

## **THE PRINCIPLE OF TERRITORIALITY ACCORDING TO EASTERN CATHOLIC CANON LAW**

**Msgr Paul Pallath\***

Msgr Paul Pallath examines the principle of territoriality from a historical and juridical perspective based on the Church document and the presence of the Latin Church in the entire world and that of the Eastern Churches in the Western territories. 1. The "Sacred Canons" and the Principle of Territoriality; 2. Western Church in the East in the Entire World; 3. Eastern Catholic Churches in Western Territories; 4. The Second Vatican Council and the Principle of Territoriality; 5. The Revision of Eastern Canon Law and the Principle of Territoriality; 6. The Principle of Territoriality according to the Eastern Code: The Legislative Power of the Synod of Bishops; The Synod of Bishops and the Administration of Justice; The Appointment of Bishops Outside the Territory, and Major Administrative Powers; 7. Possibility for the Extension of Territorial Boundaries and for a Particular or Special Law Approved by the Roman Pontiff, and 8. The Tenth Anniversary of the Taking Effect of the New Code and the Confirmation of the Principle of Territoriality.

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\*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 the 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.

## Introduction

Ecclesiastical jurisdiction is primarily exercised over human persons and not over land and temporal goods. Territory is only a convenient criterion to determine the Christian faithful over whom spiritual power is to be exercised by competent ecclesiastics. Hence, like secular governments, ecclesiastical authorities do not claim authority over deserts, airspace and oceans in so far as they are not inhabited by people. Evidently the scope of ecclesiastical jurisdiction is not the accumulation of power and wealth, but the eternal salvation of human persons. From the early centuries of the Christian era itself the principle of territoriality came to be considered as the major criterion for determining the ambit of ecclesiastical jurisdiction over a definite number of Christians, in an orderly manner, without provoking confusion, conflicts and indiscipline. The principle of territoriality, though changed according to the circumstances of time, still remains the main criterion for the circumscription of parishes, dioceses or eparchies, ecclesiastical provinces and Churches *sui iuris*. This study is an attempt to evaluate the historical and canonical evolution of the said principle with regard to the determination of the external boundaries of the Eastern Catholic Churches, in the light of the Sacred Canons and the Eastern Code, taking into account the changed circumstances of the third millennium.

### 1. The "Sacred Canons" and the Principle of Territoriality

The second canon of the Code of Canons of the Eastern Churches states: "The canons of this Code, in which for the most part the ancient law of the Eastern Churches is received or adapted, are to be assessed mainly according to that law." The ancient law of the Eastern Churches, generally known as the Sacred Canons, include the apostolic canons, the canons of the first seven ecumenical councils, the legislation of the important Eastern synods and the canons of the Holy Fathers.<sup>1</sup> These Sacred Canons which number about 700, constitute the fundamental basis for a common Code for all the Eastern Catholic Churches.

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<sup>1</sup>Cf. The first canon of the Second Ecumenical Council of Nicaea (787); for details, D. Salachas, *Il diritto Canonico delle Chiese orientali nel primo millennio*, Roma-Bologna 1997, 13-23; I. Žužek, "Common Canons and Ecclesial Experience in the Oriental Catholic Churches," in *Understanding the Eastern Code*, *Kanonika* 8 (Rome 1997) 203-207.

The early ecumenical councils generally accepted the principle of accommodation of ecclesiastical administration to the political division of the Roman Empire. In the third century Emperor Diocletian (285-305) divided the Roman Empire into two halves: Western and Eastern, for the sake of administrative convenience. The Church in the Western part of the Empire came to be known as the Western Church, which had its principal centre in Rome, with the whole Western Roman Empire as its territory. In the Eastern Roman Empire there emerged different ecclesiastical centres such as Alexandria, Antioch, Jerusalem and Constantinople, which later became patriarchates. The ecumenical councils determined the territory of these Churches in accordance with the subdivision of the Eastern Roman Empire into civil "dioceses" and defined the special prerogatives of their hierarchical heads, who in the course of time were called patriarchs.<sup>2</sup> In brief, upholding the principle of territoriality the Sacred Canons decided the exclusive jurisdiction of one hierarchical head or patriarch in one territory. However one may note that the ecumenical councils decided the territory of the Eastern Churches only within the Roman Empire. For example, the territory of the Assyrian Church of the East in the Persian Empire, or that of the Armenian Church, was not explicitly determined by any ecumenical council.

On the basis of the Sacred Canons, if one strictly applies the principle of territoriality, it is possible to affirm that the power of the patriarch and the synod of bishops of the Eastern Catholic Churches cannot be extended beyond their traditional territory.<sup>3</sup> With regard to this problem we make the following observations:

1. The Sacred Canons did not constitute an impediment to the missionary expansion of the ancient patriarchal Churches beyond the determined boundaries to other regions and nations.<sup>4</sup> We indicate

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<sup>2</sup>Cf. Apostolic Canon 34; Council of Nicaea (325) c. 6; Council of Constantinople (381) c. 2; Council of Ephesus (431) c. 8; Council of Chalcedon (451) c. 28; Council in Trullo (692) c. 39.

<sup>3</sup>See the article of I. Žužek, "Canons Concerning the Authority of the Patriarchs over the Faithful of Their Own Rite Who Live Outside the Limits of Patriarchal Territory," *Nuntia* 6 (1978) 3-33.

<sup>4</sup>For more about the missionary autonomy of the ancient patriarchal Churches, see J. Chiramel, *The Patirachal Churches in the Oriental Code*, Alwaye 1992, 59-66.

below the name of the ancient patriarchal Churches and their mission territories in a schematic manner:

Constantinople: the Slavic world – Serbia, Moravia, Bulgaria, ancient Russian Empire, including Ukraine;

Alexandria: Upper valley of Nile, Syene (modern Aswan) Ethiopia, Arabia Felix (modern Yemen);

Antioch: Osroene, some parts of Persia, Armenia, Georgia, Lebanon;

Jerusalem: no evidence of missionary activity outside the patriarchate;

Assyrian Church of the East: western coast of the Persian Gulf, Tibet, China, Mongolia and India.

