THE VENICE COMMISSION TWENTY YEARS ON

Challenge Met but New Challenges Ahead

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1. THE ORIGINAL CHALLENGE

In the late nineteen eighties Mr Antonio La Pergola's idea of setting up an international forum of constitutional experts with a view to the development of democracy and the rule of law – 'Democracy through Law' – appeared intellectually appealing but politically suspicious, as is indicated by the difficulties which surrounded the actual creation of the Venice Commission.[2] This should not come as a surprise: constitutional law was – and still is – regarded as a State's reserved domain *par excellence*, and giving an expert body the task, hence the power, to criticise and perhaps influence domestic constitutional choices must have seemed, from a national perspective, dangerous. On the other hand, the risk also existed from the international perspective that such a body, if it refrained from entering into the domestic constitutional debates in order to remain politically neutral, would become just one of the many expert groups producing abstract assessments which often remain largely ignored by the authorities of the country concerned.

The fall of the Berlin Wall provided an overwhelmingly good reason to let the Commission roll despite all the scepticism and apprehension; after all, the new democracies of Eastern Europe clearly needed urgent constitutional assistance, and were even eager to receive such assistance: the Venice Commission would be there for them.

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1 All views expressed are personal. The opinions and documents referred to in this chapter are all available on the Venice Commission's website <www.venice.coe.int>.

2 *See* G. BUQUICCHIO, 'Vingt ans avec Antonio La Pergola pour le développement de la démocratie'[Twenty five years with Antonio La Pergola on Developing Democracy] in P. VAN DIJK and S. GRANATA-MENGHINI, *Liber Amicorum Antonio La Pergola*, Lund, Juristförlager, 2009.

While the Commission thus had an undisputed and well-received initial role, its longer-term survival[3] depended on its ability to meet a great challenge: that of being, and proving to be, independent, impartial and 'meaningful'. In other words, in its expert work the Commission would have to come close enough to the heart of the constitutional and political debates to understand the situation and the stakes pertaining as well as offering useful and constructive advice. At the same time, the Commission would need to remain remote enough from such debates to give an objective and neutral assessment of the best options. The Venice Commission's involvement therefore had to make a real difference for those countries seeking its advice.

The Venice Commission has survived, and has done more than that. In its twenty-two years of existence, it has come a long way. It has moved from an experimental laboratory of institutional changes, born out of a 'premonition of great changes in the offing' – in the words of its founder Antonio La Pergola,[4] to an essential point of reference for professional and independent expert advice in constitution-making, in Europe and beyond. The Commission has witnessed and participated in almost all processes of constitutional reform which have taken place since 1990 in Europe.[5] It has expanded to comprise 58 Member States[6] on four continents.

The Commission has thus clearly met its original challenge. Indeed, it has devised a specific and unique 'philosophy', which has been the key to its success. As new democratic challenges arise in Europe and in its neighbouring areas, some may question whether the Commission has stretched to its full limits. Will the Commission's method enable it to keep riding the wave of success?

2. THE VENICE COMMISSION

The Venice Commission is an independent body. Its members and substitute members are appointed by the Member States, but do not represent them.[7] The Commission is a successful combination of constitutional and ordinary judges, law and political science Professors, Prosecutors General, Ombudspersons,

3 The Commission was set up for an initial transitional period of two years: see *Resolution adopted by the Conference for the constitution of the Commission for Democracy through Law*, Venice, 19–20 January 1990 and Resolution(90)6 *On a Partial Agreement Establishing the European Commission for Democracy through Law*, adopted by the Committee of Ministers on 10 May 1990. It is worth noting that the initial Commission was not 'European'.

4 *See* A. La Pergola, Opening Speech at the UniDem Conference on 'Constitution Making as an Instrument of Democratic Transition', Istanbul, 8–10 October 1992.

5 The Commission has assessed constitutional or legislative provisions of more than 30 countries; *see* the website of the Venice Commission.

6 As of 1 September 2012: <conventions.coe.int/Treaty/Commun/ListeTableauAP.asp?AP=9&CM=&DF=07/09/2010&CL=ENG>.

7 Article 2(1) of the Statute.

Members of Parliament and even representatives of the Executive. They act as independent experts. Members do not work on opinions relating to their own countries and abstain from undue interference. Working groups do not comprise members from neighbouring States or from States with which any particular tensions or conflicts exist.

