

THE FUNDAMENTAL RIGHTS OF THE CHURCHES IN THE CATHOLIC COMMUNION OF CHURCHES

Fr. Paul Pallath*

1. Right to Existence 2. Right to Equality 3. Right to Legitimate Diversity in Unity 4. Right to Autonomy 5. Right to the Preservation and Observation of One's Own Rite 6. Right to Growth and Development 7. Right to Pastoral Care in One's Own Rite 8. Right to Evangelization; Conclusion

Introduction

The devastation provoked by the two world wars and the crimes perpetrated against of humanity during those times induced the nations of the world to find ways and means to ensure the peaceful co-existence and collaboration of all peoples as well as to resolve disputes and conflicts through mutual dialogue and multilateral agreements. Such efforts led to the formulation of the *Charter of the United Nations*, which was signed on 26 June 1945 in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Charter defines the fundamental rights and obligations of all nations, irrespective of their size and historical origin. Subsequently on 10

*Msgr Paul Pallath holds doctorate in Eastern canon law from the Pontifical Oriental Institute in Rome and in Latin canon law from the Pontifical Lateran University. After sixteen years of service at Congregation for Divine Worship and the Discipline of the Sacraments at the Vatican in Rome, at present he is an official of the Roman Rota and an associate professor at the Pontifical Oriental Institute. He has published many books and articles on canonical themes and on the history and spiritual heritage of the St Thomas Christians in India.

December 1948 the *Universal Declaration of Human Rights* was adopted by the UN General Assembly, which proclaims that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”¹ These two documents together constitute the cornerstone of international law and the basis of collaboration among the nations for the wellbeing of the human family.

Perhaps inspired by the *Universal Declaration of Human Rights* both codes of canon law at their initial part added a title “The Rights and Obligations of All the Christian Faithful.”² However, a codification of the rights of the Churches *sui iuris* in the manner of the *Charter of the United Nations* has not yet been made in canon law. This article is an attempt to gather together and articulate some of the fundamental rights of the Churches, which are enshrined in the various documents of the Second Vatican Council, the fiftieth anniversary of which we celebrate this year, and in the codes of canon law, which translate the conciliar teachings into canonical language.

This article presupposes that the Catholic Church is a communion of the Latin Church and the Eastern Churches *sui iuris*, each of which is itself a communion of dioceses or eparchies, consisting of parishes.³ The Churches within the Catholic communion live their faith, in tune with the liturgy, theology, spirituality and discipline according to any one of the six original traditions, namely, Alexandrian, Antiochene, Armenian, Chaldean, Constantinopolitan and Roman,⁴ under the guidance of the Roman Pontiff who is the visible sign of unity and the ultimate guarantee of communion. We hope that the following basic principles and fundamental rights of the Churches which we have formulated entirely based on the conciliar doctrine and the codes of canon law would be helpful to moderate the ecclesial life of different Churches *sui iuris* and ensure peaceful co-

¹ *The Universal Declaration of Human Rights*, Preamble.

² CIC cc. 208-223; CCEO, Title I, cc. 7-26.

³ Cf. Vatican II, *Lumen Gentium*, no. 23; *Orientalium Ecclesiarum*, no. 2, *Unitatis Redintegratio*, no. 14.

⁴ Cf. CCEO c. 28 § 2. There are only six original traditions in the Church, namely the Latin or Roman tradition and five Eastern traditions, from which all rites sprung. The Churches which are not in communion with the Catholic Church also live their faith according to any one of these traditions with some modifications.

existence and beneficial collaboration among them, on the basis of justice, truth and charity.

1. Right to Existence

As regards individuals, nations or Churches the right to existence is the most fundamental, primordial and foundational one, since all other rights are meaningless unless they presuppose the existence of the being to which they apply. In order to safeguard the right of all nations to existence the United Nations Organization upholds the principles of independence, sovereignty and self-government of all nations as well as the doctrine of non-aggression.⁵ The international law does not foresee the suppression of any state, although it can become extinct because of merger, absorption or dismemberment based on mutual agreement.⁶

On the contrary the Oriental Code explicitly states that the patriarchal Churches can be suppressed by the supreme authority of the Church, namely the Roman Pontiff or the ecumenical council: "The erection, restoration, modification and suppression of patriarchal Churches is reserved to the supreme authority of the Church" (c. 57). Rejecting the idea of some authors that the patriarchate is of divine law and interpreting the indication of *Lumen Gentium* (no. 23) that the ancient patriarchal Churches originated by "divine providence," Ivan □u□ek advocates that the Eastern patriarchal Churches created by the supreme authority of the Church are of merely ecclesiastical law and can be suppressed by the same authority. He affirms that according to the constant discipline of the Catholic Church, "even patriarchal Churches may be, as an ultimate measure, suppressed by the supreme authority of the Church. Of course this shall hardly happen. Nevertheless, it is possible, and if it happens, one may think that it will be due to divine Providence..."⁷ He also states that all the Eastern Catholic Churches exist by virtue

⁵ Cf. *The Charter of the United Nations*, chapter 1, articles 1-2; M. N. Shaw, *International Law*, fourth edition, Cambridge 1997, 149-152.

⁶ Cf. M. N. Shaw, *International Law*, 147-149. For example, the reunification of East Germany and West Germany to form the present single national state on 3 October 1990.

⁷ I. □u□ek, *Understanding the Eastern Code*, *Kanonika* 8, Rome 1997, 471.

of the will of the supreme authority of the Church and hence all of them can be suppressed.⁸

The great ancient patriarchates of Alexandria, Antioch, Jerusalem, Constantinople and Rome were not created or constituted by the supreme authority of the Church, but only recognized by the ecumenical councils on the basis of the already existing ancient custom.⁹ The act of recognition may not be considered as an act of creation, but as the acceptance of an already existing reality.

