code contains no particular norms in this regard, it has effectively deferred to the common law causes for legal separation already set forth in *CCEO* canon 864 §1. Again, in terms of the cases which *CCEO* canon 1084 reserves to a collegiate tribunal of three judges, the same norm (see *CCEO* can. 1084 §1, 4°) permits particular law to establish other such cases. However, the 1996 Maronite particular law does not determine that any additional cases be reserved to a collegiate tribunal. Then, although *CCEO* canon 1152 §2 generally prescribes that penal actions are extinguished by prescription after three

years, the same rule (see *CCEO* can. 1152 §2, 3°) allows particular law to establish other time-limits of prescription regarding delicts that are not punishable under common law. By omitting any reference in this regard, the 1996 code has basically deferred to the three year period of prescription regarding penal offenses punishable under particular law.

2.3. Deferring to the Patriarch with the Consent of the Permanent Synod

In a few cases, *CCEO* proposes that a subject-matter be more specifically regulated either by particular law or by the patriarch with the consent of the permanent synod of a patriarchal Church. Since the 1996 legislation has not chosen to deal with these matters by way of particular law, it is evident that they fall within the competence of the Maronite patriarch acting with the consent of his permanent synod. Consequently, regarding *CCEO* canon 102 §3, it is not according to the norm of particular law but, rather, with the consent of the permanent synod that the patriarch can invite others to attend a patriarchal synod.[10] Also, with respect to *CCEO* canon 186 §1, in cases where a synodal vote occurs by mail ballot, the two bishops acting as scrutineers are to be designated, not in accord with particular law, but by the Maronite patriarch with the consent of the permanent synod. Finally, in the absence of any particular norm in relation to *CCEO* canon 1036 §2, 1°, it is the consent of the patriarch with the consent of the permanent synod that are required for the alienation of eparchial goods whose value exceeds the maximum established by the synod of bishops, but not by double.

2.4. Particular Law Implied by Omission

In a broad application of the principle of subsidiarity, the new Eastern Code effectively attributes to particular law the more detailed regulation of a wide variety of matters previously governed by common law. This has been achieved not only explicitly (directly) by mentioning «particular law» in *CCEO* canons but, also, implicitly (indirectly) by omitting detailed norms of the prior Eastern legislation and thereby leaving those matters for particular law to legislate.[11] Becuse the 1996 Maronite particular law is essentially based upon the explicit references in *CCEO* to particular law, it generally does not address the matters that *CCEO* has implicitly left by omission for the particular law to define. Regarding just the matter of temporal goods, for example, *CCEO* canons 1007-1054 have omitted a great deal of detail previously contained in *PA* canons 232-301. Those *PA* norms which are now

[10] While article 10 of the 1996 code, unlike the previous drafts, does cite *CCEO* can. 102 §3, the article does not deal with inviting others to the synod. Article 10 states: «§1. The synod of bishops of the patriarchal Church ordinarily meets at least once a year in the first week of June, unless the patriarch sees the necessity to convoke it at another time with the consent of the permanent synod. §2. The synod of bishops of the Maronite Church has its own proper statutes enacted by the fathers of the synod themselves».

[11] See ABBASS, *Subsidiarity* (nt. 1), pp. 43-44.

implicitly left to particular law to govern have already been described elsewhere.[12] Here are just a few examples in relation to the 1996 Maronite legislation.

2.4.1. Tithing

Regarding tithing, *PA* canon 239 stated: «Since it is an obligation to fulfill, the Christian faithful are to pay faithfully the tithe and first fruits, according to the laws and legitimate customs of each rite and place». While the 1996 Maronite legislation does not impose the obligation of tithing, it nevertheless mentions it in the context of those contributions that can be levied upon physical persons by the particular law of a Church *sui iuris* (*CCEO* can. 1012 §2[13]). Article 93 of the 1996 code states:

«The diocesan bishop has the right to impose a tax on the faithful in order to provide pastoral services such as worship, apostolate, salaries of those who serve the altar and assistance to the poor, in conformity with the Church mandate to tithe and with canon 1012 §2». Obviously, particular law need not incorporate former norms simply because the common law implicitly gives it that authority. That would simply defeat the whole purpose behind the principle of subsidiarity. Regarding tithing as a possible tax, it seems that article 93 of the Maronite particular law attempts to strike an appropriate balance. While the norm recognizes tithing as a guiding principle for assessing personal taxes, it effectively acknowledges that the imposition of such a tax is probably unrealistic.