Commission members, as diverse as they are, work together well. They complement each other and they respect each other. For this reason, discussions within working groups and at Plenary Sessions in Venice may be heated and passionate but are never confrontational. The Commission's opinions reflect consensus more than compromise. This is one of the reasons why the Commission's opinions are generally well received and followed by the States despite not being binding on them: the Commission's analysis and recommendations are scrutinized by all Commission Members and overcome objections arising against the background of as many legal systems. Criticism of a given solution will be carefully examined in particular by those members who come from a legal system where the same solution is in place and functions well: the criticism will only be maintained (except of course if it is at variance with the applicable standards) if specific circumstances linked with the domestic context are deemed by the Commission to exist and to justify a different conclusion. This consensual procedure has proven instrumental in identifying the so-called 'European constitutional heritage', which is made up of the common principles and analysis of the experience of the Council of Europe Member States in constitutional matters.

Independence is not sufficient. The Commission also needs to be impartial and neutral. The attitude of not taking any side, of not supporting not only any opposing political sides, but also any equally acceptable constitutional and legal options is crucial for the Commission to be accepted as a valid interlocutor by the national authorities of all its Member States. In its efforts to prove its impartiality, the Commission, as a rule, has refrained from issuing opinions in the heat of an electoral campaign, so that they may not be exploited by either political side.

Neutrality is required in particular because the Commission does not only assess compliance with hard-law standards. Such standards are of course fully binding and are relatively clear and direct. This notably is the case for human rights standards deriving from the European Convention on Human Rights. The Venice Commission has reviewed several constitutional chapters on human rights, which proved to be a rather uncontroversial exercise: the substance of the guarantees is clear, thanks in particular to the case law of the European Court of Human Rights.[8] Some matters may nonetheless be more controversial, for

[8] As concerns formal correspondence, the Commission has often recommended that the wording of constitutional human rights provisions be close to the articles of the European Convention on Human Rights, so as to facilitate the application of the case law of the

example the inclusion in the human rights catalogue, of certain social rights which are merely programmatic (the right to a healthy environment, for example). The Venice Commission in this respect recommends rather to formulate them as state objectives.

In addition to hard law standards, the Venice Commission also assesses the compliance of constitutional and legal texts with soft law standards (e.g. recommendations by the Committee of Ministers of the Council of Europe) or best practices (for example, the guidelines prepared by the Venice Commission together with the Organization for Security and Cooperation in Europe (OSCE)/ Office for Democratic Institutions and Human Rights (ODIHR) on freedom of assembly, political parties and freedom of religion; these are a combination of hard law standards, their interpretation and best practices). It also examines the expediency and workability of the constitutional or legal models actually chosen. These are areas where the standards are not fully binding and are not formulated in clear, univocal terms: States dispose therefore of a much broader margin of appreciation and are free to choose their own model. When there are several options equally in line with the standards, as is often the case, it is not the role of the Commission to express its preference, but only to indicate which option in its view better fits the situation in the country and whether it may function in practice. The Commission has constantly striven to adhere to this principle of neutrality. For example, it has repeatedly emphasised that the fundamental choice between a presidential, a semi-presidential and a parliamentary regime is a political choice to be made by the country in question and that all these regimes can be brought into harmony with democratic standards. The Commission has added that the system chosen should be as clear as possible, and the provisions should not create room for unnecessary complications and political conflicts. So, if a presidential system is chosen, certain minimum requirements of parliamentary influence and control should be fulfilled. In a parliamentary system, in turn, basic requirements arising from the principle of the separation of powers should be respected.[9] The applicable standards here are democracy, the rule of law and the need for checks and balances, but they do not give any indication of how in concrete terms the political system should be devised and how the relations between the President, the Government and Parliament should be articulated.

Similarly, the standards on the independence of the judiciary do not provide univocal indications on practical issues relating to the judiciary such as the

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European Court of Human Rights by the domestic courts. Indeed, constitutional human rights catalogues have been relatively standardised and echo the European Convention. Nevertheless, this is not compulsory, and States may rephrase the Convention's obligations in terms which are more familiar to the domestic legal interpreter.

9 *See e.g.* in respect of Armenia: *Interim Opinion on Constitutional Reforms in the Republic of Armenia*, CDL-AD(2004)044, para. 42; in respect of Ukraine: *Opinion on three Draft Laws proposing Amendments to the Constitution of Ukraine*, CDL-AD(2003)019, para. 14.

guarantees for the judges' irremovability or the allocation of cases,[10] nor on the actual composition of High Judicial Councils.

