

Judicial Cross-Fertilisation

Co-operation between Constitutional Courts as a means of promoting Democracy, the Protection of Human Rights and the Rule of Law

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I. Introduction

Michel Melchior is a long standing friend of the main author. We know him from time he was an eminent member of the European Commission on Human Rights always appreciated his open personality and outstanding qualities as a lawyer and share his love for a good smoke, fine food and admire his sharp legal reasoning. My professional life is marked both by the protection of human rights and by constitutional justice. This is why we have chosen the case of judicial cross-fertilisation and the Venice Commission's role promoting it on a global scale as a contribution in his honour.

II. The Venice Commission and Constitutional Justice

The idea to establish a body of eminent lawyers, ready to provide advice on constitutional matters, was the brainchild of Antonio La Pergola, the Venice Commission's founder first and long time President until he sadly passed away in 2007. Antonio La Pergola

¹ The opinions expressed herein are those of the authors and do not bind the Council of Europe or its

was Minister for European Affairs of Italy at the time of the establishment of the Venice Commission – a position which was crucial for the support needed to establish this body, but he had been Judge and President of the Constitutional Court of Italy before. He dreamt of a “common house for judges” where constitutionalists would meet and exchange their views on common problems of constitutional law. Constitutional law is no longer confined to national boundaries. Issues, such as human rights in general, but also topics such as bioethics or abortion, cross-cut national legal systems and are a legitimate concern for comparative constitutional law. Constitutional texts are national law, but the principles on which they are built are common to all countries and issues which are debated in one country are likely to have been discussed elsewhere. Legal reasoning based on constitutional principles can easily be imported, adapted to the national situation and, therefore, can enrich the debate in the country. It is clear that such arguments will not be binding, but they may be convincing and fit into the national constitutional context. Having inapplicable arguments at hand can be a nuisance; however, to miss important arguments can lead to a wrong or poorly reasoned decision.

From his experience, Antonio La Pergola knew about the difficulties in the exchange of information and experience between constitutional lawyers in Europe, marked by a rich diversity not only of legal systems, which can be an advantage to further discussions, but also of languages. Thanks to legal literature, constitutional lawyers would be able to follow the case-law of courts in large countries such as France or Germany and even the rich constitutional jurisprudence of Antonio La Pergola's own country, Italy, which was accessible to only a few. Since 1972, the prestigious Conference of European Constitutional Courts² tried to remedy this problem, but the Courts could only meet every three years to discuss one specific topic in great depth. After such a meeting, referred to as a “Congress”, the Courts would go their separate ways and the Conference could not ensure the follow-up of the topics discussed. Therefore, once the Venice Commission was established³, Antonio La Pergola invited the Presidents of the Constitutional Courts to a meeting in Piazzola sul Brenta⁴ in Italy, to propose the creation of a permanent network between the Courts under the umbrella of his Venice Commission. This co-operation was not intended to replace the existing work

² See below.

³ More on the creation of the Venice Commission: BUQUICCHIO, Gianni, «Vingt ans avec Antonio La Pergola pour le développement de la démocratie», in VAN DIJK, Pieter/GRANATA-MENGHINI, Simona, *Liber amicorum Antonio La Pergola*, Juristförlaget, Lund (2009), p. 29-34; DÜRR, Rudolf Schnitz, «The Venice Commission», in KLEINSORCE, Tanja, *Council of Europe, in WOUTERS, J., International Encyclopedia of Laws: Intergovernmental Organizations*, Kluwer, Alphen aan den Rijn (2010), pp. 151-163.

⁴ Meeting with the Presidents of Constitutional Courts and other Equivalent Bodies (Piazzola sul Brenta, 8 October 1990) – Science and technique of democracy No.1 / Rencontre avec les Présidents des Cours constitutionnelles et instances équivalentes (Piazzola sul Brenta, 8 octobre 1990) – Science et technique de la démocratie no. 1, Council of Europe Publications, Strasbourg (1990), available also as document CDL-STD(1990)001 at www.venice.coe.int.