2. At the epoch of the Sacred Canons the territorial boundaries of the Churches in the Eastern Roman Empire were determined in the ecumenical councils alone, in which the patriarchs and bishops of the respective Churches participated and they had the opportunity to expose their views and arguments before a definitive decision.

3. The sacred canons on the principle of territoriality, which were originally formulated to accommodate the ecclesiastical administration to the political division of the ancient Roman Empire cannot be applied in the same manner to the modern world, which has been turned into a global village and in which people are on the move transcending all national boundaries, as well as religious, ritual, cultural, linguistic and ethnic barriers. Like theological and liturgical traditions Sacred Canons also admit organic progress and natural development, enabling the Churches to confront the problems of the third millennium, which were not foreseen in the ancient Roman Empire. It is not without reason that in the course of time some canons were either fallen into desuetude or abandoned; some others were modified or updated and several new canons were added. This is evident from the new Eastern Code itself, which has 1546 canons, whereas the Sacred Canons numbered only about 700.

4. The Byzantine Orthodox Churches, which qualify themselves as the Churches of the Fathers and of the seven ecumenical councils, have followed their faithful everywhere in the world and constituted ecclesiastical structures and thus in praxis abandoned the Sacred Canons concerning the principle of territoriality, although they have not yet been officially modified, because of the Orthodox impossibility to convoke an ecumenical council.

5. Exclusive territorial jurisdiction of one patriarch in one territory as determined by the Sacred Canons does not seem to exist today. For example, in addition to the presence of Orthodox Churches, one can find seven Catholic jurisdictions in Egypt, six in Lebanon and Syria, five in the Holy Land, four in Iraq, three in South India and so forth.<sup>5</sup> Hence in these places jurisdiction is determined not on a territorial basis, but on an ecclesial basis, namely each patriarch has jurisdiction over the faithful of the same Church, as he is its father and head.

## 2. Western Church in the East and in the Entire World

With the Crusades in the Middle Ages and the founding of Latin patriarchates from the end of the eleventh century the Latin jurisdiction was established in many traditionally Eastern territories. The first Latin patriarchates were established in Antioch (in 1098) and Jerusalem (in 1099). The Fourth Crusade led to the occupation of Constantinople and the creation of a Latin patriarchate there in 1204 and later also in Alexandria in 1209.<sup>6</sup> When the kingdoms created by the Crusaders became extinct the patriarchs of the Latin patriarchs of the Eastern regions were considered titular 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.<sup>7</sup> At present the Latin patriarch of Jerusalem has jurisdiction over the Latin Catholics in Israel, Palestine, Jordan and Cyprus.<sup>8</sup> In January 1964, Pope Paul VI definitively suppressed the Latin patriarchates of Alexandria, Antioch and Constantinople.<sup>9</sup> However, dioceses or apostolic vicariates were erected for the

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<sup>5</sup>Cf. Distribuzione geografica delle circoscrizioni ecclesiastiche, *Annuario Pontificio* 2011, 1107-1143.

<sup>6</sup>G. Řezáč, "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.

<sup>7</sup>R. De Martinis, *Ius Pontificium de Propaganda Fide*, pars 1, vol. 6, 40-44; *Annuario Pontificio* 2011, 1818.

<sup>8</sup>*Annuario Pontificio* 2011, 6.

<sup>9</sup>*Annuario Pontificio* 2011, 1818.

pastoral care of the Latin Christians in those Eastern regions. At present the Latin Church has archdioceses, dioceses or apostolic vicariates in almost all Eastern regions like, Bulgaria, Egypt, Greece, Israel (Jerusalem) Iran, Iraq, Lebanon, Syria, South India, Turkey, Russia and Ukraine.

The organized missionary activity of the Latin Church, conducted under the Patronage of the kings of Portugal and Spain from the second half of the fifteenth century and under the authority of the Congregation of Propaganda Fide from 22 June 1622 led to the evangelization of many nations and peoples in the continents of Africa, Americas, Asia and Australia. At present, the Latin Church, which extends all over the globe, transcending all national boundaries and embracing all cultures and civilizations, has no territorial limitation.<sup>10</sup> In other words the boundaries of the Latin Church are practically coterminous with those of the world itself. Consequently in the whole Latin Code it is not possible to find a single canon, which speaks about the external territorial boundaries of the Latin Church.

### **3. Eastern Catholic Churches in Western Territories**

The presence of the Eastern Christians in the West is the result of the mobility of peoples and the phenomenon of immigration, especially in the nineteenth and twentieth centuries, provoked by Islamic intolerance, communist oppression, civil wars and tragedies, as well as other socio-political and economic reasons. Enormous groups of Eastern Christians found their safe havens in Americas, Australia and Western Europe. The effective pastoral care of these faithful urged the establishment of Eastern parishes and eparchies in the countries of their immigration. At present Eastern jurisdictions exist in Western countries such as Argentina, Canada, the United States of America, Mexico, Germany, France, Australia, England, Italy, Poland, etc.<sup>11</sup> Here we indicate only the ecclesiastical units of the 6 patriarchal and 4 major archiepiscopal Churches outside the proper territory:

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<sup>10</sup>Cf. Distribuzione geografica delle circoscrizioni ecclesiastiche, *Annuario Pontificio 2011*, 1106-1143.

<sup>11</sup>Cf. Riti della Chiesa, *Anuario Pontificio 2011*, 1144-1147.

Armenian Church: an eparchy each in Argentina and France, and two apostolic exarchates in Argentina and USA respectively (4 units);

Coptic Church: only parishes outside;

Chaldean Church: an eparchy in Australia and two eparchies in USA;

Maronite Church: an eparchy each in Mexico, Canada, Australia, Brazil, Argentina and two eparchies in USA (7 eparchies);

Melkite Church: an eparchy each in USA, Brazil, Canada, Mexico, Australia as well as apostolic exarchates in Argentina and Venezuela (7 units);

Syrian Church: an eparchy in USA and an apostolic exarchate in Venezuela;

Syro-Malabar Church: 10 eparchies in India and an eparchy in USA (11 eparchies);

Syro-Malankara Church: an exarchate in USA;

Rumanian Church: an eparchy in USA;

Ukrainian Church: a metropolitan archdiocese and 4 suffragan sees in Canada, a metropolitan archdiocese and 3 suffragan sees in USA, a metropolitan archdiocese and a suffragan eparchy in Poland, an eparchy each in Argentina, Brazil and Australia, as well as apostolic exarchates in Great Britain, Germany and France (17 units outside, inside only 10 units).