The Commission's expertise has been crucial to assess the workability of the solutions proposed in draft constitutions and draft legislation, but often this exercise has had more to do with the legal culture of the countries concerned and the best practices of other States than with standards. The Venice Commission must therefore keep its mind open to any solution, provided that it is in line with general standards and is viable. In this respect, the Commission also needs to be creative, in particular when its advice is requested at an early stage, prior to the adoption of the constitution or legislation in question.[11]

Sometimes the Commission recommends a country on not adopting a legal solution which exists in other countries, and as the Commission's 'clients' are more often so-called 'new democracies', the question of double standards inevitably arises. Although the Commission in general neither advocates nor justifies double standards explicitly,[12] its country-specific advice may be found to argue in favour of their existence. The importance of this question, however, should not be overstated. It does not concern the fundamental principles contained in hard law standards. Standards are mostly obligations of results, not of means. As the actual implementation of any constitutional regime depends on the legal, political and social culture pertaining to the country in question, it is not surprising that the Commission should doubt that the French constitutional model may function in countries with a less developed democratic tradition.

While being respectful of the States' margin of appreciation, the Commission has nevertheless at times encouraged developments in a liberal direction. The most emblematic example of this is the Commission's position as regards the definition of national minorities. While acknowledging that the traditional, though not binding, position in international law is to include citizenship among the objective elements of the definition of national minorities and that the choice

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10 The Venice Commission has explored these matters in two important reports on the independence of judges and prosecutors: *Report on the independence of the judges, Part 1, the Judges*, CDL-AD(2010)004 *and Part II – the prosecutors*, CDL-AD(2010)040-e.

11 *See* for example the Commission's proposals in respect of the possible composition of the High Judicial Council in Montenegro: *Opinion on the draft amendments to the Constitution of Montenegro*, as well as on the draft amendments to the law on courts, the law on the state prosecutor's office and the law on the judicial council of Montenegro, CDL-AD(2011)010.

12 *See* the Commission's report on constitutional amendment (CDL-AD(2010)001), in which the Commission noted 'that one should be careful in advocating different amendment rules in old and new democracies'; nevertheless, in its report on the role of the opposition in a democratic parliament (CDL-AD(2010)025), the Commission referred to the need for 'an ethic of self-restraint on the part of the majority, with respect for minority rights and interest' and concluded that 'in new democracies without such democratic traditions, the need for formal rules for protecting the opposition may often be stronger'. This divergence was noted by Fredrik Sejersted at the UniDem Conference on Constitutional Design, held in Helsinki in May 2012.

of limiting the application *ratione personae* of specific minority protection to citizens only is, from the strictly legal point of view, defensible, the Commission has referred to a 'new, more dynamic tendency', expressed notably by the United Nation's Human Rights Committee and the Advisory Committee on the Framework Convention to prefer an article-by-article approach and has encouraged States to extend minority protection to non-citizens.[13]

Finally, thanks to the number, diversity, professional skills and availability of its members, the Commission has been able to provide its services in a very flexible manner, both in terms of timeframe (some opinions have been provided within days of the request) and in terms of kinds of assistance (formal opinions, conferences, exchanges of views, secondment of long-term experts, studies or researches).

3. THE VENICE COMMISSION'S ADVICE

The Venice Commission's business is comparative constitutional engineering, which is a very complex and delicate exercise. In recent times, the comparative business has become rather popular, thanks in particular to the internet, making information on other States' legal systems easily available, so much so that some legislators have given in to the temptation of extracting models from other countries and importing them into their own legal system (often, the existence of the same legal rules in an established democracy has been invoked as an argument for rejecting recommendations to amend them). Needless to repeat, comparative constitutional engineering is not about exporting models uncritically. Before 'transplanting' any model, its compatibility with the different legal, political and social context needs to be tested. In metaphorical terms, the Venice Commission disposes of the knowledge and the methodological tools to identify the donor and to predict the compatibility of the beneficiary.

In practice, however, no mere legal transplant occurs, and adjustments are always made (in Europe, no two constitutions are alike; this is particularly true for electoral systems). The Commission has consistently refused to produce ready-made, universal models of different constitutional regimes or laws on given subjects: each case is different. Through its knowledge and access to the constitutional traditions and experience of its 58 members, the Commission is able to provide carefully calibrated advice.