2.4.2. The Patriarch: Receiving Goods/Assistance for the Patriarchal Church

According to *PA* canon 241, the patriarch could administer ecclesiastical goods and exact financial support for the patriarchate in a variety of ways. *PA* canon 241 §§ 1-2 established:

> §1. The patriarch can:
>
> 1° Receive, for the patriarchate, bequests, inheritances, donations, and resources, either from his own subjects or others, according to the pious intentions of benefactors and canonical norms, employing these things or, in the case of necessity, expending them.
>
> 2° Where the practice exists, exact a moderate fee or *cathedraticum* from local hierarchs of his patriarchate and, with due regard for can. 243, 244, exact the usual tithe, offerings and collections from the faithful and from moral persons.
>
> §2. It is for the patriarchal synod to determine the tithe, offerings or collections in §1, 2° that are to be paid or offered to the patriarch.

In the 1996 Maronite particular law, only articles 6-8 deal with the patriarch's rights and duties while articles 93-100 regarding the temporal goods of the Church concentrate chiefly on an eparchial bishop's rights and obligations. Neither section treats the patriarch's

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[12] *Ibid*., pp. 54-64.

[13] *CCEO* can. 1012 §2 states: «Taxes can be imposed on physical persons only according to the norm of particular law of their own Church *sui iuris*».

use or collection of temporal goods for the benefit of the whole patriarchal Church. Evidently, these are matters that should be covered by Maronite particular law even though tithing and taxes such as the *cathedraticum* may need to be adapted to present day circumstances.

2.4.3. Bishop's Cathedraticum

According to the previous Eastern legislation, churches and benefices were also required to pay their bishop the *cathedraticum* in support of his work. *PA* canon 242 stated:

> All churches or benefices subject to the jurisdiction of a bishop, and likewise confraternities of laity, must, each year as a sign of subjection, pay the bishop a fee or *cathedraticum* determined according to the norm in can. 245 §1 (now *CCEO* can. 1013 §1), unless ancient custom has already determined otherwise.

It may be that this norm was considered, but determined unnecessary, in the formulation of the 1996 Maronite legislation. In fact, *CCEO* canon 1012 §1 already grants the eparchial bishop the right to tax all juridical persons subject to him.[14] While this provision in the common law may have been deemed sufficient, particular law can still impose a specific tax or *cathedraticum* on churches subject to an eparchial bishop.

3. Objectives Set after 1996 to Renew and Update the Maronite Church and its Particular Law

In 1997, after the promulgation of the apostolic exhortation, *A New Hope for Lebanon,* preparatory work resumed in order to celebrate a patriarchal synod (assembly) within the meaning of *CCEO* canon 140.[15] Subsequently, four sessions were held: three working sessions - June 2003, October 2004, and September 2005; a fourth closing session took place in June 2006. The assembly's deliberations focused upon, and ultimately produced four files, comprised of twenty-four texts. In a report on the assembly's work, Monsignor Mounir Khairallah, assistant secretary general, provides some detail regarding the contents and objectives of these texts.[16]

File I, which contains four texts, deals with the identity, vocation and mission of the Maronite Church. Monsignor Khairallah states: «These documents call Maronites to know themselves better by effecting a return to their origins in order to rediscover the constitutive elements of their identity and the constants of their vocation, and therefore to show

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[14] *CCEO* can. 1012 §1 states: «Insofar as it is necessary for the good of the eparchy, the eparchial bishop has the right, with the consent of the finance council, to impose a tax on juridic persons subject to him; this tax is to be proportionate to the income of each person. No tax can be imposed, however, on the offerings received on the occasion of the celebration of the Divine Liturgy».

[15] *CCEO* can. 140 intentionally refers to a «*conventus patriarchalis*» or «patriarchal assembly» to distinguish that consultative assembly from the patriarchal synod referred to as «*synodus episcoporum Ecclesiae patriarchalis*» throughout the Eastern Code. Although the use of «patriarchal synod» would therefore seem to be inexact, it appears consistently in the context of the Maronite Church's publications regarding its renewal.