of the Congresses of the Conference of European Constitutional Courts, which is organised by the Courts themselves, but it should complement these events by providing regular information on case-law of the participating Court. The idea was welcomed by the Court presidents, who appointed liaison officer to the Venice Commission to provide the necessary information in the form of summaries of cases for a *Bulletin on Constitutional Case-Law* to be published by the Venice Commission in English and in French. In this respect, we owe much to Melchior and to the Belgian Court of Arbitration (now the Constitutional Court) appointing two outstanding individuals as liaison officers: Rik Ryckebroe and Vandernoot were mandated by the Commission to prepare a report on the possibilities (today we would call it a “feasibility study”) of such a co-operation. Their report⁵ set out the basic framework for the co-operation between the Constitutional Courts and equivalent bodies⁶ and the Venice Commission. They established the presentation of the *Bulletin*, defined the need for a database to search the case-law, and, most importantly, provided the concept and first draft for a Systematic Theorem to annotate the case-law according to coherent indexing criteria.

On the basis of this sound concept, the *Bulletin* and later the database CODICES were soon appreciated by the participating courts and the public at large, who created a hitherto unavailable source of information on foreign case-law. In addition, some 70 national Courts, currently two European Courts (the European Court of Human Rights and the Court of Justice of the European Union), as well as the American Court of Human Rights, participate in the *Bulletin* and CODICES. Over time, the Venice Commission added further services to its offer to the Constitutional Courts. Since 1997, the classic Venice Forum welcomes queries from member courts addressed to all the others on comparative law and foreign case-law. In practice, a liaison officer sends a question to the Commission's Secretariat, a first search will be made in the CODICES database and other sources available to the Venice Commission to find elements for a reply. Then, the result is sent to other liaison officers, who are asked to reply directly to the liaison officer who posed the question. Copies of all replies are kept on a restricted site for future reference. This classic Venice Forum was soon supplemented by the Venice Forum News, which is a site where each liaison officer can place questions to the other Courts to make announcements⁸ or provide information about recent or upcoming decisions. While the classic Forum is available only to Courts in member and observer status, the Venice Commission, the Newsgroup is open to all courts linked to the

⁵ CDL-JU(1994)002.

⁶ Such as the Constitutional Council of France or a Supreme Court with constitutional jurisdiction.

⁷ www.codices.coe.int.

⁸ e.g. about appointments of new presidents and judges.

Commission *via* regional partnerships or the World Conference on Constitutional Justice⁹. In the autumn of 2010, a third forum called the Venice-Monnet Forum¹⁰ will be available to the Courts and to the members of the Commission itself as well as to researchers, especially from the International Association of Constitutional Law, which has concluded a co-operation agreement with the Venice Commission.

III. Regional networks of Constitutional Courts

Following the establishment of this practical co-operation with the Commission's predominantly European members and observer States, regional and linguistic groups in other parts of the world expressed their interest to join this effort.

A. Association of Constitutional Courts using the French Language

The Association of Constitutional Courts using the French Language ("ACCPUF")¹¹ was set up in 1996 and covers European French-speaking countries, Canada, Haiti, Cambodia and a large number of African countries. Its founding Secretary General¹², Dominique Remy-Granger, soon approached the Venice Commission asking for its agreement to use the "Venice-model" of documentary exchange also for the French-speaking group. At the meeting of its Sub-Commission on constitutional Justice and the liaison officers in Vaduz, Liechtenstein in 1999, ACCPUF and the Venice Commission signed an agreement to this effect. Since 1996, the CODICES database was already available first on CD-ROM, then on the Internet. In order to avoid separate contributions by the French-speaking Courts, which already contributed to this database (Belgium, Canada, France, Moldova, Romania, Switzerland), but mostly to allow for a single search in the case-law of both geographical areas, ACCPUF renounced to establish its own database and, on the basis of the Djibouti Protocol 2002 to the Vaduz agreement, ACCPUF now contributes to the CODICES database. While contributions from the Venice Commission's members and observer States are published also on paper and both in English and in French, contributions from the other ACCPUF members are integrated only in the French section of the database.

⁹ See below.

¹⁰ This Forum will be set up in co-operation with the Jean Monnet Chair held by Prof. Arnold from Regensburg University, Germany, as the moderator.

¹¹ "Association des cours constitutionnelles ayant en partage l'usage du français".

¹² While the Presidency of ACCPUF moves from country to country within the Bureau, the Secretary General is provided for by the Constitutional Council of France. In practice, the head of international relations of the Council is entrusted with the office of Secretary General of ACCPUF.