The concept of creation and suppression of patriarchates emerged mainly during the Crusades in the Middle Ages and the founding of Latin patriarchates in traditionally Eastern territories from the end of the eleventh century. The first Latin kingdoms and patriarchates were established in Antioch (in 1098) and Jerusalem (in 1099). In 1204 the Fourth Crusade invaded, seized and sacked Constantinople, and established the Latin Empire and the Latin patriarchate there. Later in 1209 a Latin patriarchate was also founded in Alexandria.¹⁰

When the kingdoms created by the Crusaders became extinct, the Latin patriarchs of the Eastern regions were considered titular patriarchs and for many centuries they were dignitaries of the papal court. Pope Pius IX (1846-1878) reconfirmed the Latin Patriarchate of Jerusalem and restored jurisdiction to its patriarch with the apostolic letter "Nulla celebrior" of 23 July 1847.¹¹ In January 1964, Pope Paul VI definitively suppressed the Latin patriarchates of Alexandria, Antioch and Constantinople.¹² In any event the creation of Latin

⁸ I. □u□ek, *Understanding the Eastern Code*, 240. In order to substantiate his view he quotes CCEO cc. 27, 57 § 1, 152, 155 § 2. Since □u□ek is often qualified as the "father" of the Oriental Code, one may think that his ideas also manifested in it in the form of canons.

⁹ Cf. Nicaea (325), cc. 6-7; Constantinople I (381) cc. 2-3, Chalcedon (451), cc. 9, 17 & 28.

¹⁰ G. □ezá□, "The Extension of the Power of the Patriarchs and of the Eastern Churches in General over the Faithful of Their Own Rite", *Concilium* 8 (1969) 60-61; T. KANE, *The Jurisdiction of the Patriarchs of the Major Sees in Antiquity and in the Middle Ages*, Washington 1949, 77-82; For a detailed analysis of the origin and progress of the Latin Church in the Eastern territories of Alexandria, Antioch, Jerusalem and Constantinople, see G. Fedalto, *La Chiesa latina in Oriente*, Roma 1985.

¹¹ R. De Martinis, *Ius Pontificium de Propaganda Fide*, pars 1, vol. 6, 40-44; *Anuario Pontificio* 2012, 1808.

¹² *Anuario Pontificio* 2012, 1808.

patriarchates as a result of political wrangling and anti-Orthodox counteraction and their subsequent suppression may be considered as the juridical and historical basis for the canonical norms in the Oriental Code with regard to the creation and suppression of patriarchates.

Although in the Oriental Code, for the most part the ancient law of the Eastern Churches is received or adapted, the sources given for the aforementioned canon stipulating the provision for the suppression of patriarchal Churches do not contain any reference to the "sacred canons" promulgated by the first seven ecumenical councils.¹³ In fact these canons do not contain any reference to a creation, constitution or to an eventual suppression of Eastern patriarchal Churches. In the whole history of the Catholic Church we do not find a single instance of a suppression of an Eastern patriarchal Church by the supreme authority of the Church nor we hope that there would be such an eventuality in the future, although some of the Eastern Churches may become extinct because of dismemberment, unification or drastic diminution in the number of Christian faithful.

Even if the possibility of the supreme authority of the Church suppressing the patriarchal and major archiepiscopal Churches is upheld, it does not seem to have been necessary to include this counterproductive and anti-ecumenical norm in the Eastern Code, promulgated at the end of the twentieth century, characterized for respect for nations, peoples, communities and cultures, guaranteed in international laws, multilateral conventions and peace accords.

2. Right to Equality

At the epoch of the great patriarchal Churches in the first millennium, these Churches were not only considered equal, but also appeared to be almost equal in numerical strength, ecclesiastical power, territorial extension and basic dignity. In the course of time doctrinal disputes, heresies, schisms, nationalism and Moslem-Arab invasions crippled and splintered the ancient Eastern patriarchal Churches, with the loss of their credibility, prestige and power. The Eastern Catholic Churches, as they are found in the second

¹³ *Codex Canonum Ecclesiarum Orientalium*, Auctoritate Ioannis Pauli PP. II promulgatus, *Fontium Annotatione Auctus*, [Pontificium Consilium de Legum Textibus Interpretandis], Libreria Editrice Vaticana 1995, 22.

millennium, originated mainly due to the reunion of small fractions of those Churches with the Roman Church.

In this context emerged the doctrine of the superiority (*praestantia*) of the Latin Church, which has been widely held in the West since the Council of Trent and was put into canonical practice since Pope Benedict XIV (1740-1758). Firstly Pope Benedict affirmed the superiority of the Latin rite with regard to the Greek rite, having in mind the Italo-Greeks and Italo-Albanians: "The Latin rite prevails over the Greek rite on account of its superiority, as it is the rite of the Holy Roman Church, the mother and teacher of all the Churches, especially in the Italian regions, where the Greeks are subject to Latin bishops."¹⁴ Hence he forbade not only the transfer of the Latin Christians to the Greek rite but also the return of the Greeks who had adopted the Latin rite to their own original rite.¹⁵ Later Pope Benedict applied the same principle and norms to all the Eastern rites when he stated:

Since the Latin rite is the rite of the Holy Roman Church and this Church is mother and teacher of the other Churches, the Latin rite should be preferred to all other rites. It follows that it is not lawful to transfer from the Latin to the Greek rite. Nor may those who have come over to the Latin rite from the Greek or Oriental rite return again to the Greek rite, unless particular circumstances occasion the giving of a dispensation.¹⁶

Popes Leo XII (1823-1829) and Pius IX (1846-1878) also officially upheld the superiority of the Latin rite and applied this principle in inter-ritual and inter-church relationships.¹⁷ In brief, at least for a few centuries the superiority of the Latin Church and the Roman rite was officially taught and canonically practised in relation to the Eastern Churches and their rites.