[16] M. KHAIRALLAH, «Le synode patriarcal maronite: session conclusive», *Proche-Orient Chrétien* 56 (2006) 44-52.

themselves faithful to the mission entrusted to them by Christ in the East and in the West».[17] File II, comprised of ten texts, concentrates on pastoral and spiritual renewal in the Maronite Church. With respect to these documents, the assistant secretary general states: «They call the Maronites, both the hierarchy and the faithful, to assume their personal and community responsibility in the required renewal and to put it into practice in their Church at all levels».[18] File III, made up of nine texts, treats the broader theme of the Maronite Church in today's world. Regarding the declaration on this subject, Khairallah states: «These texts call Maronites to reconsider the profound changes happening today, by reading the signs of the times in order to be more present to our world and to contribute to its development in all the sectors of life».[19] These three files, together with their twenty-three texts, were published in 2008 by the Maronite Church in Arabic, French and English.[20]

Of particular interest for this paper is the fourth file, containing a single text, which includes the update to the 1996 particular law of the Maronite Church. Although the text has undergone revision, it has yet to be promulgated. Monsignor Khairallah states:

> The fourth file – «The Laws and Discipline of the Maronite Church» – comprises a single canonical text, still in the works; it is being developed on three fronts: the revision of the canons in the light of previous Maronite synods and the canon law of the Eastern Catholic Churches, and updating the particular law ratified in 1996, to which it is necessary to add the new institutions created since, as well as the recommendations and synodal (assembly) decisions which will be made into canons.[21]

A working schema, only in Arabic, of File IV has been posted on the internet.[22] However, the project for an updated Maronite code of particular law is still ongoing. At the time of this writing (June 2010), it would appear that observations to the canonical text were still being considered at the annual June meeting of the synod of bishops of the Maronite Church.

4. Noteworthy Things of a Juridical Nature in the 1996 Maronite Particular Law

Regarding noteworthy aspects of a juridical nature in the 1996 Maronite legislation, there are observations that can be made on two important subjects: i) the procedure in relation to the election of bishops; and ii) the jurisdiction of the patriarch and his synod outside the territory of the patriarchal Church. In both areas, the 1996 particular code seems to lack clarity and precision.

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[17] *Ibid*., p. 45.

[18] *Ibid*.

[19] *Ibid*., p. 46.

[20] MARONITE PATRIARCHAL SYNOD, *Maronite Patriarchal Synod (2003-2006): Texts and Recommendations*, Bkerké 2008.

[21] KHAIRALLAH, *Le synode patriarcal* (nt. 16), p. 46.

[22] See the home page of www.maronitesynod.com for this working schema.

4.1. The Procedure for the Election of Bishops (see art. 12 and CCEO cann. 182 §3, 183 §2)

Regarding the election of bishops in the patriarchal Churches, the previous Eastern legislation in *Cleri sanctitati* (*CS*) canon 252 §2, 2° had established that, at the election session of the patriarchal synod, the patriarch had the right of proposing the names of the candidates to be bishops («*ius nomina candidatorum proponendi*»). Within *PCCICOR*, it was simply decided that bishops had to be free to elect as bishops those they considered to be worthy. That norm was ultimately promulgated as *CCEO* canon 183 §2, which states: «The bishops are freely to elect the one whom before all others they consider before the Lord to be worthy and suitable». However, during the *denua recognitio* of this norm, a lengthy discussion followed a proposal made by a consultative body of the Maronite Church to allow the patriarch the right, as before, to name the candidates for bishop. The proposal stated: «Add to the end of the first paragraph (now *CCEO* can. 183 §2) what follows: *firmo jure particulare quo ius nomina candidatorum proponendi Patriarchae reservatur*. This clause is found in CS canon 252 §2, 2° and, among the Maronites, the patriarch has always had this right».