Since 2009, the *Organisation Internationale de la Francophonie* ("OIF") kindly pr funds to translate into French the contributions received from associate and of States of the OIF (such as Bulgaria, Ukraine, etc.).

This co-operation established with the French-speaking countries was welcomed by the African members of ACCPUF and enabled them to present case-law within their group and to courts in other regions. The Commission this exchange as the starting point for a strategy to promote the basic values Council of Europe – democracy, the protection of human rights and the rule of among its European members as well as abroad. The Commission soon offered types of co-operation to other sub-regional bodies.

B. Southern African Chief Justices' Forum¹³

In 1994, the Commission's President La Pergola – together with Lord Carrington Henry Kissinger – was invited to participate in a mediation effort regarding a c between the three political parties, the African National Congress, the N Party and the Inkatha Freedom Party in South Africa. When the Swiss G ment wanted to support the democratic transition in that country, they turned Venice Commission as a vector for support. On the basis of an agreement wi South African and Swiss governments, the Commission provided assistance to v State institutions in South Africa, such as the Parliament, the Government, p cial Governments, the National Human Rights Commission and the Constitu Court. Of these, the body most keen to co-operate with the Venice Commi was the Constitutional Court, headed by its admirable Chief Justice Arthur Cl son who – together with the other judges – forged the outstanding jurisprude the Court. Arthur requested an extension of the assistance already provided Constitutional Court to the entire Southern African region. With the agreem the Swiss Government, who allowed the use of the funds originally earmark South Africa alone to benefit the whole SADC¹⁵ region, the Commission w:

¹³ For more information on this programme, see BUQUICCHIO, Gianni / DÜRR, Schnutz Rudolf, *The Commission's Action in Africa*, in YAZICI, Serap / GÖZLER, Kemal / GÖZTEPE, Ece, *Essays in Honour Özbudun, Yetkin*, Ankara (2008), vol. II, pp. 165-174.

¹⁴ The Commission suggested to the Government of South Africa to establish a sister Commission i composed of independent experts in the field of constitutional law with the purpose of providi tance to the African countries. This proposal was, however, not pursued by South Africa. Note attempt to establish a sister Commission in Latin America (discussed further below), which had i fate.

¹⁵ The Southern African Development Community is a regional economic body (www.SADC.i programme did not involve SADC as such, but its geographical scope originally also determined th daries of the co-operation. Soon however, the Chief Justices of Uganda and later Kenya – countries

to co-operate with a relatively homogenous group of mostly common law countries. In practical terms, co-operation was established on several levels: (a) as was the case for ACCPUF, the Commission opened its CODICES database for contributions from liaison officers appointed by the Chief Justices, this time in the English language; (b) thanks to the funds from the Swiss Government and later from Norway, Italy and now Ireland, it was possible to organise meetings for the Chief Justices, registrars and the liaison officers, respectively, in order to tackle issues of common concern¹⁶; (c) most importantly, in 2003, the Chief Justices established the Southern African Judges Commission, renamed "the Southern African Chief Justices Forum" in 2009. When the group found that, in some countries, the independence of the judiciary of the region was in danger, it mandated delegations to undertake fact-finding missions in order to assist its threatened members¹⁷. In order to have a sound basis for such actions, the Chief Justices adopted "Rules of Engagement" in March 2006. The adoption of these Rules resulted in the *de facto* withdrawal from the Group of the Judiciary of Zimbabwe between 2006 and 2009, when the co-operation with the Zimbabwe Judiciary resumed.

There is a very close relationship between the Venice Commission and the Southern African Chief Justices – whose Union was born practically out of the co-operation with the Venice Commission – their statute, adopted in 2003, explicitly provides for a close exchange with the Venice Commission. The Commission continues to support the Southern African Chief Justices Forum, regardless of its current budgetary crisis.