Our panoramic presentation demonstrates that for the pastoral care of the Eastern Catholic emigrants hierarchies were constituted outside the territory. At the same time they were considered completely independent from the mother Church, because of the strict application of the principle of territoriality and the consequent limitation of patriarchal power within the territory. Even according to the canons of the *motu proprio Cleri Sanctitati*, a part of the previous Eastern legislation promulgated by Pope Pius XII on 11 June 1957,<sup>12</sup> the patriarch and the synod of bishops had no authority over the faithful and the bishops of the same Church outside the territory. These bishops were directly appointed by the Roman Pontiff without any kind of participation of the synod and even without the knowledge of the patriarch or major archbishop of the same Church. The bishops thus appointed were not members of the synod and had

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<sup>12</sup>*De ritibus orientalibus, de personis pro Ecclesiis orientalibus, Cleri sanctitati*, AAS 49 (1957) 433-558, 558 canons.

no synodal rights and obligations. They directly depended upon the Holy See just like the bishops of the Latin Church, without any juridical relationship with the mother Church.<sup>13</sup>

#### 4. The Second Vatican Council and the Principle of Territoriality

The Second Vatican Council in its decree *Orientalium Ecclesiarum* highly esteemed the patriarchal institution and determined that the rights and privileges of the patriarchs “should be re-established in accordance with the ancient tradition of each of the Churches and the decrees of the ecumenical councils” (OE 9), but it maintained the principle of territoriality. The Council defined the name Eastern patriarch as “the bishop to whom belongs jurisdiction over all bishops, not excepting metropolitans, clergy and people of *his own territory or rite* in accordance with canon law and without prejudice to the primacy of the Roman Pontiff” (OE 7). Again the Council stated that the patriarchs with their synods are the highest authority for all business of the patriarchate only “within the territorial bounds of the patriarchate” (cf. OE 9). Hence the Council did not abolish the principle of territoriality.

However, the position of the Council on the principle of territoriality seems to be very attenuated by other provisions for evangelization and pastoral care of the migrants. In fact, the Council proclaimed that the individual Churches of the East and the West are of equal dignity and “they enjoy the same rights and are under the same obligations, also in respect of preaching the Gospel to the whole world (cf. *Mk* 16: 15) under the guidance of the Roman Pontiff” (OE 3). Evidently the preaching of the Gospel to the whole world would eventually result in the emergence of new Christian communities and the constitution of suitable hierarchical structures.<sup>14</sup> Again with regard to the pastoral care of the migrants the Council decrees: “Means should be taken therefore in every part of the world for the protection and advancement of all the individual Churches and, to

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<sup>13</sup>The canons of CS which deal with such questions are 5, 22, 216 § 2 n. 2, 240 §2, 243 § 1, 260 § 1 n. 2, 261 and 262; cf. I. Žužek, “Canons Concerning the Authority of the Patriarchs...,” *Nuntia* 6 (1978) 14-15; N. Edelby, “Scope of Patriarchal Authority Outside the East,” *The Jurist* 29 (1969) 178-179.

<sup>14</sup>Cf. Vatican II, Decree on the Church’s Missionary Activity, *Ad Gentes*, no. 6.

this end, there should be established parishes and a special hierarchy where the spiritual good of the faithful demands it" (OE 4). In brief, the principle of territoriality, according to the mind of the Council, does not impede the Eastern Churches from preaching "the Gospel to the whole world", nor from establishing parishes and a special hierarchy "in every part of the world", if the spiritual good of the faithful requires them. Hence, the principle of territoriality does not seem to have been set forth in an absolute manner.

Moreover, for the first time the Council made provisions for strengthening the unity and communion of all the hierarchs and the Christian faithful of the same Church inside and outside the proper territory. As we have seen above, formerly the eparchies and bishops of the same Church constituted outside the proper territory had no juridical relationship with the mother Church. In order to resolve this problem the Council introduced the new concept of "attached hierarchy." According to the decree *Orientalium Ecclesiarum*, "Wherever an hierarch of any rite is appointed outside the territorial bounds of the patriarchate, he remains attached to the hierarchy of the patriarchate of that rite, in accordance with canon law" (OE 7). The Council did not define the juridical content of the "attached hierarchy", but simply indicated that the "attachment" would be "in accordance with canon law." This statement of the Council did not produce any practical juridical effect because the canon law of that epoch, as enshrined in *Cleri Sanctitati* did not foresee any kind of relationship of the hierarchy outside the territory with the mother Church.<sup>15</sup> Therefore, in order to put into effect the said clause of the conciliar decree *Orientalium Ecclesiarum*, by the order of the Supreme Pontiff, on 27 March 1970 the Congregation for the Oriental Churches made the following Declaration.

In its solicitude for safeguarding and promoting the growth of the Oriental Catholic Churches, the Apostolic See believes that certain norms should be established for strengthening closer relations between the patriarchs and hierarchs of their rites who are set up outside the limits of the patriarchal territory and for promoting more

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<sup>15</sup>For an extensive commentary on the nature and significance of "attached hierarchy," C. Pujol, "De sensu vocis "aggregatus" (Vaticanum II, Decr. "Orientalium Ecclesiarum," n. 7)," *Periodica de Re Morali Canonica Liturgica* 60, fasc. 2 (1971) 251-271.

effectively the welfare of the faithful of Oriental rites who are living outside the patriarchate. Wherefore the Sacred Congregation for the Oriental Churches, acceding to the requests that the prescriptions of the third clause of n. 7 of the conciliar decree *Orientalium Ecclesiarum*, be put into effect, by order of the Supreme Pontiff, makes the following declaration:

1. Oriental hierarchs who have been set up outside the limits of the patriarchal territory can participate with deliberative vote in the patriarchal synods of their own rite, whether these pertain to elections or to business matters.
2. The patriarch or, if the see is vacant or impeded, the patriarchal administrator is obliged to summon to the synods mentioned in no.1 all and each of the hierarchs of his rite who have been set up outside the boundaries of the patriarchal territory.
3. With reference to the designation of hierarchs of his own rite for the faithful who are living outside the patriarchate, the patriarch in conjunction with his synod of elections can, at the proper time, propose to the Apostolic See a list of at least three fit candidates, but the Roman Pontiff retains the right to appoint to offices of this kind whomever he himself prefers.

