



**2nd Congress  
of the World Conference on Constitutional Justice  
Rio de Janeiro, 16-17 January 2011**

**DRAFT  
STATUTE OF THE  
WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE**

**Presentation by  
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Following the successful conclusion of the discussions on the topic of the 2<sup>nd</sup> Congress, I have the honour to briefly present you the draft statute for the World Conference.

Before I go into the articles and the substance of the Statute let me briefly set out the history of the World Conference.

Formalised co-operation between constitutional courts and equivalent bodies has its origin in the Conference of European Constitutional Courts, which was established in 1972. This Conference meets every three years and its next Congress will be held under Romanian presidency in Bucharest in May 2011.

Since its establishment in 1990, the Venice Commission tried to complement the work of the European Conference by facilitating exchange also in between the 3 annual congresses. We did so by publishing important judgements in the *Bulletin on Constitutional Case-Law* and since 1996 in the database CODICES ([www.CODICES.coe.int](http://www.CODICES.coe.int)).

When the Association of French Speaking Constitutional Courts was established, they asked us to work together as concerns our database and on the basis of a co-operation agreement we include their decision in CODICES. This model of co-operation was soon followed by the Southern African Group and later with the Ibero-American Conference, the Union of Arab Constitutional Courts and Councils, Asian courts and so on. However, this co-operation remained a bilateral one between the Venice Commission based in Europe, and the various groups.

The first Congress of the World Conference on Constitutional Justice in South Africa in January 2009 was an attempt to bring all our partner courts and councils together and to enable a direct exchange also between them. In three preparatory meetings,

representatives of the groups prepared the Cape Town Congress. The participants of the Congress adopted a declaration, which inter alia calls upon the representatives of the regional and linguistic groups to draft a statute, which should enable the establishment the World Conference as a permanent body.

Right after the Congress, the Bureau started to prepare such a text, which was discussed at the meetings of the various groups in 2009. Following the discussions in the groups, and notably the meeting of the European group in October 2009, the Statute was revised and received its present form dated December 2009, which was distributed before the present Congress (available at:

Arabic - [www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR\\_2010\\_001-ar.pdf](http://www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR_2010_001-ar.pdf),

English - [www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR\\_2010\\_001-e.pdf](http://www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR_2010_001-e.pdf),

French - [www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR\\_2010\\_001-fr.pdf](http://www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR_2010_001-fr.pdf),

Portuguese - [www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR\\_2010\\_001-por.pdf](http://www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR_2010_001-por.pdf),

Russian - [www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR\\_2010\\_001-rus.pdf](http://www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR_2010_001-rus.pdf),

Spanish - [www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR\\_2010\\_001-esp.pdf](http://www.venice.coe.int/wccj/statute/CDL-JU-WCCJ-BUR_2010_001-esp.pdf)).

On Sunday, the 16 January, the Bureau met again here in Rio de Janeiro and made further proposals for amendment, which I will present along with element of the text in front of you.

Let me briefly present a few important articles, especially those which were discussed and changed as compared to earlier versions.

The Preamble was not changed and mostly refers to the Cape Town declaration which provided the mandate for the Bureau to draft a statute. Please note that two groups – the Portuguese speaking group and the Asian group - were established only this year and their full names will of course figure in the Article 4.b of the final version of the Statute.

Article 1 sets out the objectives of the World Conference, the promotion of constitutional justice and exchange between the regional and linguistic groups. The means of the Conference are global congresses as the one here in Rio de Janeiro, the participation in regional seminars and case-law exchange. The offer of good offices should not be misunderstood as giving a political role to the World Conference.

Upon proposal by the Francophone group (ACCPUF) in the Bureau, co-operation with university institutes and the academic world should be another task of the World Conference.

In Article 2, we probably find the most radical change. Following the requests by the groups in 2009, the text distributed places more emphasis on the individual courts and less on the groups.

Membership is now open only to courts and no longer to the groups as this was the case in the draft discussed in 2009. When we come to Article 4 we will see that the groups only “participate” in the Bureau. This should allow the groups’ presidencies or secretariats to come to the Bureau meetings, without “representing” the group. We hope that this formula will be acceptable for all courts.

Simple accession is open to all courts and councils, which are part of a regional group including the Joint Council on Constitutional Justice of the Venice Commission. This Council unites the constitutional courts and equivalent bodies in the member and observer

states of the Venice Commission. Other courts would have to make a presentation of their activity as a constitutional court.

Article 3 provides for the organisation of congresses at least every three years. On Sunday, the Bureau agreed that the Statute should provide that it the Bureau will decide on the topic of the next Congress only after consulting the General Assembly (that is all members) in writing.

Article 4 sets out the respective powers of the three organs of the Conference: the General Assembly, the Bureau and the Secretariat.

The powers of the General Assembly were widened, especially as concerns amendments to the Statute, which are now a sole competence of the Assembly and no longer a shared one with the Bureau. I will refer to the individual powers at the respective articles.

The Bureau is composed of three Courts elected by the Assembly and by the presidencies or secretariats of the regional and linguistic groups, as well as the Courts hosting the last and the next congress. The Bureau has a presidency which rotates annually between the groups.

Article 4.b.2 clearly sets out that the representatives of the groups “participate” in the Bureau “if they so wish”. No group is obliged to participate in the Bureau and this could not be otherwise in the absence of their formal membership.