C. Ibero-American Conference of Constitutional Justice

Co-operation with Latin American countries was most dear to Antonio La Pergola, who had close personal and friendly relations with numerous Latin American constitutionalists. The relations with Argentina were so close that Hector Masnatta, Ambassador at large and observer to the Venice Commission in respect of his country, proposed to establish a sister Commission of independent constitutionalists in Argentina¹⁸. Antonia La Pergola welcomed this idea, but suggested to aim higher – probably too high – and to establish such a body for the whole of Latin America¹⁹. Unfortunately, contacts with other major countries in the region soon revealed that

of the SADC – participated in the co-operation whereas the Supreme Court of French-speaking Congo (Kinshasa) did not join the English-speaking group.

¹⁶ Seminars were organised on various topics ranging from judicial independence or human rights to practical topics such as modernising the judiciary. The Chief Justices seminars usually adopted resolutions on how these common problems could be addressed, see www.Venicecoe.int/SACJF.

¹⁷ Such actions were organised for the judiciaries of Swaziland and Zimbabwe.

¹⁸ He proposed to create the COVENARG – "Comisión de Venecia para Argentina".

¹⁹ The working title was COVENAL – "Comisión de Venecia para América Latina".

the lead of Argentina in this endeavour was not appreciated and this rejection only caused the failure of the Latin American association, but also the Argentine initiative. Bilateral co-operation with Argentina, especially that based on the contributions of the liaison officer of the Supreme Court, Rolando Gialdino, *Bulletin* and CODICES, nevertheless continued. However, it was only in 2005 that the Commission was able to establish co-operation with Latin-America as a whole framework of the Ibero-American Conference of Constitutional Justice ("CIJC" the Vth Conference, held in Santiago de Chile, the second author was able to attend the co-operation, which was similar to the one that already existed with ACCPUF the group of Constitutional Courts, Supreme Courts and, interestingly from a European point of view, Constitutional Chambers within Supreme Courts²⁰. The not only covers most Latin-American countries, but also Andorra, Portugal and The CIJC does not have a presidency, but two Secretariats. The Secretariat *pro tempore* is passed on from one country to the next every two years²¹ and the Constitutional Court of Spain²² holds the permanent secretariat. The offer for co-operation warmly welcomed by the CIJC and a number of its member courts already contribute to the CODICES database²³. Following these first contacts, a co-operation was concluded in 2009²⁴.

D. Conference of Constitutional Control Organs of Countries of Young Democracy

This Conference was established on the basis of a common declaration of the Constitutional Courts of Armenia, Belarus, Georgia, Kazakhstan, Moldova, Russia, Tajikistan and Ukraine²⁵. The Courts regularly meet on the occasion of the "Yerevan Inter-Conferences", which take place in that city every year in October. Informa Constitutional Court of Armenia holds the Presidency and Secretariat of this Conference. The situation concerning case-law was different for this Conference as co-

²⁰ In Europe, such a Chamber only exists in Estonia.

²¹ Currently, the Supreme Court of Nicaragua holds the *pro tempore* secretariat.

²² Justice Pablo Pérez Trepms of the Constitutional Court of Spain is the Secretary General *permane* Andorra (member of the Venice Commission), Argentina (observer to the Commission). Br.

²³ became member), Chile (member), Ecuador (recent nomination of a liaison officer), Mexico (observer, now member), Peru (member), Portugal (member) and Spain (member), the Inter-Court of Human Rights is not a member of the CIJC. However, following contacts with its then Ventura Robles, the Commission also invited that Court to contribute to the *Bulletin* and CODICES its case-law is of high interest not only in Latin America, but also in other parts of the world.

²⁴ Signed in Vilnius, Lithuania on 4 June 2008 at the XIVth Conference of European Constitutional which both the then Mexican *pro tempore* and the permanent Spanish Secretariat were represent Venicecoe.int/CIJC).

²⁵ <http://www.concourt.am/intconf/index-e.htm>.

to co-operation with ACCPUF and the SACJF, because – with the sole exception of Tajikistan – the Courts concerned already contributed to the *Bulletin* and CODICES due to the status of their country as members of or observers to the Venice Commission. The co-operation agreement²⁶, concluded in 2003, does not relate to the publication of case-law, but mostly to the joint organisation of the Yerevan Conferences.