The above-established norms will obtain force for the interim until the Oriental canonical discipline has been reorganized in accord with the decrees and intent of the Second Vatican Ecumenical Council. In so far as necessary, the prescriptions of the current Oriental canon law are abrogated but this does not mean that the jurisdiction of the patriarch extended beyond the limits of his patriarchate. All things to be contrary notwithstanding, even those deserving special mention.

Given at Rome, 25 March 1970.<sup>16</sup>

The purpose of the Declaration was: to safeguard and promote the growth of the Oriental Catholic Churches, strengthen closer relations

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<sup>16</sup>*L'Osservatore Romano*, giovedì 23 aprile 1970; AAS 62 (1970) 179; English trans., *Canon Law Digest* 7 (1975) 9.

between the patriarchs and hierarchs of their rites who are set up outside the limits of the patriarchal territory and to promote more effectively the welfare of the faithful of Oriental rites who are living outside the patriarchate.<sup>17</sup> According to the Declaration the bishops of the same Church constituted outside the territory could participate (*partem habere possunt*) in the synods of the mother Church whether of elections (of patriarch and bishops) or of business matters with deliberative vote. The patriarch was bound to convoke these bishops to the synod, but they had no obligation to be really present. Although the bishops outside the patriarchate could participate in the synod with deliberative vote, the laws and decisions had force of law only within the territory. For the first time provision was made for some kind of participation of the synod and patriarch in the appointment of bishops outside the territory: the patriarch could propose a list of three worthy candidates elected in the synod, although the Roman Pontiff "retains the right to appoint to offices of this kind whomever he himself prefers." The norms set forth in the Declaration had only a provisional character, that is, until the promulgation of the new Eastern Code. Finally, the Declaration explicitly stated that these new norms did not mean the extension of the jurisdiction of the patriarch beyond the limits of his patriarchate.

##### **5. The Revision of Eastern Canon Law and the Principle of Territoriality**

The canons of the new Code with regard to the synodal rights outside the territory of the patriarchal Churches are formulated on the basis of the aforementioned Declaration with a view to strengthen the ties of the aggregates with the mother Church as much as possible, but without extending the patriarchal jurisdiction outside the determined territory. The question of the extension of the power of the patriarchs and synods outside the territory was a matter of serious discussion in the Code-Commission. As a final attempt, at the first session of the second plenary meeting on 5 November 1988 fifteen members of the Commission made the following proposal to be presented to the Roman Pontiff:

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<sup>17</sup>For details, C. Pujol, "Adnotationes ad Declarationem practicam vocis "aggregatus," *Periodica de Re Morali Canonica Liturgica* 59, fasc. 2 (1970) 346-349.

The undersigned propose that the question of the extension of the patriarchal jurisdiction over all the faithful of the autonomous Church also outside the territory of the patriarchate, be discussed first of all and that there be a solution before proceeding to the other questions.<sup>18</sup>

Bishop Emilio Eid, the Vice President of the Code-Commission immediately transmitted the petition to the Secretariat of State, in order to be submitted to Pope John Paul II as soon as possible. In a letter dated 10 November 1988, addressed to the Vice President, the pontifical decision was communicated to the assembly:<sup>19</sup>

Your Excellency,  
Relative to the "Motion" of the 5th of this month, signed by the "Plenary Codification Commission," assembled these days, it is my task to communicate to you that the Holy Father authorizes the Assembly to discuss the question posed, but holding firm to what has been decided by the ecumenical councils which have foreseen patriarchal jurisdiction only within the territory of the patriarchate and in particular what the Second Vatican Council established, which did not accede to the request to extend such jurisdiction outside the boundaries of the patriarchate.

It is necessary that the present assembly present to the Holy Father a draft of a Code that entirely conforms to the Eastern traditions and to the conciliar decisions.

In any case, for those Churches which find themselves in special situations with regard to their faithful residing outside the territory of the same, the Holy Father will be happy to consider, in light of the promulgated Code, the proposals elaborated by the synods with clear reference to the norms of the Code which if he should consider it opportune to specify with a special and temporary law (*ius speciale et ad tempus*).

Yours most devotedly in the Lord  
E. Cassidy, Substitute

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<sup>18</sup>*Nuntia* 29 (1989) 27.

<sup>19</sup>*Nuntia* 29 (1989) 27; the English translation is taken from J. D. Faris, *Eastern Catholic Churches: Constitution and Governance*, New York 1992, 355.

With this official communication the discussions with regard to the question of extending the patriarchal power over the faithful of the same Church outside the proper territory came to an end. The new Eastern Code, which strictly applies the principle of territoriality, was promulgated by Pope John Paul II on 18 October 1990 with the apostolic constitution *Sacri Canones*.<sup>20</sup> The Pope himself officially presented the new Eastern Code to the Eighth Ordinary Assembly of the Roman Synod of Bishops on 25 October 1990. In the speech delivered on that occasion, with regard to the exercise of power by the heads of the *sui iuris* Churches within a determined territory the Pope stated: "...I repeat what I said at the final Plenary Assembly of the Members of the Commission which prepared the Code. Now that the Code has been promulgated, I will be happy to consider proposals, formulated in the synods, well-detailed and with clear reference to norms in the Code, for which it may be thought to be opportune to draw up a "ius speciale" and "ad tempus"; the Code opens up this route in the relative canon with a clause referring to the "ius a Romano Pontifice approbatum" ...<sup>21</sup>. Though the extension of patriarchal power over the faithful of the same Church outside the territory is excluded in a general manner, the door is left open for some kind of adjustments for confronting special circumstances.