The expert study group entrusted with the *denua recognitio* of the *Schema canonum de constitutionem hierarchica Ecclesiarum Orientalium* considered the Maronite proposal the main question to be resolved in connection with the draft formulation of *CCEO* canon 183 §2. The group's response not only clarified the issue but, in the context of this paper, it is also particularly helpful. The pertinent minutes recorded in *Nuntia* states:

> At the meeting in the month of October 1985, it was made known, first of all, that the aforementioned clause (*quo ius nomina candidatorum proponendi Patriarchae reservatur*) is found in CS can. 252, while canon 151 of the schema (now *CCEO* can. 183) is based upon CS can. 254, whose context is different. A similar clause does not appear in it and it would be something to exclude in any case. In fact, if the list of possible candidates was compiled with a majority of the synod's votes and it was *approbata* by the Holy See, we must not further condition the *libera electio* of these candidates with a *ius proponendi nomina* reserved to the patriarch.
>
> The procedure for the election of new bishops proposed in the schema is very similar to that of CS can. 254 and already belongs, insofar as its substance, to the *praxis* established by the Holy See almost immediately after the conclusion of Vatican Council II. That considered, the study group, after a long discussion, did not find it possible to add to the end of §1 of canon 151 (now *CCEO* can. 183 §2) of the schema such a clause that restricts the juridical meaning of «libere eligant». However, to accommodate the consultative body that made the above-mentioned proposal, it was decided to introduce a similar clause in the preceding canon and, particularly, at the beginning of §3 (now *CCEO* 182 §3) in relation to drawing up the list of candidates to submit for the assent of the Roman Pontiff. In this way, the patriarch will be able to exercise his «ius proponendi nomina» of candidates before their inclusion in the list that must have the assent of the Holy Father.[23]

At the election session of the synod, then, the bishops were to be free to elect as bishops whomever they considered worthy (*CCEO* can. 183 §2). However, the expert study group

[23] *Nuntia* 23 (1986) 12 (can. 151 §1).

did agree to allow the patriarch the possibility of proposing, beforehand, the list of episcopal candidates to be sent to the Roman Pontiff but this possibility would have to be provided for in a particular law approved by the Holy Father. Accordingly, a clause similar to that found in *CS* canon 252 §2, 2° was added to the draft formulation of *CCEO* canon 182 §3. As promulgated, the new Eastern norm states: «Unless particular law approved by the Roman Pontiff determines otherwise, the synod of bishops of the patriarchal Church is to examine the names of the candidates and draw up by secret ballot a list of the candidates. This list is to be transmitted through the patriarch to the Apostolic See to obtain the assent of the Roman Pontiff».

Given these things, it should be clear that the patriarch, in accord with particular law approved by the Roman Pontiff, can determine the names of candidates on the list submitted to the Holy Father for his assent. However, at the election session of the synod, the patriarch is not to determine or present the name(s) since the bishops are to be free to elect the candidate(s) they deem suitable. With reference to article 12 of the 1996 Maronite particular law, it stipulates that the patriarch, alone, determines the names of the candidates to the episcopate. From these names, the bishops compile by a secret vote the list that is to be submitted for the Roman Pontiff's assent. Then, at the election session, it also appears that the patriarch presents the names of the candidates for election. This seems to conflict with *CCEO* canon 183 §2 and article 12 makes no reference to any particular law approved by the Roman Pontiff regarding the procedure to elect Maronite bishops. In any case, article 12 states:

> §1. Only members of the synod of bishops of the patriarchal Church can propose candidates suitable for the episcopate. It is also for them to collect, with discretion and prudence, information and documents that are necessary to prove the suitability of the candidates. The bishops are to report their findings to the patriarch during the consultations about the candidates. Then, the patriarch, at the election session, will present the names of the candidates proposed by the fathers for election by secret ballot. The election shall take place according to canon 183.
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> §2. It is up to the patriarch alone, according to the particular law approved by the Roman Pontiff, to bring before the fathers of the synod the names of the candidates to the episcopate. After deliberation, the fathers shall compile a list of the candidates by secret ballot which is to be transmitted through the patriarch to the Apostolic See to obtain the assent of the Roman Pontiff.

Despite the clarity of *CCEO* canons 182 §3 and 183 §2 regarding the election of bishops, article 12 lacks precision. The recent patriarchal assembly held in the Maronite Church may not have been clear, either, regarding the current Eastern norms. Reporting on the third session of the patriarchal assembly and, in particular, the procedure to elect bishops, Monsignor Khairallah states: «The current canon law says that only the patriarch presents the names to the assembly of bishops for the election, but after having consulted the bishops; and the bishops are to discreetly consult the clergy and certain lay people before presenting