The Commission's advice is never an abstract one: it is aimed at providing an answer to the questions which underlie any constitutional or legal reform. Prior to adopting an opinion, a Commission delegation generally travels to the country in question and meets with the Parliament – majority and opposition,

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13 For the numerous references *see: Compilation of Venice Commission Opinions and Reports Concerning National Minorities*, CDL(2011)018.

with extra-parliamentary opposition if need be – with the President, the Government, the judiciary, the Constitutional Court, the civil society, the Ombudsman, the media. The aim of the visit is threefold: to learn and understand more about the domestic system and context; to understand the aims of the reform in question and the arguments in favour and against the reform; to establish a channel of communication and a relationship of trust with the reform's stakeholders. The Commission's opinions are prepared in constant dialogue with the authorities and the society of the country concerned. This minimizes the risks involved by the fact that the Commission's understanding of the domestic context can, admittedly, never be full.

The Commission thus refuses to content itself with academic but abstract proposals. One example is particularly illustrative. In 2003, the Commission was requested by the Parliamentary Assembly to examine the human rights situation in Kosovo with a view to remedying that territory's non-inclusion within the jurisdiction of the European Court of Human Rights. Kosovo was not an independent State and was administered mainly by an international organisation – the United Nations Mission in Kosovo (UNMIK) together with Kosovo Force (KFOR). Two main options could be envisaged: firstly, that the statute of the Council of Europe and the European Convention on Human Rights should be amended so as to enable a territory which was not an independent State to become a party, hence extending the jurisdiction of the European Court of Human Rights over it; secondly, that a special, quasi-international human rights court should be created in Kosovo, similar to the Human Rights Chamber which was created in Bosnia and Herzegovina under the Dayton Peace Agreement in 1995. After a visit to Kosovo, the Venice Commission examined both options with scientific interest. However, it realised that neither of them was possible in the short term. Having been to Kosovo and realising how urgently its inhabitants expected a solution to the human rights vacuum, the Commission ventured to propose among others installing an independent human rights panel under UNMIK.[14] While, as such, the proposal was unprecedented and not an easy for the United Nations to accept, the Commission considered it to be feasible. Less than two years later, the UNMIK Advisory Panel was set up,[15] followed at the end of 2009 by the EULEX[16] Human Rights Review Panel, the European Union having taken over UNMIK's role in Kosovo in 2008.[17]

In relation to human rights in Kosovo, the Venice Commission obtained two major results: it provided a short-term practicable solution, which was its first

14 *Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms*, adopted by the Venice Commission on 8–9 October 2004, CDL-AD(2004)033.

15 The Advisory Panel was formally established in March 2006.

16 European Union Rule of Law Mission in Kosovo.

17 See the Venice Commission's follow-up opinion on the existing mechanisms to review the compatibility with human rights standards of acts by UNMIK and EULEX in Kosovo, adopted on 17–18 December 2010, CDL-AD(2010)051.

objective, and made it operational; and it stressed the principle that, when an international organisation carries out executive functions that are similar to those of a State, it must not be exempted from any independent legal review, in particular a system of independent review of conformity with international human rights standards. The European Union's acceptance of the need to install a human rights advisory panel was a great success in this respect.

The Commission considers that in order to be meaningful, its advice also needs to be 'viable', that is, possible to be achieved in the actual domestic context. The Commission, however, has not taken mere 'political feasibility' as a pre-condition for viability. Indeed, subjecting the Commission's proposals to actual political willingness on the side of the authorities would drastically reduce the range of constitutional options. In addition, the Commission would miss the chance of meeting the possibly legitimate aspirations of the opposition and of the civil society.

The Venice Commission does not intend to become an advisor to the ruling majority: it provides its advice in the interest of the whole country. The Commission was proud to see in 2010 that some of its past opinions were being used by new majorities, having thus become part of the constitutional history of the countries concerned: the opinions on the 1996 constitution of Ukraine and on the 2004 amendments to that constitution were extensively referred to in the debates surrounding the annulment in September 2010 by the Constitutional Court of Ukraine of the constitutional amendments of 2004. Similarly, in Kyrgyzstan, the new form of government has been largely modelled on the Commission's recommendations given in 2005 which had been ignored by the authorities then in power.