The Venice Commission is to provide the Secretariat of the Conference. Over the years, we have built up relations with all the groups and courts present and we have the necessary practical tools already at hand, like our CODICES database and an on-line Forum for exchange. I think we are well placed to provide the services of a Secretariat to the World Conference.

Article 5 provides that decisions in the Assembly and the Bureau are made by 2/3s majority but whenever possible consensus should be sought. The Arabic group now proposes to turn the order around and to provide that decisions are taken by consensus but when no consensus can be achieved, a 2/3 vote could take place.

Consensus should be really the normal case and all efforts should be made to come to a consensus. A good example of such a consensus is the topic of the present Congress, which was the result of a good compromise formulated within the Bureau.

Article 6 on Finances is one of those which were hotly discussed and which were amended in 2009 and re-amended by the Bureau on Sunday.

The first draft had provided for obligatory membership fees but after resistance from a number of Courts such contributions were made non-mandatory as you can see in the text distributed before this Congress.

However on Sunday, in the Bureau an obligatory membership fee in three categories ranging between 500 and 2000 Euros per year was proposed again. Courts which would not be able to make payments could be exempted by the Bureau and would thus benefit from the solidarity of the other courts. It seems that this delicate issue needs further discussions and I would call on you to express your opinion on this issue.

Article 7 settles an important point, languages. At the Cape Town Conference we used 5 languages and the working groups did not have interpretation. Since, then Portuguese has been added because the Portuguese speaking group was established. Given the enormous price of interpretation in six languages in three parallel working groups, which here in Rio de Janeiro is generously covered by the Federal Supreme Court of Brazil, I think we can not go further than these six languages.

For the meetings of the Bureau we have a pragmatic compromise to use only two languages in consecutive interpretation. According to a proposal by the Ibero-American Conference, participants should be able to pay for interpretation.

Article 8 on the amendment of the Statute was itself amended substantially. These powers shifted from a shared competence with the Bureau to the General Assembly only. In the very first draft of the Statute, the World Conference should have been a kind of a federation of the groups, with the Bureau having the main powers. However, during the discussions, the members of the Bureau strongly insisted that main powers and especially that of the amendment of the Statute should be a competence of the General Assembly only.

Article 9 provides that member courts and councils can leave the World Conference by written notice to the Secretariat, which will of course inform the Bureau and the other members. The sentence that membership only ends at the end of the current year has been deleted and it will be possible to quit the Conference with immediate effect.

Also following discussions in the Bureau on Sunday, a clause has been added which would provide that “in cases of flagrant violation of the objectives of the World Conference by one of its members, the Bureau can make a proposal to the General Assembly for the suspension of that member”. Again, this is a matter of such importance that we would like to have your opinion on this issue.

The entry into force of the Statute is regulated in Article 10. Once a final version of the Statute is presented, its acceptance by 30 courts is required for the entry into force. In addition the Bureau now proposes that these 30 members must come from at least three groups.

When will the Statute be ready for acceptance? In 2009 we thought that this would happen very quickly but some courts told us that they need more time. Especially one group, the European Conference, could not decide immediately in 2009. The European Group will have its next Congress in May of this year in Bucharest, Romania. We hope that in view of the revisions of the draft Statute, which I just presented, the European Conference would leave the choice to join the World Conference or not to its member courts and would enable its Presidency – if it so wishes – to “participate” in the Bureau.

Therefore, we envisage a meeting of the Bureau either in Bucharest in May, which should open the Statute for acceptance to all Courts and Councils. What we hope to achieve today is an expression of intent or strong interest in membership from as many courts as possible, which could give us orientation on the way forward. I realise that not all of you may have a mandate to do so today but it would be a pity to let the occasion of your gathering here pass without providing further impetus in the establishment of the World Conference.

Article 11 on Dissolution is not what we want to see happen soon but of course it needs to be regulated. The competence lies in principle with the Assembly but if it cannot meet for more than 5 years, the Bureau can dissolve the Conference.

We have a transitory provision on the first membership of the Bureau, which can be explained by the history of the Conference. Before the Cape Town Conference, what is now the Bureau met three times in order to discuss the very idea of the World Conference and its organisation. These meetings took place in Lithuania, Korea and Algeria. Article 4.b provides that the Bureau is composed of three Courts elected by the Assembly and by the presidencies or secretariats of the regional and linguistic groups. These three courts can be elected at the first Assembly, which should take place at the next Congress. Until then, the Courts which have contributed significantly to the Conference should be members of the Bureau if they so wish.

Finally, following a recent question in the Bureau, the draft Statute should point out that all six languages are authentic.

Presidents, Judges,

Let me be frank. Some courts have informally expressed doubts whether the World Conference should be established at all and whether it would not be too heterogeneous. We can only reply that in every group there will be some who have advanced more quickly and others who still aspire to reach the same level of standards. But the purpose of such a group like the World Conference is not to give certificates of membership as a club of the selected few but to try to discuss, to exchange and to provide inspiration for all judges aspiring democracy, the protection of human rights and the rule of law.

During the two days of the Congress here in Rio de Janeiro, we have heard about many problems relating to the independence of the courts, in Europe and in other regions. The purpose of the World Conference is to support those judges who want to move forward towards greater independence, towards constitutionalism.

Even in very difficult circumstances, you, the judges can make small steps, which will advance the country. The World Conference is not about giving lessons, not about establishing an exclusive club. It is about coming together and exchanging also with those who need the help most. Therefore, I would like to invite you to support the draft Statute.

Thank you for your attention.