## 6. The Principle of Territoriality according to the Eastern Code

Canon 78 § 2 establishes and ratifies the fundamental principle of territoriality, which permeates the whole Code: "The power of the patriarch is exercised validly only inside the territorial boundaries of the patriarchal Church unless the nature of the matter or the common or particular law approved by the Roman Pontiff establishes otherwise." As a consequence of the strict application of the principle of territoriality, the bishops, priests and other faithful of the main patriarchal and major archiepiscopal Churches are practically divided into two groups: those residing inside the territory of the same Church and those dwelling outside of it. Even

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<sup>20</sup>AAS 82 (1990) 1033-1363.

<sup>21</sup>The original Latin text of this discourse can be found in *L'Osservatore Romano*, 27 October 1990, 4-5 & in AAS 83 (1991) 486-493; English trans., *L'Osservatore Romano*, weekly edition of 5 November 1990. The reference here is to canon 78 § 2, which speaks about a particular law approved by the Roman Pontiff, extending patriarchal jurisdiction outside the territory.

though the patriarch is the father and head of the entire patriarchal Church, he exercises his power over the bishops and other members of his Church only inside the territory, with some exceptions. According to John D. Faris, “outside the territory of the patriarchal Church, the Roman Pontiff, in effect, exercises the patriarchal jurisdiction over the bishops and other Christian faithful of the patriarchal Church with the exception of those matters determined by the CCEO or by particular law approved by the Roman Pontiff.”<sup>22</sup>

After this general principle, other canons concerning the patriarchal territory are arranged under Title IV, Chapter VIII: “The Territory of the Patriarchal Church and the Power of the Patriarchal Synods outside of This Territory” (cc. 146-150). Canon 146 § 1 defines the territory of a patriarchal Church:

The territory of the Church over which the patriarch presides extends over those regions in which the rite proper to that Church is observed and the patriarch has a lawfully acquired right to erect provinces, eparchies and exarchies.

According to this canon the territory of a patriarchal or major archiepiscopal Church is determined on the basis of two criteria which should be applied simultaneously:

1) The rite proper to that Church must be observed. The term “rite” is employed according to the prescription of canon 28 § 1 and therefore indicates a tradition observed by a specific Church (for example, Syro-Malankara rite) and not a generic tradition (for example, Antiochene tradition, cf. c. 28 § 2). This criterion of rite alone does not seem to create any serious problem because the rite proper to the same Church is observed even in the eparchies and parishes of the same Church constituted outside the territory. In fact the main purpose of the erection of ecclesiastical structures outside the territory of Eastern Catholic Churches is to enable the Christian faithful to live their faith in tune with the liturgical, theological, spiritual and canonical heritage of their own Church.

2) The proper territory of a Church extends only over those regions in which the patriarch or major archbishop has a lawfully acquired right to erect provinces, eparchies and exarchies (cf. c. 85 § 1 and § 3).

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<sup>22</sup>John D. Faris, *Eastern Catholic Churches: Constitution and Governance*, 242.

In fact, the patriarch or major archbishop of any Eastern Catholic Church has lawful right to erect one of the aforesaid ecclesiastical circumscriptions only within the confines determined by the supreme authority of the Church. In the present circumstances, the patriarch or major archbishop has no possibility of acquiring this right outside the delimited territory, except through an intervention of the Roman Pontiff, who is exclusively competent to modify the boundaries of the Eastern Catholic Churches (cf. cc. 57 § 1 and 146 § 2).

In addition to the general norms, the new Eastern Code uses expressions like “inside the territorial boundaries of the patriarchal Church,” “within the territorial boundaries of the patriarchal Church” and “outside the territorial boundaries of the patriarchal Church” more than 80 times to refer to the principle of territoriality or to the limitation of patriarchal power within the proper territory.<sup>23</sup> Since it is impossible to consider all the related canons in this brief study, we give only a few indications with regard to the major powers of the patriarch and synod.

### 6.1. The Legislative Power of the Synod of Bishops

According to the new Eastern Code the bishops of the same Church outside the territory are equally members of the synod and have the all the synodal rights and obligations, including a deliberative vote in all decisions.<sup>24</sup> With regard to the legislative power of the synod outside the territory the new Code stipulates:

Can. 150 § 2. The laws enacted by the synod of bishops of the patriarchal Church and promulgated by the patriarch have force of law everywhere in the world, if they are liturgical laws; if they are disciplinary laws or if other decisions of the synod are in question, they have the force

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<sup>23</sup>Cf. Canons 78, 86 § 2, 102 § 2, 132 § 1, 133 § 1, 138, 139, 143 § 1, n. 4, 146 § 2, 147-150, 155 § 2, 157 § 2, 177, 181 § 1, 204 § 4, 206 § 1, 208 § 1, 210 § 2, 211 § 1, 220, 224 § 1, 231 § 2, 232 § 3, 233, 261 § 1, 311 § 2, 314 § 1, 315 § 1, 330 § 1, 357 § 1, 397, 414 § 2, 435 § 1, 438-440, 480, 496 § 2, 499, 501 § 3, 506-507, 509 § 1, 544 § 1, 549 § 1, 575 § 1, 621 § 1, 642 § 2, 713 § 2, 729 n. 3, 748 § 2, 759 § 2, 767 § 2, 794-796, 830 § 1, 883 § 1, 893 § 1 n. 2, 986, 1036, 1060 § 2, 1062 § 1 & § 5, 1067, 1084 § 3, 1383 § 3, 1423 § 1, etc.

<sup>24</sup>Cf. Cc. 102, 149 & 150 § 1.

of law within the territorial boundaries of the patriarchal Church.

§ 3. Eparchial bishops constituted outside the territorial boundaries of the patriarchal Church, who desire to do so, may give force to the disciplinary laws and other decisions of the synod in their own eparchies, provided they do not exceed their competence; if however these laws or decisions are approved by the Apostolic See, they have force of law everywhere in the world.