On the other hand, a specific political culture is a very relevant element to be taken into account in assessing the practicability and the chances of success of a specific proposal. The example of Montenegro appears particularly illustrative in this regard. After its independence from the State Union of Serbia and Montenegro in 2006, political compromise among the eleven parties represented in Parliament proved extremely hard to achieve, and the requirements of super-constitutional majorities invariably resulted in tough political bargaining on issues unrelated to the specific object of the reforms, which crippled the Parliament. In the context of the reform of the judiciary, Montenegro objected to the Venice Commission that the parliamentary appointment of judges and of members of the Judicial Council could not be improved by requiring a two-thirds majority, lest the reforms would be staggered. The Commission insisted on the need to ensure a broader support for the appointments, but proposed, as an alternative, that instead of requiring a two-thirds majority for each appointment, quotas be established for the majority and for the opposition.[18]

18 The two parliament-appointed members of the Judicial Council could thus be appointed: one by the majority and one by the opposition.

4. THE VENICE COMMISSION'S ROLE

The Venice Commission is an advisory body, and its advice is non-binding. It produces opinions at the request of the interested States: any Member State of the Venice Commission may request an opinion on its own legal system; a State may request an opinion on the legislation of another State, provided that the latter agrees, failing which the Commission must bring the issue before the Committee of Ministers of the Council of Europe.[19] Non-Member States may request opinions on their own legal system with the agreement of the Committee of Ministers, but must bear the costs of the Commission's intervention, provided that the Commission has the necessary human resources and time.

The Commission's advice may also be requested by the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities of Europe, the Secretary General, or by a State or international organisation or body participating in the work of the Commission (for example the Office of the High Representative of Bosnia and Herzegovina and the European Union).

Finally, the Commission may carry out research and produce general studies and reports at its own initiative.

The Commission plays different roles, depending on the circumstances of its involvement.

When the State itself requests the Commission's assistance, it obviously has an interest and the political will to listen to the advice. It must not be forgotten in this regard that the Commission's opinions are always made public, so that through the Commission a State exposes itself to public scrutiny, both within its territory and internationally. When it receives the request at an early stage, when the legal text in question has not been finally adopted, the Commission acts as an advisor. It should be noted that the Commission has constantly declined any requests (and resisted the temptation) to propose texts or parts of texts itself, with the exception of certain formulas which echo the European Convention on Human Rights. In the early stages, the Commission often further plays a role in facilitating the dialogue between the majority and the opposition and between

19 The necessity of a ratification by the Committee of Ministers was introduced with the revised statute (Article 3 para. 2 of Committee of Ministers' Resolution (2002)003), after the controversy in 2001 between Romania and Hungary over the latter's so-called 'Status law', conferring rights and privileges to members of the Hungarian minorities abroad – Hungary's so-called 'kin-minorities'. Romania requested the Venice Commission to assess the compatibility with international standards of the status law, by which it considered to have been negatively affected. The Commission sought the agreement of Hungary, and as a compromise the latter requested the Commission to carry out a general study on the legislation on kin-minorities existing in Europe: *see Report on the Preferential Treatment of National Minorities by their Kin-State*, CDL-INF(2001)019.

the authorities and the civil society; indeed, the Commission brings the discussion into the legal field, leaving political passions outside.

When the Commission is requested to assess a legal text which is already in force, its role is also that of an auditor, although the Commission does not confine itself to criticizing existing provisions but normally gives recommendations for improving them. As the request is often motivated by the intention of the legislator to amend the text in question, the Commission maintains its role of advisor.

When opinion requests come from the interested States themselves, it is the rule that the opinions are followed, in part or in full. As previously explained, compliance with the Commission's recommendations is also a direct consequence of their quality, their 'meaningful' nature and of the relations of trust which normally develop between the State and the Commission. Although the Commission does not have any power to demand or impose compliance with its recommendations, it naturally engages in dialogue with the States concerned in order to address the issue of follow-up. Constitutional and legal reforms obviously take time, so that these matters remain on the Commission's agenda for a long time (the Secretariat monitors and regularly provides the Commission with follow-up updates at the Plenary Sessions; these matters are raised and discussed on the occasion of visits to the country concerned). When the Commission is involved in several steps of a constitutional or legal reform, it issues 'interim' opinions prior to the final one: these successive opinions accompany and assist the reform process.[20]

Political pressure on the part of the Council of Europe bodies and also of the European Union may also contribute to the implementation. When opinions are produced jointly with other international organisations such as and *in primis* the OSCE/ODIHR, notably in the electoral field, where opinions as a rule are prepared jointly;[21] additional pressure is put on the relevant State. The Commission takes pride in adopting joint opinions and developing joint sets of standards,[22] as these convey the important message that standards are universal

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20 This procedure has been followed in numerous cases, for example in relation to constitutional reforms in Armenia, Georgia, Kyrgyzstan and Montenegro; to electoral legislation in Armenia, Azerbaijan and Georgia, to legislation in Armenia, Bulgaria and Georgia.