names to the patriarch».[24] In his study of the 1996 particular law of the Maronite Church, Antonios Mina also notes a certain incongruence between what is prescribed in article 12 and *CCEO* canons 182-183. He states: «In this way, the patriarch is the only one to know the names of all the candidates to the episcopate. Since, in the election session, he proposes them one by one to the synodal fathers, it is easy to suppose that the patriarch proposes first those he favours. This particular law establishes that the patriarch has the said faculty by virtue of the approval of the Roman Pontiff. However, any reference to such an approval is missing».[25] Finally, even if we admit the approval of a particular law allowing the Maronite patriarch to present the names of candidates for the ultimate list to be sent to the pope for his assent, no particular law can condition the freedom of the bishops at the election session from voting for whomever they consider worthy and suitable to be bishop. In his commentary on *CCEO* canon 183 §2, John Fares states: «The patriarchal prerogative or presentation of candidates by him can be established (can. 182 §3), which could give the appearance of restricting the freedom of choice on the part of the bishops. However, a bishop can vote for any candidate he considers to be most worthy before the Lord, even if the person had not been presented by the patriarch».[26]

4.2. The Competence of the Maronite Synod of Bishops to Make Laws

As a general rule, the synod of bishops is exclusively competent to legislate for the entire patriarchal Church. *CCEO* canon 110 §1 states: «The synod of bishops of the patriarchal Church is exclusively competent to make laws for the entire patriarchal Church that obtain force according to the norms of can. 150, §§ 2 and 3». However, those laws normally have force only within the territorial boundaries of the patriarchal Church. *CCEO* canon 150 §2 states: «Laws enacted by the synod of bishops of the patriarchal Church and promulgated by the patriarch, have the force of law everywhere in the world if they are liturgical laws. However, if they are disciplinary laws or in the case of other decisions of the synod, they have the force of law within the territorial boundaries of the patriarchal Church». With specific regard to the 1996 Maronite particular law, it sometimes legislates in respect to areas outside the patriarchal territory although the tendency is not as consistent as it was in the 1993 draft. Some illustrative examples follow here.

Article 55 of the 1996 code wants to legislate regarding the erection of secular institutes even outside the territory of the Maronite Church. It stipulates: «The erection of secular institutes and the approval of their statutes are reserved to the patriarch with the consent of the permanent synod within the boundaries of the patriarchal territory and outside these boundaries by the eparchial bishop with the consent of the presbyteral council, and after

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[24] KHAIRALLAH, *Le synode patriarcal* (nt. 16), p. 48.

[25] MINA, *Sviluppo del diritto particolare* (nt. 9), p. 543.

[26] J.D. FARIS, *The Eastern Catholic Churches: Constitution and Governance*, New York 1992, p. 424.

consulting the patriarch within the patriarchal territory and after consulting the Holy See outside this territory».

Regarding the recognition of other forms of ascetic life, article 56 of the 1996 legislation was evidently amended and no longer makes any reference to the bishop outside the territory of the patriarchal Church. Article 56 states: «The eparchial bishop with the consent of the presbyteral council can establish other forms of ascetic life which imitate eremitical life, belonging or not to an institute of consecrated life. He can also admit consecrated virgins and widows who live on their own in the world, having publicly professed chastity. The ecclesiastical authority that approves their statutes is the patriarch and the synod of bishops of the patriarchal Church». The earlier formulation, article 57 of the 1993 draft had also made provision for the approval of other forms of consecrated life outside the territorial boundaries of the Maronite Church.[27]

With regard to the approval of societies of apostolic life, the 1996 Maronite law also assigns that competence outside the patriarchal territory to the eparchial bishop, with the consent of the presbyteral council, after having consulted the Holy See. Article 57 states:

> The patriarch and the synod of bishops of the patriarchal Church within the patriarchal territory, and outside the territory, the eparchial bishop with the consent of the presbyteral council after consulting the Apostolic See, can approve and organize societies of apostolic life, whose members, without religious vows, pursue the particular apostolic purpose of the society and lead a common life according to their own rule of life, striving for the perfection of charity through the observance of their constitutions.

5. Obstacles/Difficulties Encountered

The obstacles and difficulties that arose in producing this paper can be viewed from two perspectives. On the one hand, there was little published information available to the writer and basically none in English. On the other hand, the Maronite Commission charged with drafting the 1996 particular law published no official proceedings and, then, the patriarchal assembly which sought to update that law in file IV (text twenty-four) has yet to publish the definitive result. Any number of reasons could explain the long delay but one possible explanation is examined here.