¹⁴ Benedict XIV, apostolic constitution *Etsi pastoralis*, 26 May 1742, *CIC Fontes* 1, 730.

¹⁵ *Ibidem*.

¹⁶ Benedict XIV, encyclical letter *Allatae sunt*, 26 July 1755, *CIC Fontes* 1I, 459.

¹⁷ See Leo XII, letter *Moderantibus Nobis*, 27 July 1827, *Bullarii Romani continuatio*, tom. VIII, Prati 1854, 852-855; Pius IX, apostolic letters *Plura sapienter* of 11 June 1847 and *In Suprema* of 6 January 1848, *Iuris Pontifici de Propaganda Fide*, vol. VI, pars 1, Romae 1894, pp. 29-30 & 48-53 respectively.

At times secular events also have had some repercussions on the Church and the evolution of juridical concepts. The decolonization of several countries in Asia, Africa and America, as well as the independence of those countries from European occupying forces finally led to promulgation of the *Charter of the United Nations* and the proclamation of the sovereign equality of all nations, large or small.¹⁸ Theoretically, the most potent state of the United States of America (USA) and the small state of Malta are equal before international law and have the same rights and obligations. Such juridical equality, however, does not exclude the sociological and phenomenal differences and the greater influence of one state over the others because of its military strength, economic development and political prestige.

In this context of rethinking, just as the doctrine of the equality of all nations, that of the equality of the Churches also resurfaced. In fact, the Second Vatican Council officially declared the equality of all the Churches in the Catholic Church - both those of the West as well as of the East in dignity, rights and obligations. The Council solemnly stated:

These particular Churches both Eastern and Western, while they differ somewhat among themselves in what is called "rite", namely, in liturgy, in ecclesiastical discipline and in spiritual tradition, are none the less are equally entrusted to the pastoral guidance of the Roman Pontiff, who by God's appointment is successor to Blessed Peter in primacy over the Universal Church. Therefore these Churches are of equal rank, so that none of them is superior to others because of its rite (OE 3).

Prof. George Nedungatt affirms that with this assertion "the Council solemnly set aside the view that the Latin rite, being the rite of the Roman Church, was superior to the Eastern rites, a view which was generally held, officially taught and widely put into practice in the past."¹⁹

Through *Sacrosanctum Concilium* the Council again emphasized the equal right and dignity of the rites of different Churches: "Finally, in faithful obedience to tradition, the sacred Council declares that Holy

¹⁸ Cf. *The Charter of the United Nations*, Preamble and chapter 1, article 2, 1.

¹⁹ G. Nedungatt, "Equal Rights of the Churches in the Catholic Communion", *The Jurist* 49 (1989) 1.

Mother Church holds all lawfully recognized rites to be of equal right and dignity; that she wishes to preserve them in the future and to foster them in every way" (SC 4). In brief, all the Churches of the Catholic communion are of "equal rank" and their rites are of "equal right and dignity."

The equality of the Churches can be better understood in the light of the equality of all human beings, though in an analogical manner. All human beings, endowed with reason and conscience, are ontologically equal, because of the universal human nature, which is the same in man and woman, in people of every racial and ethnic background. Hence all have equal dignity, rights and obligations, in spite of their differences in intellectual capacity, psychological maturity and physical qualities, and without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁰

In the manner of the equality of all human beings, the equality of all Churches is also based on their ontological substance or intrinsic essential ecclesial nature, irrespective of numerical strength, territorial extension, economic affluence or jurisdictional power. The one, holy, Catholic and apostolic Church is fully, equally and integrally incarnated or actualized in the Roman Church and in all the Eastern Catholic Churches and hence they do not lack anything of "Catholic ecclesiality." In other words the only one Church of God subsists in all the Catholic Churches and hence all of them are essentially of the same nature, having the same faith, the same sacraments and the same hierarchical government under the Roman Pontiff; therefore, all of them basically have the same dignity, rights and obligations.

As in the case of human beings and national states, the equality of Churches consisting in their equal dignity and ecclesial nature does not entail the equal exercise of power, jurisdiction and rights, because each Church acts only according to its own capacity and resources. The Latin Church embraces all nations on the globe and has as its head the Roman Pontiff, the very same head of the Catholic Church, who according to Catholic doctrine exercises freely supreme, full, immediate, and universal ordinary power in the

²⁰ Cf. UNO, *The Universal Declaration of Human Rights*, articles 1-2.

whole Church and in each diocese or eparchy.²¹ In the East itself the autonomy and powers of the patriarchal and major archiepiscopal Churches, metropolitan Churches and other Churches *sui iuris* differ considerably and vastly. Moreover, the intrinsic equality of Churches is also not contrary to the order of precedence or pre-eminence extrinsically attributed to any Church by ecumenical councils and canon law.

The principle of equality is also said to be the basis of the new Eastern Code. Among the *Guidelines for the Revision of the Code of Oriental Canon Law* we read: "As regards the structure of the various particular Churches, the juridical effects of the principle of equality of all the Churches of the East and of the West, which was asserted by the Second Vatican Council (*Orientalium Ecclesiarum*, n. 3), should obtain recognition in the new Code."²² However, as Prof. Nedungatt laments, though this principle of equality implicitly influenced the formation of some canons, the new Code failed to canonize the fundamental conciliar norm of ecclesial equality of all Churches before law, which has the value of a Magna Carta for the Eastern Catholic Churches and to guarantee the legal protection in inter ecclesial relations.²³

The equality of Churches also requires the equal treatment of all the Churches from the part of the supreme authority and the Apostolic See in the same sociological and phenomenological circumstances, with regard to ascription to a Church, change of Church membership, admission into religious institutes of another Church, evangelization, pastoral care, constitution of hierarchical structures, erection of dioceses and appointment of bishops.