The regulations of the Code concerning the validity of the laws and decisions of the synod outside the territorial boundaries of a patriarchal or major archiepiscopal Church can be summarized as follows:

1. Liturgical laws enacted by the synod and promulgated by the patriarch have force of law everywhere in the world. Liturgical laws of a patriarchal or major archiepiscopal Church are mainly contained in the liturgical books of that Church. Even the common Code, though it often refers to the prescriptions of liturgical books, does not on the most part legislate on liturgical matters; and therefore, the norms contained in the liturgical books are to be diligently observed (c. 2). Liturgical books (of course including norms for celebration) can be published by the patriarch with the consent of the synod only after a prior review of the Apostolic See (c. 657 § 1). It is self-evident that anyone who celebrates the liturgy of a Church *sui iuris* anywhere in the world should act according to the liturgical norms contained in the liturgical books of that Church, already reviewed and ratified by the Apostolic See. This was the case even before the promulgation of the new Code, although not officially stated.

2. In principle, disciplinary laws and other decisions of the synod have the force of law only within the territorial boundaries of a patriarchal or major archiepiscopal Church. Although the common law explicitly states that the "bishops outside the territorial boundaries of the patriarchal Church have all the synodal rights *and obligations* of the other bishops of the same Church" (c.150 § 1) and they have deliberative vote in all synodal decisions, it does not really oblige these bishops to apply the disciplinary laws and other decisions enacted by them in their own eparchies, and even prohibits them from doing so at least in certain cases (c. 150 § 3). Thus the laws

made by the bishops of a Church (except the liturgical ones) are not applicable to all the bishops and faithful of the same Church.<sup>25</sup>

The provision for the non-application of the disciplinary decisions of the synod outside the territory may destroy the unity of discipline in a *sui iuris* Church, especially if it has many bishops outside the territory, who are not obliged by the disciplinary laws. Even the particular programme for the training of clerics (c. 330), as well as the catechetical directory (c. 621) issued by the synod in harmony with the spiritual heritage and genuine traditions of the Church *sui iuris*, are not applicable in the eparchies and metropolitan provinces of the same Church constituted outside its delimited territory. However, non-liturgical laws and decisions of the synod can obtain the force of law outside the territory in two ways:

a) Synodal decisions as eparchial laws: the eparchial bishop exercises legislative power in the eparchy entrusted to him (cc.190-191). An eparchial bishop, constituted outside the territory of a patriarchal or major archiepiscopal Church, in his capacity as the legislator of the eparchy can promulgate the disciplinary laws and other decisions of the synod in his own eparchy, if he so desires and only if the matter is within his competence according to the norms of the Code. The eparchial bishops are not competent to enact laws in matters that are excluded by the Eastern Code from their competence or which are contrary to any laws enacted by the Apostolic See (cf. c. 985 § 2).

b) Synodal decisions as papal law: if the disciplinary laws and decisions of the synod are approved by the Apostolic See, they have force of law everywhere in the world. In such a case, the legislation would no longer be synodal law but *pontifical law*, and its abrogation would be within the competence of the Apostolic See.<sup>26</sup> It seems that any synod of bishops which desires to promulgate a disciplinary law

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<sup>25</sup>For example, the particular law of the Syro-Malabar Church prescribes obligatory celibacy for all its priests. Particular Laws of the Syro-Malabar Church, Art. 34 § 2, *Synodal News*, vol. 11 (May 2003) 15; cf. CCEO, c. 373. Since this is a disciplinary law, the eleven eparchial bishops of the same Church outside the territory are not bound by it and hence they can admit married clergy according to the common law.

<sup>26</sup>Cf. John D. Faris, *Eastern Catholic Churches: Constitution and Governance*, 363.

for the entire Church *sui iuris* may submit its legislation to the Apostolic See and obtain its approval.

According to *ius commune*, the deliberative vote of bishops constituted outside the territory can be restricted by particular law, except in the election of patriarchs, bishops and candidates for episcopacy outside the territory (c. 102 § 2). However, the restriction of the deliberative votes of the bishops outside the territory does not seem to be a good solution when considering the unity and growth of a Church, as well as the communion and concord of all its bishops congruent with the doctrine of the collegiality rehabilitated by Vatican II.

## 6.2. The Synod of Bishops and the Administration of Justice

The synod of bishops, which acts as the superior tribunal of a patriarchal or major archiepiscopal Church, together with the synodal tribunal of three elected bishops, the ordinary tribunal of the proper Church and other lower tribunals, forms a perfect judiciary system within the territory of the same Church, which judges in all the instances up to the final sentence with the exception of some cases reserved to the Roman Pontiff or the Apostolic See by the common Code.<sup>27</sup> However, the synod of bishops or its subsidiary judicial organs have no judicial power outside the territory, in spite of the fact that bishops outside the territory have the same rights in the synod with regard to the administration of justice inside the patriarchal or major archiepiscopal Church.

The judicial system of eparchies and metropolitan sees outside the proper territory of a patriarchal or major archiepiscopal Church is equivalent to that of the Latin Church (cc. 1064-1065; CIC c. 1483). Outside the territory the tribunal of the third instance is always the Apostolic See (c.1065) and the Roman Rota is as much competent as in the Latin Church.

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<sup>27</sup>Cf. Canons 1058-1085; for details, P. Pallath, *Synod of Bishops of Catholic Oriental Churches*, Rome 1994, 151-161; *Local Episcopal Bodies in East and West*, Kottayam 1997, 156-174; A. Thazhath, "Administration of Justice in the Patriarchal Churches," *Congregazione per le Chiese Orientali, Ius Ecclesiarum Vehiculum Caritatis*, Atti del simposio internazionale per il decennale dell'entrata in vigore del Codex Canonum Ecclesiarum Orientalium, Città del Vaticano 2004, 477-483.