5.1. Difficulties Encountered by the Writer

The greatest for this writer was to find no official translation of the 1996 Maronite particular law, which was promulgated and published only in Arabic. This was especially

[27] Article 57 of the 1993 draft stated: «Other forms of ascetic life, in the manner of eremitic life can be established, whether their members belong to institutes of consecrated life or not. Also permissible are consecrated virgins and widows who make a public vow of chastity while living in the world. In the patriarchal territories, the patriarch, after having heard the permanent synod, authorizes the establishment of these forms of consecrated life and recognizes their statutes. Outside the patriarchal territories, it is the eparchial bishop who does it, after having heard the presbyteral council».

surprising given the specific recommendation made by the patriarchal assembly celebrated by the Maronite Church from 2003 until 2006. Among the texts published by the patriarchal assembly in 2008, recommendation 12(a) of text 17 entitled «The Maronite Church and higher Education» states:

> Since mastering foreign languages has become a necessity for all citizens in the modern societies, and since has started to spread in educational circles in Lebanon alongside French, the synod (assembly) recommends the adoption of the tri-lingual setup: Arabic, French and English, and to employ this prioritization in the use of foreign languages in the light of historical constants, at least in Lebanon. The synod (assembly) also recommends that the Maronite Church maintains this linguistic policy.[28]

Then, a significant drawback to examining the meaning and purpose of the 1996 laws resulted from the lack of published materials that could trace the iter of these norms both before their promulgation and, thereafter, as revisions were considered. Unlike *Nuntia*, which reported the proceedings of *PCCICOR* and constitutes an excellent legislative history for the canons of the new Eastern Code, no official organ reported on the working sessions of the Maronite Commission which developed drafts that led to the promulgated text of the 1996 Maronite particular law. Nor has any publication reported on the fourteen years of subsequent deliberations, especially by the patriarchal assembly, in order to update and further develop the 1996 particular law. Indeed, file IV (text twenty-four) produced by the patriarchal assembly is available only in Arabic and is still in the works.

5.2. An Obstacle (or Unnecessary Detour) in Forging an Updated Particular Law

Certainly, canonical experts and those who have worked on revising the 1996 particular law of the Maronite Church might offer any number of reasons that could explain the rather long wait for the publication of the patriarchal assembly's file IV concerning the laws and discipline of the Maronite Church. However, a recurring theme considered by the patriarchal Churches over the years has drawn this writer's attention and given rise to one question that might explain the delay in updating the Maronite particular law. Is it possible that those charged with the revision of the 1996 code might have turned their attention to other considerations that necessitated a further review and, therefore, delay in updating the Maronite legislation? That question precisely concerns the principle of territoriality, which effectively limits the exercise of the jurisdiction of the patriarch and synod outside the patriarchal territory.

According to ancient Eastern tradition, the territorial limits of the patriarchal Churches were set and the patriarch and his synod could not exercise jurisdiction outside those boundaries. No ecumenical council, including Vatican II, has acted to change or extend those territorial limits. In this regard, the Vatican II decree *Orientalium Ecclesiarum* (n. 7) states:

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[28] MARONITE SYNOD, *Maronite Synod Texts* (nt. 20), p. 674.

> The patriarchal institution has existed in the Church from ancient times and was already recognized by the first ecumenical councils.
>
> By the name of Eastern patriarch is meant a bishop, to whom belongs jurisdiction over all bishops, including metropolitans, the clergy and the people of his own territory and rite, according to the norm of law and with due regard for the primacy of the Roman Pontiff.
>
> Wherever a hierarch of any rite is appointed outside the boundaries of the patriarchal territory, he remains aggregated to the hierarchy of the patriarchate of the same rite according to the norm of law.