21 A few years ago, the Venice Commission promoted a universal forum of reflection on national minorities, putting together the different competent bodies of the Council of Europe, the Organization for Security and Cooperation in Europe and the United Nations: see for example the round-table on Non-citizens and minority rights held in Geneva on 16 June 2005 (CDL(2006)052).

22 In the electoral field: *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report*, CDL-AD(2002)023rev; *Code of Good Practice on Referendums*, CDL-AD(2007)008, CDL-AD(2007)008; in relation to political parties: *Code of Good Practice in the Field of Political Parties*, CDL-AD(2009)021; *Guidelines on Political Party Regulation*, CDL-AD(2010)024, CDL-AD(2010)024; in the field of freedom of assembly: OSCE/ODIHR – *Venice Commission Guidelines on Freedom of Peaceful Assembly* (2nd edition),

and discourage the practice of 'forum shopping' consisting of exploiting differences of views or even mere lack of co-ordination or information between different international organisations with a view to obtaining the most favourable opinion.

When the request for an opinion comes from a Council of Europe body, the State concerned may be not interested and even reluctant to receive the Commission's advice. These requests are normally made within the framework of the monitoring procedures of the Parliamentary Assembly or of the Committee of Ministers, which will then apply political pressure on the State to ensure implementation of the Commission's recommendations.

In these cases, irrespective of the political circumstances surrounding the opinion request, the role of the Commission remains that of an advisor to the country concerned. The Committee of Ministers or the Parliamentary Assembly may be its 'clients', but the Venice Commission is not an advisor to them: they are political bodies, and the Commission is not a political but a technical body, and its aim is always to provide constructive advice to the country in question.

In all cases, the Venice Commission plays an additional role: that of providing independent expert analysis of the constitutional and legal situation in a given country to the international community. There does not seem to be any other international expert body capable of doing so. The Commission's opinions have been regularly used and quoted by the European Union (notably in the framework of the preparation of stabilization and accession agreements); the United States' State Department has also referred to them in some cases (Georgia and Romania).

Co-operation with other international actors is of particular importance when the Commission is called upon to give advice on possible constitutional solutions for conflict situations. The Commission worked in very close contact with the Office of the High Representative with respect to the implementation of the Dayton Agreement in Bosnia, with the European Union and United Nations with respect to constitutional arrangements in Kosovo and with the European Union for the drafting of the Ohrid Framework Agreement in 'the former Yugoslav Republic of Macedonia' and on the situation in Transnistria, Abkhazia and South Ossetia.

Further, through its scientific conferences, studies and general reports the Venice Commission plays a role in identifying areas in which the elaboration of guidelines appears particularly useful and in developing such guidelines (if possible jointly with other international organisations such as the OSCE/ODIHR). This role may be rather dynamic, as the recent example of the Commission's work on the rule of law shows: after adopting a report on the rule

CDL-AD(2010)020; in the field of freedom of religion: *Guidelines for Assessing Legislation on Freedom of Religion*, CDL-AD(2004)028.

of law[23] in which it explored the different definitions of rule of law, *Rechtsstaat* and *état de droit*, the Commission has proposed an operational approach to the rule of law aiming at promoting a rule of law strategy.[24]

Last but not least, the Venice Commission has played an important role in the protection and promotion of constitutional justice, understood as constitutional review including, human rights case law, as a key element for democracy, the protection of human rights and the rule of law. Constitutional courts are thus a privileged interlocutor and partner of the Venice Commission, which has invariably supported all constitutional courts and has set up a network of translation and circulation of case law, with a view to promoting so-called 'cross–fertilization' amongst courts.[25] The Commission has created the World Conference on Constitutional Justice, which is a unique network of this kind and counts 59 members to date.[26]

5. THE VENICE COMMISSION'S FUTURE

One of the secrets of survival is the anticipation of change and adaptation to it. One needs to be proactive and creative. Ten years ago, the Venice Commission's role in relation to constitutional advice in Eastern Europe seemed to have reached its peak: most States had adopted modern democratic constitutions and chosen their electoral system. Not all had been settled of course, and important reforms (notably in the field of the judiciary) still needed to be accomplished, but the bulk of the work could be thought to have been carried out.