3. Right to Legitimate Diversity in Unity

In modern times people are ever more aware of the dignity and rights of their own nation, socio-cultural ethos, philosophical wisdom, spiritual heritage, language, music, art and architecture. Hence even from a practical point of view the principle of diversity in unity cannot be ignored. If one does not accept the right of

²¹ Cf. Vatican II, *Lumen Gentium*, no. 20; *Christus Dominus*, nos. 2, 8; CIC cc. 331, 333 § 1; CCEO cc.43, 45 § 1.

²² *Nuntia* 3 (1976) 22.

²³ Cf. G. Nedungatt, "Equal Rights of the Churches in the Catholic Communion", 1-2 & 21-22; *A Guide to the Eastern Code, Kanonika* 10, Rome 2002, 109-110.

diversity in unity and communion , one would be constrained to uphold the principle of complete uniformity: one Latin-Roman Church, one rite and one jurisdiction. This would naturally lead to the destruction of different rites, creation of unique sacramental discipline and the condemnation of venerable ecclesial traditions, stigmatizing them as heretical and schismatic, as happened in the past.

At present the Catholic Church, which extends all over the world, embracing all nations and races, accepts the religious values and cultural traditions of all peoples, provided that they are compatible with the Catholic faith and not bound up with superstitions and errors. Even in the Roman liturgy itself, "the Church has no wish to impose a rigid uniformity in matters which do not implicate the faith or the good of the whole community; rather does she respect and foster the genius and talents of the various races and peoples."²⁴

In fact catholicity itself is not uniformity but rather identity in diversity, which means on the one hand the unity of the different Churches made by the substantial identity of faith and sacraments, and on the other, the capacity of the one Church of Christ to be realized in the multiplicity of diverse Churches. It is the capacity of the Church to adapt to particular genius and cultures in order that the Word of God may be efficaciously proclaimed to peoples of every place and nation.²⁵

Vatican II recognized and ratified the principle of unity in diversity as the proper way of being Church in the modern world. Legitimate pluralism and multiplicity existed in the Church from the apostolic period itself and thus through divine providence, in the course of time, different Churches set up in various places by the apostles and their successors developed into patriarchal Churches which, "whilst safeguarding the unity of the faith and the unique divine structure of the universal Church, have their own discipline, enjoy their own liturgical usage and inherit a theological and spiritual patrimony."²⁶

²⁴ Vatican II, *Sacrosanctum Concilium*, no 37.

²⁵ Cf. P. Granfield, "The Church Local and Universal: Realization of Communion", *The Jurist* 49 (1989) 460; J. M. R. Tillard, *L'évêque de Rome*, Paris 1982, 189; Y. Congar, "Autonomie et pouvoir central dans l'Eglise vus par la théologie catholique", *Kanon* 4 (1980), 142 & 131-132; E. Dulles, *The Catholicity of the Church*, Oxford 1985, 23-25 and 167-174.

²⁶ Vatican II, *Lumen Gentium*, no. 23.

Thus the holy Catholic Church, which is the mystical body of Christ, is made up of “particular Churches” having the same faith, the same sacraments and the same government, but these Churches both Eastern and Western differ somewhat among themselves in what is called “rite” namely in liturgy, in ecclesiastical discipline, and in spiritual tradition.²⁷ All the Churches in the Catholic Communion have the same faith, but the theological formulations, methods and approaches are different; they have the same sacraments, but the mode of celebrating them is different according to different rites developed on the basis of the particular apostolic Christ experience and the specific socio-cultural philosophical ethos of each place; they have the same divinely instituted structure and hierarchical government under the Roman Pontiff, but the mode of governing is different.

Setting aside the medieval concept that diversity is an obstacle to unity and catholicity, Vatican II teaches that the entire heritage of spirituality and liturgy, of discipline and theology, in the various traditions adds to the full Catholic and apostolic character of the Church.²⁸ In spite of the multiplicity of rites, between the Churches in the Catholic Communion there is such a wonderful bond of union that this variety in the universal Church so far from diminishing its unity, rather serves to emphasise it and show all the more resplendently the Catholicity of the undivided Church.²⁹ Legitimate diversity, while preserving unity, enriches and embellishes the Church, whereas inordinate pluralism breaks the bonds of communion, provoking divisions and schisms. Hence the principle of unity in diversity cannot be invoked as an alibi for provoking divisions in the Catholic Church or in any of the Churches in the Catholic communion.

The Council accepted the principle of unity in diversity not only in the Catholic Church but also with regard to the non-Catholic Churches, recognizing their diverse forms of spiritual life, liturgical rites and theological formulations: “While preserving unity in essentials, let everyone in the Church, according to the office entrusted to him, preserve a proper freedom in the various forms of

²⁷ Vatican II, *Orientalium Ecclesiarum*, nos. 2-3.

²⁸ Cf. Vatican II, *Orientalium Ecclesiarum*, nos. 1, 2, 5; *Unitatis Redintegratio*, no. 17.

²⁹ Cf. Vatican II, *Orientalium Ecclesiarum*, nos. 2-3; *Lumen Gentium*, nos. 13, 23; *Ad Gentes*, nos. 4, 10, 15, 22; *Gaudium et Spes*, nos. 4, 42, 44, 58.

spiritual life and discipline, in the variety of liturgical rites, and even in the theological elaborations of revealed truth. If they are true to this course of action, they will be giving ever richer expression to the authentic catholicity and apostolicity of the Church" (UR 4). Such diversity of customs and observances does not constitute an obstacle to ecumenism and Church's unity, but "only adds to her beauty and contributes greatly to carrying out her mission" (UR 16).