Although the new *CCEO* norms are consistent with ancient Eastern tradition and the conciliar decrees confirming the principle of territoriality, fifteen members of *PCCICOR* had requested the Holy Father during their 1988 plenary assembly to extend patriarchal jurisdiction throughout the entire world. Preferring a Code in conformity with Eastern traditions and conciliar decisions, the pontiff did not grant the request but agreed, instead, «to consider, once the Code was promulgated, proposals formulated by the synods with clear reference to the norms of the Code, that they believed appropriate to specify with a "*ius speciale*" and "*ad tempus*"».[29]

After the promulgation of the new Eastern Code, the subject regarding the extension of patriarchal jurisdiction to the diaspora apparently remained an open and recurring question. In March of 2001, the six Catholic patriarchs of the Middle East wrote the Roman Pontiff requesting that their jurisdiction be extended throughout the world. The patriarchs asked the Holy Father «to grant them, with the synods of their Churches, the right and obligation to govern themselves according to their own particular disciplines throughout the entire planet, obviously in accord with the norms of law and with due regard for the primacy of the Roman Pontiff, and to erect parishes and eparchies in all parts of the world where there are groups with sufficient numbers of their faithful so that they continue to preserve their identity and belonging to their Church».[30]

Subsequently, in November 2001, the Holy See sponsored a symposium to celebrate the tenth anniversary of the promulgation of the Eastern Code. In his unscheduled discourse to the participants, Cardinal Angelo Sodano undoubtedly responded, on behalf of the pope, to the March 2001 letter and the persistent question it posed.[31] Since his clear response is important, especially for those who may not have heard it or attended the symposium, it

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[29] *Nuntia* 29 (1989) 27.

[30] This letter of March 2001, entitled «Relations entre les Églises patriarcales catholiques et le Siège Apostolique de Rome» was published in its original French by ÉLIE HADDAD, *La collégialité épiscopale dans les Églises orientales catholiques* (en arabe), Beyrouth 2003, p. 276. This citation and footnote, in turn, appeared in SYNODE PATRIARCAL MARONITE, *Réflexions synodales (Conférences données par le Prof. Hervé Legrand, op.),* Bkerké 2008, p. 101.

[31] There can be no doubt that Cardinal Sodano was speaking for the pope. In his discourse to the participants, John Paul II stated: «Yesterday, I asked the Lord Cardinal Secretary of State to anticipate my greetings together with some considerations regarding important points of existing canonical discipline». See JOHN PAUL II, «Discorso di Sua Santità Giovanni Paolo II ai partecipanti al Simposio», in *Ius Ecclesiarum Vehiculum Caritatis* (nt. 9), p. 597.

bears repeating in full here. Regarding the principle of territoriality, the Secretary of State stated:

> It is appropriate here to recall the so-called «principle of territoriality», firmly maintained by all the ecumenical councils, including Vatican Council II, in light of which the Holy Father wished the *Codex Canonum Ecclesiarum Orientalium* to be elaborated. The members of the Commission that prepared the Code, among whom figured prominently the six Eastern patriarchs, showed to have understood this perfectly when, during the plenary assembly in November 1988, they withdrew, after the Holy Father's reminder, a motion signed by fifteen members, in which they aimed at obtaining the extension of patriarchal jurisdiction to the whole world. In fact, the pope had asked that a draft Code be presented to him in full conformity both to Eastern traditions and to the conciliar decisions, among which also those of Vatican Council II, which had not granted the request to extend such jurisdiction outside the legitimately established boundaries of the patriarchal Church. From then, the work of the assembly proceeded in a serene and efficacious manner. Indeed, it was evident to all that the draft Code that was on the table of the assembly, the product of almost twenty years of hard work, carried out with the collaboration of the entire Eastern episcopate, was in conformity, also on the theme of territoriality, with Eastern traditions and the conciliar decisions.
>
> On that same occasion, however, the pope added that, for the Churches having faithful outside their own territory, he would be happy to «consider, after the Code was promulgated, proposals formulated by the synods with clear reference to the norms of the Code, that they believed appropriate to specify with a '*ius speciale*' and '*ad tempus*'». He also reaffirmed this openness on the occasion of the promulgation of the Code, when he presented the new juridical text to the synod of bishops.
>
> Also, you know that the Code even foresees the possibility of a revision of the territorial boundaries of a patriarchal Church. Canon 146 §2 clearly indicates the path to follow in such a case: it is up to the synod of bishops of the patriarchal Church to examine the question in depth, after having heard the superior administrative authority of each Church *sui iuris* concerned. Then, the synod must present the proposal, supported by the necessary documentation, to the Roman Pontiff. Evidently, one assumes that it is a question of proposals not aimed at a reversal of the principle of territoriality sanctioned by the ecumenical councils, but only at boundary changes for reasons of a particular character.[32]