E. Association of Asian Constitutional Courts and Equivalent Institutions

Co-operation with Asian Constitutional Courts first started bilaterally, in parallel with the Constitutional Courts of the Republic of Korea and the Constitutional Court of Indonesia in 2005. Through these courts, the Venice Commission came to be involved by the German Konrad Adenauer Foundation, which had gathered Asian constitutional courts and equivalent bodies in their Conferences of Asian Constitutional Court Judges²⁷. At the 2005 conference in Ulaanbaatar, Mongolia, the Commission was able to make its offer for the exchange of information and experience *via* the CODICES database; the Courts in Indonesia, Korea, Mongolia and the Philippines have appointed liaison officers and have begun to contribute to the database²⁸. During the World Conference on Constitutional Justice in Cape Town (see below), the Courts/Councils of Kazakhstan, Kyrgyzstan²⁹ and Russia expressed their interest to join the group. After long discussions and with the support of the Konrad Adenauer Foundation and the Venice Commission, the Courts were able to draft the Statute for an Association of Asian Constitutional Courts and Equivalent Institutions, which has been enacted at the 6th Conference in Jakarta in July 2010.

F. Union of Arab Constitutional Courts and Councils

News about the existence of the Union of Arab Constitutional Courts and Councils first reached the Commission through ACCPUF, but soon the Union expressed its wish to work with the Commission directly. An interesting point is that the decisive

²⁶ www.Venice.coe.int/CCOCOCYD.

²⁷ Regular participants came from the Constitutional Council of Cambodia, the Constitutional Court of Indonesia, the Constitutional Court of Korea (Republic), the Constitutional Court of Mongolia and the Supreme Court of the Philippines. The Supreme Court of Malaysia participated in some of the conferences. Until its dissolution during the military coup in 2006, the Constitutional Court of Thailand participated regularly. The newly formed Thai Constitutional Court joined the group.

²⁸ The Constitutional Council of Cambodia contributes *via* its ACCPUF correspondent.

²⁹ Constitutional Court suspended at the revolution in April 2010, see the Opinion on the Draft Constitution of the Kyrgyz Republic, adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010), CDL-AD(2010)015, adopted on 4 June 2010), available at www.venice.coe.int.

step was taken by the Constitutional Council of Algeria, which was not a member of ACCPUF, during the March 2006 plenary session of the Commission. At this President Bessaïf of the Constitutional Council of Algeria offered to co-operate with the Venice Commission on behalf of the Union. It is interesting to note that the advance of the World Conference, this plenary session gave the regional group opportunity to communicate amongst each other and exchange information, at the same time, the Chief Justices of the Southern African Judges Commission participated in the plenary and had an exchange with the Commission on “constitutional review in common law countries and countries with specialised constitutional courts”.

The Arab offer was gladly accepted and resulted in the conclusion of a co-operation agreement³¹, which provides for contributions to CODICES, exchange of information, but also for the joint organisation of seminars and conferences, with the Commission is able to co-finance thanks to funds from the Government of earmarked for co-operation with the Arab Courts, with a particular focus on the Palestinian National Authority. Indeed, an important element of the co-operation with the Arab Courts was the Opinion on the “Law on the Constitutional Court of Palestine”³². In this opinion, the Venice Commission cautioned against the establishment of a Constitutional Court – replacing the present constitution of the High (supreme) Court – during the present split between the Bank and Gaza.

Following the participation and co-organisation of a number of seminars of the Union of Arab Constitutional Courts and Councils, the Commission is developing its concept of “Intercultural Workshops on Democracy”, which embrace constitutional courts and other State bodies as well as the academia countries.

G. Conference of Constitutional Jurisdictions of Countries of Portuguese Language

Exchange with the Conference of Constitutional Jurisdictions of Countries of Portuguese Language started relatively late and its founding General Assembly took place only in May 2010. At the World Conference on Constitutional Justice in Cape Verde in January 2009, Portuguese-speaking Courts participated without even being

³⁰ See above, now Southern African Chief Justices Forum.

³¹ <http://www.venice.coe.int/uacc>.

³² Opinion on the Law on the High Constitutional Court of the Palestinian National Authority adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009), CDL-AD(2009)014, available at www.venice.coe.int.

ised as a formal group³³. However, they used the meeting in Cape Town for an international meeting, which also served as a basis for the later establishment of the Conference. Already for the 2nd Congress of the World Conference, the Portuguese-speaking group will participate as such and the draft Statute of the World Conference provides for Portuguese as one of the languages of the Conference³⁴.