4. Right to Autonomy

In the first millennium the great Oriental patriarchal Churches enjoyed legislative, judicial, electoral and administrative autonomy. Each Oriental patriarchal Church freely elected its own patriarchs, metropolitans and bishops, erected new dioceses or elevated their grade, regulated its liturgy and canonical legislation, as well as moderated the discipline of the clergy and laity.³⁰ In the second millennium the weakening of its patriarchal authority in the Catholic Church, the tendency of Roman centralization and the interpretation of patriarchal power as a participation in the supreme authority of the Church, provoked the diminution or curtailment of autonomy in the domain of liturgy, canonical legislation, election of bishops, administration of discipline, and in the synodal governance of the Eastern Catholic Churches in general.³¹

After several centuries autonomy or self-government was of reestablished by Vatican II which, after speaking about the heritage of the Oriental Churches as belonging to the patrimony of the universal Church, declared: "Therefore the Churches of the East like

³⁰ Cf. W. De Vries, "La S. Sede ed i patriarcati cattolici d'Oriente", *OCP* 27 (1961) 316-325; *Rom und die Patriarchate des Ostens*, Freiburg-München 1963, 19-22; "Die Entstehung der Patriarchate des Ostens und Ihr Verhältnis zur päpstlichen Vollgewalt", *Scholastik* 37 (1962) 339-366; C. Gallagher, "The Concept of Protos in the Eastern Catholic Churches", *Kanon* 9 (1989), 105-106; V. Parlato, *L'ufficio patriarcale nelle Chiese orientali dal IV al X secolo*, Padova 1969, 65-68; O. Kéramé, "Les chaires apostoliques et rôle des patriarcats", *Unam Sanctam* 39, Paris 1962, 266-268; J. Chiramel, *The Patriarchal Churches in the Oriental Code*, Alwaye 1992, 52-76.

³¹ Cf. W. De Vries, "La S. Sede ed i patriarcati", 326-361; *Rom und die Patriarchate des Ostens*, 247-296; "Die Entstehung der Patriarchate des Ostens...", 339-336; J. Hajjar, "Les synodes des Eglises orientales catholiques et l'évêque de Rome", *Kanon* 2 (1974) 53-99; "The Synod in the Eastern Church", *Concilium* 8 (1965) 32-33; C. Gallagher, "The Concept of Protos", 101.

those of the West have the right and duty to govern themselves according to their own special disciplines. For these are guaranteed by ancient tradition, and seem to be better suited to the customs of their faithful and to the good of their souls.”³² In fact the most fundamental and solemn affirmation of the autonomy of the Eastern Catholic patriarchal Churches was made by the Council itself:

The patriarchs with their synods are the highest authority for all business of the patriarchate, including the right of establishing new eparchies and of nominating bishops of their rite within the territorial bounds of the patriarchate, without prejudice to the inalienable right of the Roman Pontiff to intervene in individual cases (OE 9).

Vatican II theoretically re-established the principle of the disciplinary autonomy of the Eastern patriarchal Churches and that of the major archiepiscopal Churches which are almost equated with the former (OE 10; CCEO c. 152). Each patriarchal Church is governed by its own organisms and hence in its hierarchical constitution, regime and discipline does not depend up on any other Church regardless of size or historical derivation.

When we speak of the “autonomy” of a Church within the Catholic Church, it does not mean “autocephaly” in the Orthodox sense with complete independence and self-government, but a kind of relative autonomy in the heart of the Catholic Church, which always implies the recognition of the authority of the Roman Pontiff and of the ecumenical councils. Autonomy is the right to self-governance while remaining subject to a superior authority in certain matters, while autocephaly is complete independence from any superior authority in matters of ordinary governance. Therefore, autonomy in the Catholic Church is not absolute, but only relative, limited by the law established by the supreme authority of the Church.³³ Within such

³² Vatican II, *Orientalium Ecclesiarum*, no.5; cf. *Unitatis Redintegratio*, no. 16.

³³ Cf. J. D. Faris, “Synodal Governance in the Eastern Catholic Churches”, in CLSA, *Proceedings of the Forty-Ninth Annual Convention*, Washington 1987, 215; *Eastern Catholic Churches: Constitution and Governance*, New York 1992, 145; M. Brogi, “Le Chiese sui iuris nel Codex Canonum Ecclesiarum Orientalium”, *Revista Española de Derecho Canónico* 48 (1991) 525 and 530; D. Salachas, *Istituzioni di diritto canonico delle Chiese cattoliche orientali*, Roma 1993, 63; “Autonomie des Eglises orientales”, *Année*

established limits, each Church of the Catholic communion has the power to govern itself with legislative, judicial, electoral and administrative functions without any interference from other Churches.

In the Catholic sense of relative autonomy, the aforementioned Council text itself explicitly states that the Roman Pontiff has the inalienable right "to intervene in individual cases". The autonomy of the Eastern Churches in the Catholic communion does not undermine the right of the Roman Pontiff, the head of the Catholic Church to intervene in individual cases if it is useful for the good of the Church, especially for safeguarding faith and morals, and proper canonical and liturgical discipline. At times the beneficial intervention of the Roman Pontiff may be helpful to avoid the election of unworthy and incompetent candidates to hierarchical ranks and undesirable administrative acts, since the Eastern Catholic Churches also are not completely free of nepotism, regionalism, excessive nationalism, ideological polarization, religious lobbying and unhealthy competition.