In his concluding remarks, Cardinal Sodano encouraged the participants to have faith in the future. Again, with specific reference to the principle of territoriality, he stated:

> In particular, with regard to limiting territorial jurisdiction, in the already cited discourse before the eighth ordinary general assembly of the synod of bishops, the pope reaffirmed: the norms regarding such jurisdiction «were repeatedly at the center of my attention and, finally, were decided as they are in the Code, as the Supreme Pontiff considers them necessary for the good of the universal Church and in order to safeguard its right order and the fundamental and inalienable rights of all redeemed by Christ». He then concluded: «Please have faith that the

[32] Cardinal ANGELO SODANO, «Discorso di S. Em. Angelo Sodano ai partecipanti al Simposio» in *Ius Ecclesiarum Vehiculum Caritatis* (nt. 9), p. 590.

> "Lord of Lords" and the "King of Kings" will never allow the diligent observance of such laws to harm the good of the Eastern Churches».[33]

Despite these clear statements from the Holy See, the question of extending the jurisdiction of the patriarch continued to interest the Maronite Church. During the years in which its patriarchal assembly was celebrated, the secretariat sought the help of experts such as Father Hervé Legrand, o.p., to animate the theological reflections of the assembly's participants. In April 2004, he presented a series of three conferences, one of which was entitled, «The Exercise of Jurisdiction of the Eastern Catholic Patriarchs beyond their Actual Territory: A Canonical and Ecclesiological Approach».[34] It was during this presentation that Father Legrand examined the principle of territoriality and highlighted the contents of the March 2001 letter, which has already been cited.[35] Unfortunately, the same paper makes no reference to the unambiguous response given by Cardinal Sodano in November 2001.

Evidently, extending patriarchal jurisdiction continued to be one of the salient themes at the third and final work session of the Maronite patriarchal assembly in September 2005. In his report referring to this ongoing theme, Monsignor Khairallah stated:

> The Maronites, notably those of the expansion as well as their bishops, ask that the jurisdiction of the Maronite patriarch be extended to all the faithful everywhere in the world. Until now, the Maronite patriarch only has jurisdiction over the territory of Antioch and all the East, while the Maronites living outside this territory juridically depend on Rome, their patriarch having no authority over them except for the liturgy.
>
> During the discussions, everyone agreed that this delicate question be studied together with the Apostolic See of Rome and the pope, and that it was necessary beforehand to deepen theologically and canonically the concept of the patriarchal institution and the role of the patriarch according to Catholic thinking. Moreover, the secretary general is working at the organization of a colloquium on this theme for June 2006 with Fr. Hervé Legrand, o.p., an expert at the patriarchal synod (assembly).[36]

Even among the 2008 published documents of the Maronite patriarchal assembly, the theme of extending patriarchal jurisdiction still figured prominently. In file II, text 5 («The Patriarchate, the Eparchy, and the Parish») states: «The preference of the Eastern patriarchs to extend their jurisdiction over all the members of their Churches wherever they are located throughout the world, and to do so concerning every issue, continues to occupy the Holy See as it tries to find a fitting and necessary solution in order to preserve the entity and

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[33] *Ibid.*, p. 591.

[34] H. LEGRAND, «L'exercice de la juridiction des Patriarches orientaux catholiques au-delà de leur territoire actuel: approche canonique et ecclésiologique», in SYNODE PATRIARCAL MARONITE, *Réflexions synodales (Conférences données par le Prof. Hervé Legrand, op.),* Bkerké 2008, pp. 99-136.

[35] See note 29, above.

[36] KHAIRALLAH, *Le synode patriarcal* (nt. 16), p. 48. Apparently, the colloquium planned with Fr. Legrand for 2006 did not take place.

identity of Eastern Churches».[37] Given the decisive intervention of Cardinal Sodano in 2001, the argument that this issue «continues to occupy the Holy See» is rather untenable. Indeed, on the basis on what has been described above, it seems, instead, that the question of extending patriarchal jurisdiction may well have overly occupied the attention of the Maronite Church during the years of the patriarchal assembly and constituted a kind of detour or obstacle which, together with other reasons of course, might have prevented a quicker completion and publication of an update to the 1996 Maronite particular law.

[37] MARONITE SYNOD, *Maronite Synod Texts* (nt. 20), p. 160.