H. Commonwealth Courts

The Supreme or Apex Courts in the Commonwealth are not formally united into a conference or association. However, during the preparation of the World Conference on Constitutional Justice in Cape Town, the Constitutional Court of South Africa and the Venice Commission decided to invite courts from the Commonwealth countries, because their contribution to the Conference would be of high value and a number of Commonwealth Courts were already invited as members of other regional groups (Southern African, European, Asian). At the Conference, the Commonwealth Courts were welcomed as the other groups traditionally co-operating with the Venice Commission and held a separate workshop together with the Southern African Chief Justices Forum. On behalf of the group, Lord Clarke of Stone cum Ebony³⁵ reported as informal representative of the group and later participated in the World Conference Bureau.

I. Conference of European Constitutional Courts

This Conference is mentioned last, not because its co-operation with the Venice Commission is more recent than that with the other groups, but because of the many years it worked together with the Commission and that this co-operation seemed so obvious that a co-operation agreement was never concluded. The Conference was established in 1972 by the Constitutional Courts of Austria, Germany, Italy and Yugoslavia and organises a scientific congress every three years on a specific topic. The Courts' Presidents meet at the congresses and also a year and a half before to decide on the topic of the next congress and the requests for accession. The Conference grew slowly until the fall of the Berlin wall and then expanded quickly, especially up to the

³³ The participation of the African Portuguese-speaking courts was supported by the North-South Centre of the Council of Europe.

³⁴ The co-operation agreement with the Ibero-American Conference (see above) made it possible to have the Systematic Thesaurus (not the case-law itself) in Spanish and in Portuguese in the CODICES database. The introduction of the case-law summaries (*Précis*) themselves in other languages than English and French would defeat the purpose of the database to overcome the linguistic barriers for the exchange of case-law. Then, Sir Anthony Clarke.

³⁶ See <http://www.lrkt.it/conference3.html>.

³⁷ And Commonwealth Courts, see above.

year 2000, taking in new member Courts nearly in parallel to the accession of countries to the Council of Europe³⁶.

In 1996, the Hungarian Presidency of the Conference invited the Venice Commission to participate in their Budapest Congress and to work together with the Commission. Since 1999, the Venice Commission started to regularly prepare a working document for the Conference, presenting relevant case-law (from the CODICES database specifically prepared for this occasion) for the congresses. The Hungarian proposal to establish a permanent Secretariat was not taken up, but the existing practice of the Venice Commission was codified in the Statute of 1999, providing that the rotating presidencies also act as the Secretariat for the Conference.

IV. World Conference on Constitutional Justice

As shown above, in 2008, the Venice Commission had established fruitful cooperation with a number of regional groups. These were, however, always bilateral relationships between the Commission and the respective partners, with the exception of the encounter between the Arab and Southern African group in March 2006 in Addis Ababa. In order to provide for further occasions for exchange and judicial cross-fertilisation, the Constitutional Court of South Africa and the Venice Commission invited groups of judges to come together in Cape Town on 22-24 January 2009 for the World Conference on Constitutional Justice on the topic "Influential Constitutional Justice – its influence on society and on developing a global jurisprudence on rights". This topic was chosen to show that such a gathering was not to be seen as a protocol exercise for the highest courts, but that the World Conference was to have a purpose, such as promoting democracy, human rights and the rule of law not only in countries with a long tradition in the pursuit of these values, but also in countries struggling to live up to the principles enshrined in their Constitutions. Even in countries where democracy is far from being achieved or where we had to witness the support for constitutional judges is a goal worth pursuing. In some countries, judges have little leeway, some risk losing their position or even their life if they confront power outright. However, the judges are only too aware of the need to support their countries and international and foreign support can help them to stand up to pressure and to decide on the sole basis of the Constitution, which often entails all the principles required for a 'just' decision. Support from abroad will allow judges to take at least some steps in ensuring these principles.

The reply to the call for participation from the partner courts was overwhelming³⁸ and 93 Constitutional Courts and equivalent bodies as well as 9 regional and linguistic groups participated. In view of the high number of participants, only presentations by the groups as such were foreseen in order to leave sufficient time for discussion. Nonetheless, a high number of Courts made written contributions.³⁹ The Conference adopted a Declaration⁴⁰, which highlights the role of constitutional justice for the protection of human rights on the basis of universal and regional instruments. However, the declaration also insists on the value of judicial cross-fertilisation between the Courts within the regions and world-wide.