According to the Eastern Code, which regulates the relative autonomy of the Eastern Catholic Churches, there are four kinds or grades of Churches *sui iuris*: patriarchal Churches (cc.55-150), major archiepiscopal Churches (cc.151-154) metropolitan Churches (cc. 155-173) and "other Churches *sui iuris* (cc.174-176). The four different forms of Churches represent four degrees of autonomy within the Catholic communion of Churches.

Under the supreme authority of the Church and the Apostolic See, subject to the restrictions of the Eastern Code, the patriarchal and the major archiepiscopal Churches enjoy sufficient relative autonomy within the boundaries of their territory as regards the election of their hierarchical heads and bishops, regulation of liturgy, promulgation of laws, administration of justice and several administrative acts like the creation of exarchates, dioceses and ecclesiastical provinces, modification of their boundaries, etc.³⁴ The autonomy of the metropolitan Churches *sui iuris* is considerably limited (cc.155-168) and that of the other Churches *sui iuris* is comparable to the autonomy of a diocese or eparchy (cc. 174-176).

canonique 38 (1996) 80-81; G. Nedungatt, "La giurisdizione delle Chiese particolari", *Unitas* 31 (1976-77) 274.

³⁴ For details, P. Pallath, *Local Episcopal Bodies in East and West*, Kottayam 1997, 125-216.

5. Right to the Preservation and Observation of One's Own Rite

When the superiority of the Latin Church and that of the Roman rite was officially taught, several liturgical, theological, spiritual and disciplinary items of the Eastern Catholic Churches were altered, suppressed, or substituted with Western elements.³⁵ With regard to the modification of the Eastern tradition of administering the sacraments of Christian initiation together in one and the same ceremony, the Congregation for the Oriental Churches explicitly affirms: "This practice was changed during the last centuries in different Eastern Catholic Churches under external pressure, based on spiritual and pastoral meanings altered by Latins, comprehensible but extraneous to the organic progress and not in line with the dynamism of the Eastern patrimony."³⁶ What the Congregation affirms with regard to the sacraments of Christian initiation is applicable to all other aspects of Eastern ecclesial heritage as well.

With the Second Vatican Council the tendency of westernization of the Eastern rites on the part of the Latin missionaries officially terminated. The Council praises and values highly the rites of Eastern Churches which have their origin in the apostolic tradition and desires that they be preserved and promoted as the undivided patrimony of the Universal Church.³⁷ The patrimony of the universal Church is the totality or communion of the patrimonies of all the Churches - the Latin Church and the different Eastern Churches which belong to one of the five original traditions; these being not mutually exclusive, but complementary, serve to give "expression to the authentic catholicity and apostolicity of the Church" (UR 4). The diminution of the patrimony of any of these Churches is tantamount to the diminution of the patrimony of the universal Church.

³⁵ With regard to the Syro-Malabar Church, see J. Vellian, "The Synod of Diamper and the Liturgy of the Syro-Malabar Church", in G. Nedungatt, ed., *The Synod of Diamper Revisited*, Rome 2001, 175-181 & 185-191; P. Pallath, *The Eucharistic Liturgy of the St Thomas Christians and the Synod of Diamper*, Kottayam 2008, 85-154; "The Sacraments of the Church of St Thomas Christians in India and the Synod of Diamper", *Ephrem's Theological Journal*, vol. 11, no. 2 (October 2007) 121-146.

³⁶ Congregation for the Eastern Churches, *Instruction for Applying the Liturgical Prescriptions of the Code of Canons of the Eastern Churches*, Vatican City State 1996, no. 42, P. 39.

³⁷ Cf. Vatican II, *Orientalium Ecclesiarum*, nos.1, 2, 5.

Vatican II teaches that “each and every Catholic, as also the baptized of every non-Catholic church or denomination who enters into the fullness of the Catholic communion, must retain his own rite wherever he is, must cherish it and observe it to the best of his ability...” (OE 4). With regard to the preservation and observation of the Eastern rites the Council solemnly declares:

All Eastern Christians should know and be convinced that they can and should always preserve their own legitimate liturgical rites and their established way of life, and that changes should be made only by reason of their proper and organic development. All these things must be observed with the greatest fidelity by the Eastern Christians themselves. They should indeed, from day to day, acquire greater knowledge of these matters and more perfect practice of them and if for reasons of circumstances, times or persons, they have fallen unduly short of this they should take steps to return to their ancestral traditions (OE 6).

The Council prohibits the alteration of Eastern rites except for the sake of proper and organic development and orders that the Eastern Christians “should take steps to return to their ancestral traditions,” if they have fallen unduly short of their rites and disciplines. Interpreting the mind of the Council, the Congregation for the Oriental Churches asserts: “The Council, in particular, is not satisfied to just confirm and praise the ancient discipline enforced by the Eastern Churches, but desires it to be reestablished in the places where it has weakened or fallen away. Therefore, in reviewing their own law, the different Eastern Churches *sui iuris* must take into account this desire and courageously undertake, even if cautiously and gradually, the recuperation of elements that have been lost...even if it means modifying decisions made by Synods or taking distance from indications given, in other times and for various reasons, by the Congregations of the Apostolic See”³⁸

Such teachings of the Council concerning the ritual heritage of the Eastern Churches obtained legal force in the Eastern Code which considers the rites of the Eastern Churches “as the patrimony of the entire Church of Christ,” which are to be religiously preserved and fostered” (c. 39). In fact the Code decrees that patriarchs, major archbishops, metropolitans, bishops, priests, other clerics, members of religious institutes and all other Christian faithful have the right

³⁸ Congregation for the Eastern Churches, *Instruction for Applying the Liturgical Prescriptions...*, no. 39, p. 36.

and obligation to faithfully protect and accurately observe their own rite (c. 49). Also for this reason the liturgical laws enacted by the synod and promulgated by the patriarch or major archbishop have force of law everywhere in the world (c. 150 § 2). Similarly the approved liturgical books (cf. c. 656) of a Church can be and should be used anywhere in the world, if the liturgy of the same Church is celebrated.