The Commission then turned to two more potential 'clients': the so-called established democracies and non-European States. The Commission had stressed on all possible occasions that its role was not necessarily limited to Eastern European countries and could benefit established democracies too. The latter had mostly turned a deaf ear, although in 2002 Luxembourg lodged three opinion requests with the explicit aim of proving its trust and openness towards the Commission's advice.[27]

As concerns non-European States, in 2002 the Venice Commission became an 'enlarged agreement', meaning that in addition to all Council of Europe Member States, other States could join. Convinced that the common constitutional heritage which it had developed and promoted since its creation was not only 'European' but could indeed benefit from exchanges with non-

23 *Report on the Rule of Law*, adopted by the Venice Commission at its 86th plenary session, Venice, 25–26 March 2011, CDL-AD(2011)003rev.

24 Conference on 'The Rule Of Law As A Practical Concept', Lancaster House, London, 2 March 2012, *see* CDL(2012)001syn.

25 *See* <www.venice.coe.int/site/main/Constitutional_Justice_E.asp>.

26 *See* <www.venice.coe.int/WCCJ/WCCJ_E.asp>.

27 *See* <www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=44&L=E>.

European States, the Commission has carried out a far-sighted and even visionary policy of establishment of contacts and good relations in three more continents (Africa, Asia, Latin America), notably through co-operation in the field of constitutional justice. The results of this policy have been impressive: Kyrgyzstan joined in 2004; Chile in 2005; the Republic of Korea in 2006; Algeria and Morocco in 2007, Israel in 2008; Brazil and Peru in 2009; Tunisia and Mexico in 2010; Kazakhstan in 2012.

The revolution in Kyrgyzstan in 2010 and the Arab Spring in 2011 revealed the full potential of the membership of non-European countries, putting the Commission, once again, at the heart of its core business of constitutional engineering.

In 2011–2012, somewhat unexpectedly, severe constitutional crises have also touched Member States of the European Union (Hungary, Belgium, Romania) and, in an unprecedented manner, the Venice Commission has become involved in them. It therefore seems that the Venice Commission may count on abundant work at least for the next few years. This is obviously good news. But this is not only good news: it is also a new challenge. The Commission must succeed in meeting all the demands it receives including the new ones without losing consistency[28] and without decreasing the high quality of its work. The long-standing success of the Venice Commission proves, if need be, that democracy is not perfect but is perfectible, and it should be perfected 'through law'.

6. PIETER VAN DIJK'S CONTRIBUTION TO THE VENICE COMMISSION

Pieter van Dijk was appointed member of the Venice Commission in respect of the Netherlands on 1 October 1999; he was reappointed three times, until his term expired on 31 July 2011. He contributed as a rapporteur to the preparation of more than thirty opinions on constitutional reforms and on legislation on human rights (notably freedom of assembly, freedom of religion, freedom of expression, right to respect for one's private life, but also the mechanisms of human rights protection), on minority protection, on electoral law and political parties. These opinions concerned sixteen different countries. He was also one of the authors of ten major Venice Commission general studies. In the majority of the examples quoted in this paper Pieter van Dijk was a major driving force, which demonstrates how deeply associated he was with the development and implementation of the Commission's philosophy.

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28 Concern for quality and consistency prompted the Commission to set up a Scientific Council in December 2009. One of its tasks is to prepare compilations of extracts of the Commission's opinions and studies on specific topics, *see* CDL(2011)048, CDL(2011)018, CDL(2011)079 and CDL(2012)014rev.

Pieter van Dijk, a human rights defender with a strong sense of the law, a deep respect for the rule of law and an instinctive refusal of any injustice, acted with rigour and lucid thinking, but also open mindedness and creativity. His search for meaningful and constructive advice never accepted any compromise on the fundamental values which the Venice Commission stands for, as he does.

But his contribution was not only of a professional nature. His characteristic respect for the opinions of others coupled with his ability to listen, his modesty and his sense of measure proved extremely useful in politically and diplomatically sensitive situations but also taught a good lesson on the skills of persuasion.

After twelve years on the Venice Commission, he felt it was only fair to give someone else the opportunity of enjoying the experience. How characteristic of him.

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Liber Amicorum Pieter van Dijk

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