The Cape Town Declaration also “entrusted a Bureau, composed of the Presidents of the regional groups and the three Courts which hosted the preparatory meetings, assisted by the Venice Commission, with the goal of organising a second World Conference on Constitutional Justice” and “with making proposals for the establishment of a World Association open to the Courts belonging to the regional or linguistic groups”.

A few months later, at the VIth Ibero-American Conference on Constitutional Justice in Mérida, Mexico, the Bureau met for the first time⁴¹ and prepared a first draft statute for the Conference. This first version of the Statute laid much emphasis on the role of the Bureau and the representatives of the regional and linguistic groups. However, it soon became clear that both individual Courts and the groups themselves preferred to concentrate deciding powers in the General Assembly, in which the member Courts are represented. Later versions of the draft Statute, which were discussed at further Bureau meetings in Venice in December 2009 and in June 2010, provided a clear shift of competences towards the General Assembly. The draft Statute provides that the Venice Commission acts as the Secretariat of the Conference⁴². The Commission is also to provide a case-law database (the existing CODICES database) and a web-forum (the Venice Forum Newsgroup).

During consultations throughout the year 2009, on the occasion of gatherings of the regional and linguistic groups, most groups and courts welcomed the idea of establishing the World Conference as a permanent body; others, especially in the Conference of European Constitutional Courts were more hesitant and preferred to move towards this goal at a slower pace. The 2nd Congress in Rio de Janeiro will

³⁸ To the extent that a larger venue had to be selected in view of the high number of participating courts.
³⁹ http://www.venicecoe.int/WCCJ/WCCJ_papers_E.asp.
⁴⁰ http://www.venicecoe.int/WCCJ/WCCJ_CapeTown_E.asp.

⁴¹ During the preparation of the Cape Town Conference, the representatives of the groups had already met three times for preparatory meetings held in Vilnius, Seoul and Algiers, but they have met formally, as the Bureau of the World Conference on Constitutional Justice, only since the Cape Town Declaration.
⁴² While the Cape Town event was called “Conference”, the draft Statute provides that the organisation is to be called “Conference”, whereas the gatherings of the members for an exchange on a subject (chosen by the Bureau) are called “congresses”.

be an important step on this path, because it will give the potential member the opportunity to discuss the draft Statute together. A further discussion of the Statute is envisaged for the next meeting of the Presidents of the Conference of European Constitutional Courts, which will meet in Bucharest in May 2011. For discussions in these two fora, another meeting of the Bureau should be able to a final draft for adoption.

V. Conclusion

We have seen that the Venice Commission’s model for co-operation with Constitutional Courts and equivalent bodies proved to be a successful one in Europe, so that soon courts and groups of courts from other regions wanted to participate in this work. If the first contacts with the French-speaking Courts (“ACC were the fruit of specific circumstances (e.g. the fact that the Secretary General ACCPUF was also the liaison officer for the French Constitutional Council establishment of the co-operation with other regional groups of Courts was a strategy to promote the values of the Council of Europe also abroad. What unifies the Commission’s work from other bodies is the regularity and coherence of the exchange via the *Bulletin on Constitutional Case-Law* and the database CES, which are the backbone of the co-operation together with the Venice and the Forum Newsgroup.

This co-operation in the field of judicial documentation is not a purpose in itself, but it is a tool for judicial cross-fertilisation, allowing legal arguments to be shared, the protection of human rights and the Rule of law to travel from country to country, from continent to continent.

Michel Melchior has witnessed the establishment of this judicial network actively supported it, not only during the Presidency of the Belgian Constitutional Court, – then the Court of Arbitration – but also in the Conference of European Constitutional Courts between 1999 and 2002. Michel has the gift of connecting people, of establishing links with and between them, a gift which is essential type of networking that unites Courts in Europe and in other regions of the world today.

⁴³ Through the Systematic Thesaurus developed by the liaison officers.

Liège, Strasbourg, Bruxelles : parcours des droits de l'homme

Liber amicorum Michel Melchior



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