6. Right to Growth and Development

The Second Vatican Council speaks not only of the preservation of Eastern heritage and observation of rites, but also of the protection and progress of the Churches themselves that are the custodians and matrices of this venerable heritage. The Council declares:

Means should be taken therefore in every part of the world for the protection and advancement of all the individual Churches and, to this end, there should be established parishes and a special hierarchy where the spiritual good of the faithful demands it (*OE* 4).

In accordance with the conciliar teaching, first of all the Eastern Churches should be protected and defended from everything that could harm them or against any action that could be detrimental to them. In other words, they ought to be defended for their existence, preservation and for their maintenance, whether of their rites and traditions or of their rights and obligations: for such is the desire of the Catholic Church and such is the exigency of the very nature of the *Churches sui iuris*.³⁹

Eastern Churches are not like archaeological relics, only to be protected and preserved. Mere protection of a Church is not enough because no living organism can survive simply on defence, remaining in a static condition, it should grow, develop and reach its perfection. So the Council also aims at ensuring the growth or advancement of the Eastern Churches. This growth is to be both intrinsic and extrinsic. Intrinsic growth means an internal perfection, by the utilization of all the necessary means at its disposal, by an appropriate increase in the number and capacity of its various organisms and personnel in order to enable it to fulfill its proper role, duty and mission of providing for the spiritual welfare of its faithful. Extrinsic increase means making it possible for each Church to extend the territorial reach of its activity whenever it is necessary

³⁹ C. Pujol, "The Care and Organization of the Particular Churches", in J. VELLIAN, ed., *The Malabar Church*, Roma 1970, 215.

and suitable, without being obliged to remain in a certain territory.⁴⁰ In brief, the Council granted all the *Churches sui iuris* the right to be protected and to organize itself everywhere in the world if the spiritual good of the faithful demands it.

It is evident that a Code for the Eastern Catholic Churches should contain provisions for the protection, growth and development of these Churches everywhere in the world. This fact was solemnly confirmed by Pope John Paul II on the occasion of the presentation of the Eastern Code to the eighth ordinary general assembly of the Synod of Bishops on 25 October 1990. The Pope declared that the norms in the Code permit nothing which could have even the remote suggestion of actions or initiatives which are not in line with what the Catholic Church loudly proclaims in the name of the Redeemer of the humankind concerning the fundamental rights of every human person and every baptized individual and the rights of every Church, not only to exist, but also to develop, increase and flourish.⁴¹

Indeed, as we see below, the Council and both codes of canon law have also laid down various provisions for the protection and development of Eastern Catholic Churches and their patrimony.⁴²

7. Right to Pastoral Care in One's Own Rite

Different conciliar principles which we have already explicated, such as the equality and autonomy of all the Churches, the equal right and dignity of all lawfully recognized rites, the right and obligation of Christian faithful to preserve and observe their own rite, as well as the proclamation of the religious freedom of all men (*DH 2, GS 26*) concur and converge on the right of the Christian faithful for pastoral care in their own rite, namely in tune with the liturgy, theology, spirituality and discipline of their own Church. Based on these conciliar texts both codes of canon law explicitly stipulate that the Christian faithful have the right to worship God in accordance with the prescriptions of their own Church and rite, as well as to

⁴⁰ Cf. C. Pujol, "The Care and Organization of Particular Churches", 215-216.

⁴¹ John Paul II, Discourse of Presentation of the Eastern Code, *L'Osservatore Romano*, 27 October 1990, 5; *Nuntia* 31 (1990) 16 & 23; *AAS* 83 (1991) 498.

⁴² Cf. Vatican II, *Orientalium Ecclesiarum*, no. 4; *Christus Dominus*, nos. 23 & 27; CIC cc. 383, 372 § 2, 476, 518; CCEO cc. 31, 38, 192-193, 146 § 2, 148, 1465.

follow their own form of spiritual life consonant with the teaching of the Church.⁴³ It would be a direct contradiction of these principles to oblige the faithful of the Latin Church to practise an Eastern rite, or to deprive the Eastern faithful the spiritual help of their own rite and constrain them to concur with the Latin rite.

Since the Christian faithful have the right to worship God in accordance with the prescriptions of their own Church and to receive proper pastoral care in their own rite, the local and supreme authorities have a corresponding obligation to provide the same everywhere in the world. The Decree on the Pastoral Office of Bishops in the Church, while speaking about the need of sufficient qualified clergy and institutional structure for the proper care of the people of God, with regard to the faithful of Oriental rites explicitly affirms:

For this same purpose, where there are faithful of a different rite, the diocesan bishop should provide for their spiritual needs either through priests or parishes of that rite or through an episcopal vicar endowed with the necessary faculties. Wherever it is fitting, the last named should also have episcopal rank. Otherwise the Ordinary himself may perform the office of an Ordinary of different rites. If for certain reasons, these prescriptions are not applicable in the judgment of the Apostolic See, then a proper hierarchy for the different rites is to be established (CD 23).⁴⁴

Based on the conciliar teaching both codes of canon law have stipulated various provisions such as the appointment of pastors of the same rite or episcopal vicars, erection of personal parishes, vicariates or exarchies and even the establishment of a special hierarchy for each Church *sui iuris* with the erection dioceses or eparchies.⁴⁵

8. Right to Evangelization

Since all the Churches are of equal rank “they have the same rights and obligations, even with regard to the preaching of the Gospel in

⁴³ Cf. CIC c. 214; CCEO c. 17.