### 6.3. The Appointment of Bishops outside the Territory

According to the Eastern Code the synod of a patriarchal or major archiepiscopal Church elects the bishops of the respective Church, who are to exercise their office within the territorial boundaries of the same Church, in accordance with the special norms for the election of bishops (cc. 180-189) and observing, as far as is necessary, the general norms on election (cc. 947-957). Evidently the bishops outside the territory are directly appointed by the Roman Pontiff, for which the procedure of the aforementioned Declaration of the Congregation for the Oriental Churches on 25 March 1970 was accepted into the new Oriental Code with redactional changes. Thus according to canon 149 of the Code the synod of bishops can elect at least three candidates for filling the office of eparchial bishop, coadjutor bishop or auxiliary bishop outside the territorial boundaries of a patriarchal or major archiepiscopal Church according to the norms of the canons on the election of bishops, and through the patriarch or major archbishop proposes them to the Roman Pontiff for appointment.

In the Declaration of the Congregation for the Oriental Churches which we cited above, it was explicitly stated that although the patriarch in conjunction with the synod could propose to the Apostolic See a list of at least three candidates, "the Roman Pontiff retains the right to appoint to offices of this kind whomever he himself prefers." However, this expression is not found in canon 149 because it is evident that according to canon 181 § 2 and the present practice, the Roman Pontiff is not bound by the list of candidates presented by the synod of bishops, and he can freely appoint whom he wishes. This is also evident from the obligation of secrecy imposed by the same canon 149 on all who in any way know the outcome of the election.<sup>28</sup> In brief, though the appointment of bishops outside the territory is reserved to the Roman Pontiff, the patriarch or major archbishop and the synod of bishops are at least

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<sup>28</sup>In the initial stage of the revision, about this point the Relater of the Code-Commission expressed the following opinion: "The Holy Father should be guaranteed the liberty to act as deems fit. Several consultors for the time being, feel that such a guarantee will be provided if the future Code adds a clause obliging all the members of the synod to 'strictissimum secretum usquedum de nominatione nuntium ad Patriarcham pervenerit.'" *Nuntia* 6 (1978) 30.

involved in the process. Only the Roman Pontiff can grant canonical provision to a bishop constituted outside the territory; however the patriarch is given *ipso iure* faculty to ordain and enthrone metropolitans and bishops who have been appointed by the Roman Pontiff (c. 86 § 2).

#### **6.4. Major Administrative Powers**

Administrative powers are generally reserved to the patriarch or major archbishop, though he requires the consent of the synod of bishops or that of the permanent synod according to the seriousness of the matter. Obviously the administrative powers of the patriarch or major archbishop are limited within the territorial boundaries of the same Church. The major administrative powers inside the territory are: constitution of provinces and eparchies; modification of their boundaries; unification, division, suppression and modification of their hierarchical status; transfer of the eparchial see; giving an eparchial bishop a coadjutor or auxiliary bishop; transfer of metropolitans and bishops; erection, modification and suppression of eparchies (cf. c. 85).

#### **7. Possibility for the Extension of Territorial Boundaries and for a Particular or Special Law Approved by the Roman Pontiff**

The entire revision process, the canons of the new Eastern Code and the decisions of the supreme authority demonstrate that the principle of territoriality will not be abandoned at the present circumstances and the power of the patriarchs, major archbishops and synods will not be extended outside the territory in a general manner by means of common law. However, a patriarchal or major archiepiscopal Church, which has a great number of eparchies and Christian faithful outside the territory or which finds itself in special historical, ecclesiastical and political circumstances can approach the supreme authority of the Church for the extension of territorial boundaries (cf. c. 57 § 1). Canon 146 § 2 indicates the procedure for such an eventuality. The synod of bishops of the concerned Church should investigate the matter. Then, after hearing the superior administrative authority of each Church *sui iuris* concerned, and after discussing the matter in the synod, the same synod should present a suitably documented petition for the extension of territory to the Roman Pontiff, who is the only competent authority to decree the modification of the boundaries.

Another possibility is to obtain a particular law approved by the Roman Pontiff in accordance with canon 78 § 2 or a special temporary law, which was originally proposed in 1988 in response to the petition of the Code-Commission and personally confirmed by the Roman Pontiff himself in 1990 on the occasion of the official presentation of the Code. For obtaining such a law the synod of the respective Church should study the various aspects of the matter and elaborate well-detailed proposals with clear reference to the norms of the Code and propose them to the Roman Pontiff for decision.<sup>29</sup>

It seems that the basic division of the patriarchal and major archiepiscopal Churches into intra-territorial and extra-territorial regions and the placing of the bishops and Christian faithful under a double regime with corresponding canonical norms considerably weaken the unity, harmony and communion of these Churches and may imperil the growth and advancement promised by Vatican II. The bishops and faithful of a Church *sui iuris* outside or inside the territory may be considered as equal members of the same Church, and hence they may be bound to their mother Church and *pater et caput* (patriarch or major archbishop) as strongly as possible. In order to strengthen the unity of the Eastern Churches and to ensure their growth and advancement, fully in agreement with the decisions of the superior authorities, I make three proposals, which can be granted by the Roman Pontiff as a particular law or special temporary law, in individual cases, upon specific and well-pondered request by the synod of the respective Church, without abandoning the principle of territoriality.<sup>30</sup>

1. Laws and decisions enacted by the synod and promulgated by the patriarch shall have obligatory force in all the eparchies of the same Church both inside and outside its delimited territorial boundaries. An eparchial bishop constituted outside the territory, who judges a given law not to be fruitfully applicable in his eparchy because of extraordinary special circumstances, shall reveal his reasons to the synod of bishops to obtain exemption or dispensation from this particular law. If the desired dispensation has not been granted and

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<sup>29</sup>Cf. *Nuntia* 29 (1989) 27; AAS 83 (1992) 492.

<sup>30</sup>Originally I made these three proposals in my doctoral dissertation, which was later published as a book. P. Pallath, *Synod of Bishops of Catholic Oriental Churches*, 233; also *Local Episcopal Bodies in East and West*, 490-491.

if the said bishop still considers such a provision necessary for the good of his eparchy, he can appeal to the Apostolic See for a definitive decision.<sup>31</sup> Granting juridical validity to every synodal decision in all the eparchies of the same Church seems to be in agreement with the teaching of Vatican II on the equality of Churches and the right of the Eastern Churches to govern themselves according to their own proper disciplines.<sup>32</sup>

2. The synod of bishops may become the superior tribunal for all the juridical persons and Christian faithful of the same Church even if located outside its territorial boundaries, with the exception of the special cases reserved to the Roman Pontiff (c.1060). The appeals from eparchies and metropolitan sees outside the territory should be made to the synodal tribunals of the same Church.