⁴⁴ Vatican II, *Christus Dominus*, no. 23; cf, also no. 27 & *Orientalium Ecclesiarum*, no. 4.

⁴⁵ Cf. CIC cc. 383, 372 § 2, 476, 518; CCEO cc. 31, 38, 192, 193 & 1465; Pontifical Council for the Pastoral Care of Migrants and Itinerant People, Instruction *Ergo migrantes caritas Christi*, 3 May 2004, nos. 21-26.

the whole world (cf. Mk 16:15) under the direction of the Roman Pontiff" (OE 3). The mission of preaching the gospel to all people, which Christ entrusted to his Church, is not a privilege given exclusively to any of the Churches of the Catholic Communion, but the equal right and obligation of all *Churches sui iuris*. Missionary activity is the natural exigency, intrinsic necessity and the greatest and holiest duty of every Church *sui iuris*, because every Church is missionary by its very nature.⁴⁶ In the post synodal apostolic exhortation on evangelization in the modern world Pope Paul VI confirms: "Evangelization is the special grace and vocation of the Church. It is her essential function. The Church exists to preach the Gospel, that is to preach and teach the word of God..."⁴⁷ Interpreting the doctrine of the Council Archbishop Powathil highlights the missionary right and obligation all the Churches as follows:

The missionary obligation is entrusted equally to all the Churches. Hence no individual Church can give up its own right and obligation or maintain any kind of exclusive monopoly of the missionary activities. The openness and authenticity of a Church does not mean the giving up of one's own responsibility to another Church. The missionary obligation is an inalienable right and unavoidable obligation of every Church. The maturity, development, spiritual growth and dynamism of a Church depend on the way she fulfils her missionary obligation. If one Church leaves its obligation to another Church or creates obstacles in fulfilling this essential obligation of every Church, it will be a sin against the Church of God!⁴⁸

In light of the conciliar and post conciliar teaching, the Eastern Code, which explicitly affirms that the Church recognizes herself to be totally missionary (CCEO c. 584 § 1), imposes a precise missionary obligation on the Eastern Catholic Churches: "Each of the Churches *sui iuris* is to continually see that, through suitably prepared preachers sent by the competent authority according to the norms of the common law, the Gospel is preached in the whole world under the guidance of the Roman Pontiff" (CCEO c. 585 § 1). The Code also stresses the obligation of the synod of bishops, individual eparchies and all the Christian faithful for evangelization (c.585 §§ 2-4). Hence

⁴⁶ Cf. Vatican II, *Ad Gentes*, nos. 2, 29, 35; *Lumen Gentium*, no. 17; *Dignitatis Humanae*, no. 13; CCEO c.584 § 1.

⁴⁷ Paul VI, *Evangelii Nuntiandi*, no. 14.

⁴⁸ J. Powathil, *The Ecclesial Milieu: Ecclesial Vision & Historical Interventions*, Trivandrum 2009, 84

evangelization is not only a fundamental right of the Eastern Catholic Churches, but also a juridical obligation imposed upon them by canon law.

The preaching of the Gospel would eventually result in the emergence of new Christian communities and the constitution of suitable hierarchical structures. Vatican II clearly states: "The proper purpose of this missionary activity is evangelization, and the planting of the Church among those peoples and groups where it has not yet taken root. Thus from the seed which is the word of God, particular autochthonous Churches should be sufficiently established and should grow up all over the world, endowed with their own maturity and vital forces."⁴⁹ The history of the Church itself demonstrates the validity of this statement: from the large scale missionary activity of the Latin Church first under the Portuguese-Spanish patronage and then under the Congregation of Propaganda Fide, originated Latin Church communities in several countries in the continents of Africa, America, Asia and Australia (Oceania).

A mere observation of the evangelization process of the Latin Church in the aforementioned countries demonstrates that even in geographically Oriental regions the Western missionaries implanted new Churches with the Roman rite and of Western culture, when the concept of inculturation and adaptation was not in vogue. Evangelization is an ecclesial act and hence the faithful of each *Church sui iuris* have the right to preach the Gospel in tune with their own manner of living the faith, according to the liturgical, theological, spiritual and canonical heritage of their own Church. As Archbishop Powathil affirms, "A missionary is not a preacher who is independent of his ecclesial heritage, which in its essence is the apostolic experience it has inherited...the gospel is not an abstract concept devoid of any ecclesial content. The missionary shares the Christian message which he has personally experienced and inherited through his Church. Ecclesial experience involves liturgical spirituality, discipline and other authentic traditions of a particular Church."⁵⁰

Since the Church is by its very nature missionary and evangelization is the right and duty of all Christian faithful, they cannot be

⁴⁹ Cf. Vatican II, *Ad Gentes*, no. 6.

⁵⁰ J. Powathil, *The Ecclesial Milieu: Ecclesial Vision & Historical Interventions*, 85.

prohibited from this noble task on the basis of rite, Church affiliation or cultural conditioning, with due regard for the moderation and coordination of missionary activities on the part of the supreme authority of the Church. It is also against the teaching of the Catholic Church to require anyone to abandon his own Church and ecclesial heritage, in order to engage in the ministry of evangelization.

Conclusion

In this article we have endeavoured to sort out and highlight some of the basic principles and directives enshrined in the documents of Vatican II and in the codes of canon law, as well as to propose them as fundamental rights of the Churches in the Catholic communion. Although the Church is a supernatural institution with a divine constitution, it exists in this world as a human society and hence cultural, sociological and phenomenological dimensions cannot be eluded. The recognition and respect of the rights and obligations of the different Churches in the Catholic communion would help to engender peaceful coexistence, mutual harmony and healthy collaboration among them for the spread of the Kingdom, the greater glory of God and for the salvation of souls, the *raison d'être* of the Church of Christ.