3. The bishops and metropolitans of the eparchies and provinces of the same Church constituted by the Roman Pontiff outside the territory may be elected by the synod of bishops according to the normal procedure of election stipulated in the Eastern Code, without prejudice to the inalienable right of the Roman Pontiff to intervene in individual cases.<sup>33</sup>

#### **8. The Tenth Anniversary of the Taking Effect of the New Code and the Confirmation of the Principle of Territoriality**

For the commemoration of the tenth anniversary of the taking effect of the Code of Canons of the Eastern Churches an international symposium was held at the Vatican from 19 to 23 November 2001 under the auspices of the Congregation for the Oriental Churches. In his inaugural discourse on 19 November 2001 Cardinal Ignace Moussa I Daoud, the Prefect of the Oriental Congregation, indicated the patriarchal jurisdiction outside the territory of the patriarchate as one of the delicate and important problems to be resolved in the

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<sup>31</sup>When the draft of the Code was sent to Oriental hierarchies for consultation, a similar proposal was made, but it was rejected by the Code-Commission. Cf. *Nuntia* 22 (1986) 110-111.

<sup>32</sup>Cf. Vatican II, *Orientalium Ecclesiarum*, nos. 3 & 5.

<sup>33</sup>Cf. Vatican II, *Orientalium Ecclesiarum*, no. 9. Recently also Dimitri Salachas made such a proposal. See his article, "Ecclesial Communion and the Exercise of Primacy in *Codex Canonum Ecclesiarum Orientalium*," *Studies in Church Law*, vol. 1 (2005) 182.

future.<sup>34</sup> On Thursday, 22 November 2001, Cardinal Angelo Sodano, Secretary of State, in the name of the Holy Father, greeted the cardinals, patriarchs, bishops, priests and experts taking part in the symposium. With regard to the principle of territoriality Cardinal Sodano made the following statement:

It seems opportune to recall here the principle of territoriality, that was firmly upheld by all the ecumenical Councils, including the Second Vatican Council (cf. *Orientalium Ecclesiarum*, n. 7), and which the Holy Father wanted the experts to keep in mind as they drafted the Code of the Canons of the Eastern Churches. The members of the Commission that prepared the Code - with the six Eastern Patriarchs being pre-eminent among them - demonstrated that they understood this (principle) perfectly: in the course of the Plenary Assembly of November 1988, after the matter was brought to their attention by the Holy Father, they abandoned a motion that had been signed by 15 members aimed at obtaining the extension of patriarchal jurisdiction to the whole world. The Pope had asked for the Code to be drafted in accord with both the traditions of the Oriental Churches and the decisions of the Councils, including those of the Second Vatican Council. Vatican II did not accept the request to extend Patriarchal jurisdiction beyond the legitimately established boundaries of the patriarchal Church. From that point on, the assembly did its work quietly and effectively. In fact it was evident to all that the draft of the Code presented by the Assembly, the fruit of almost 20 years of assiduous work, finished with the collaboration of the entire Episcopate of the Eastern Churches, and even on the theme of territoriality, was in accord with the Oriental traditions and the decisions of Councils. On this same occasion, however, the Pope added that, for the Churches having faithful outside their territory, he would be happy to consider, once the Code was promulgated, Synod proposals making clear reference to the norms of the

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<sup>34</sup>Congregazione per le Chiese Orientali, *Ius Ecclesiarum Vehiculum Caritatis*, 19.

Code, judging it opportune to address specific situations a *ius speciale* that would be in effect *ad tempus* (cf. *Nuntia*, n. 29, p. 27). He repeated this willingness again on the occasion of the promulgation of the Code, when he presented the new juridical text to the Synod of Bishops (cf. n. 12, AAS 83 [1991] 492). You also know that the Code foresees the possibility of a revision of the territorial boundaries of a Patriarchal Church. Canon 146, § 2 clearly indicates the path to be followed in this case. It is up to the Synod of Bishops of the Patriarchal Church to study the question, after having listened to the higher administrative authority of each *sui iuris* Church that is involved. The Synod must then present the proposal, with the necessary documentation, to the Roman Pontiff. Evidently, one assumes that we are dealing with proposals which do not intend to change the principle of territoriality sanctioned by the ecumenical Councils, but only to change boundaries for reasons of a particular character.<sup>35</sup>

This declaration of the Secretary of State unequivocally confirms the territorial limitation of patriarchal jurisdiction. At the same time it does not exclude the possibility of the Roman Pontiff to modify the boundaries of the Eastern Churches in accordance with canon 146 § 2. It also reiterates the idea of a *ius speciale* that would be in effect *ad tempus*, in order to address specific situations.

### Conclusion

Since the Eastern Code has not made any objective criteria for the extension of the territory of the Eastern Catholic Churches, the patriarchs and major archbishops have only the possibility of approaching the Apostolic See with well-documented petitions for the modification of the territorial boundaries of their Churches. Any decision with regard to the territorial extension depends fully on the supreme authority of the Church, which is exclusively competent for the matter. Hence, in accordance with canon 146 § 1 concerning the modification of territory, newly confirmed by Cardinal Sodano in the name of the Pope on 22 November 2001, the Eastern Catholic

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<sup>35</sup>*L'Osservatore Romano*, 24 novembre 2001; also Congregazione per le Chiese Orientali, *Ius Ecclesiarum Vehiculum Caritatis*, 590; English trans. *L'Osservatore Romano*, weekly edition, 21 November 2001, 6.

Churches, which have a great number of faithful outside the territory can present proposals to the Roman Pontiff for the extension of territorial boundaries. For the ecclesiastical circumscriptions eventually constituted outside the territory, these Churches can obtain a particular law approved by the Roman Pontiff or a special and temporary law, without extending their jurisdiction to the whole world and without changing the principle of territoriality. However, although mention has been made of a special law from 10 November 1988 on, until today no such law has known to have been promulgated in favour of any Eastern Catholic Church.