

## MEMORANDUM

TO: The Executive Council  
FROM: The Standing Commission on Constitution and Canons  
DATE: February 15, 2011

### Background

This Memorandum constitutes the report requested from the Executive Council regarding constitutional and canonical issues arising from the text of the draft Anglican Covenant. We have been asked to focus on Section 4 of the draft Covenant. A close reading of the Covenant, and especially Section 4.4.1, makes it clear that the text of the Preamble and of the Introduction to the Covenant must be considered as part of the Covenant itself, despite some confusing language to the contrary. The Commission is mindful of recent actions and statements by the Archbishop of Canterbury, our Presiding Bishop, and other primates of the Communion which provide some perspectives on the subject of future disputes and the understanding of roles and authority.

As developed further in this report, the SCCC is of the view that adoption of the current draft Anglican Covenant has the potential to change the constitutional and canonical framework of TEC, particularly with respect to the autonomy of our Church, and the constitutional authority of our General Convention, bishops and dioceses.

### Provisions of the Introduction and Preamble: Potential Concerns for Constitutional Autonomy

Paragraph 1 of the Introduction speaks of the biblical treatment of the “communion in Jesus Christ.” It includes the “Communion of the life of the Church,” as the basis for the existence and “ordering of the Church.” A fair interpretation of this text is that our “Communion in Jesus Christ” coexists with our Communion as constituent members of the Anglican Communion. The implication may be that the continuation of our communion in Jesus Christ requires accession to the particular ordering of the church described in the draft Covenant, or which may be described from time to time by various elements of the Anglican Communion (e.g., “Instruments of Communion”). If so, this may be seen as superseding the respective Constitutions and Canons of the constituent members of the Anglican Communion, including TEC. This conclusion, if well-founded, may be of concern to those who believe that the history of the flexibility and growth of the churches of the Anglican Communion has been largely attributable to our traditional structures and their local adaptations.

The implied nexus between biblical notions of communion with the Anglican Communion is developed further in paragraphs 2 and 3 of the Introduction. These paragraphs begin to illuminate the drafters’ simultaneous expectations of sharing in God’s communion in Jesus Christ, recognizing responsibilities for our common life, and living out this relationship “in mutual deference.” Depending on the means and manner by which these expectations are made manifest in actions at the Communion level, it may be of concern to TEC and any individual constituent church within the Communion that any given “Instruments of Communion” could define “responsibilities of our common life,” and that invocation of Section 4 is the consequence for alleged breaches of such defined responsibilities.

Paragraph 4 provides that the Provinces will “covenant together as churches of this Anglican Communion to be faithful to God’s promises through the historic faith we confess, our common worship, our participation in God’s mission, and the way we live together.” Again,

depending on the forms that this language, if adopted, may take, this provision may challenge the autonomy of each church and the uniqueness by which some believe that the Church has received and understands the Scriptures and understands the Divine (in ways beyond the descriptions of the 1662 Book of Common Prayer). Arguably, Provincial conformity to this promise within the Covenant may proscribe or limit any doctrinal actions of the General Convention or changes to the Book of Common Prayer, a constitutional prerogative.

Finally, the juxtaposition in paragraph 5 of “the character of this Anglican expression of Christian faith” with “the common understanding of faith and order we have received” spotlights the potential tension of simultaneously honoring Anglican tolerance for variation of expression and understanding with the new structure which may circumscribe and limit our faith journey in new understandings. The thrust of the Covenant, that, under certain circumstances, new expression by a constituent member of its understanding of faith and order may be subject to the judgment (and assent) of other members of the Communion, may challenge the authority of the General Convention, under the provisions of our Constitution and Canons, in identifying and articulating new understandings of our faith and doctrine.

The Preamble identifies the purpose of the Covenant “to proclaim more effectively in our different contexts the grace of God revealed in the Gospel, to offer God’s love in responding to the needs of the world, to maintain the unity of the Spirit in the bond of peace, and together with all God’s people to attain the full stature of Christ. Recent actions and statements from the Archbishop of Canterbury, our Presiding Bishop, and the primates of the Anglican Communion illustrate the difficulty of simultaneously recognizing “our different contexts” with the goal “to maintain the unity of the Spirit . . .” This invites the inevitable question of whether the expectations of being “in Communion” or subscribing to the Covenant may be more valuable and useful from the “30,000 foot level” rather than expecting consensus or acceptance of differing understandings or actions on the ground. Should the mutual expectations and accountability for membership in the Anglican Covenant be limited to broader theological tenants and traditions without conformity and the more detailed level?

#### Particular Issues in Section 4

One matter to be considered in assessing the Covenant is the weight to be accorded the Windsor Report. Although some members of the Anglican Communion consider the Windsor Report to be authoritative in its own right, the text of the Windsor Report states that it is intended to be a document for discussion and study. Some students of the Covenant may be concerned that it accords the so-called “Instruments of Communion” a degree of authority and responsibility arguably never historically accorded them by the collective membership of the Communion. Some observers of the recent history of the Communion may question why primacy seemingly has been given to the recommendation that a Covenant be adopted, while it may appear that other provisions having been largely ignored. Others, however, take the position that the adoption of a Covenant was, in fact, the “prime directive” of the Windsor report, with other considerations, although meriting mention in the Report, being secondary to considerations of promoting adoption of a Covenant. To some, the idea of a Communion-wide Covenant may appear to be anomalous, when the underlying document, the Windsor Report, has never itself been adopted or approved.

Section 4.1 of the Covenant reflects tensions between the concepts of theological harmony within the Communion and Provincial autonomy. Some may view as contradictory the charge of the Covenant for each covenanting church to take the steps to implement the stated principles and procedures and the Covenant’s claim that it does not intentionally alter “any provision of the Constitution and Canons of any church of the Communion, or to limit its autonomy of governance.” Similarly, some may be concerned that the Covenant could be seen as promoting a concept of “interdependence of life which is consistent with its own life and with the doctrine and practice of the Christian faith as it has received them, “proscribing actions which may be taken unilaterally by any of the Instruments of Communion” or the Standing Committee of the Anglican Communion to sanction any constituent member whose expression of doctrine or

practice of the Christian faith is deemed objectionable to an unspecified number of other members of the Communion. To others, however, the principal thrust of the Covenant is to articulate principles of theological comity and harmony that have been historically understood throughout the spread and development of Anglicanism, but whose explicit articulation has been made necessary by the divergent actions of various Provinces. Undoubtedly, however, the Covenant promotes a disciplinary structure which has not existed, heretofore in the history of the Anglican Communion. The adoption of a Communion-wide system of discipline may be, in practice, difficult to establish or conduct, in light of the fact that each Province has a history and role not related to any concept of such a formal Communion-wide structure. The governing Provincial bodies represent a coincidence of how representatives of the Church gather and how we partner in ministry that is quite distinguishable from a governance function. There is no consensus as to the actual authority of the Instruments of the Communion. If the adoption of a Covenant creates a limited governance authority in the Instruments, our Constitution would need to be amended to acknowledge accession to that authority. Some may argue that if autonomy is really understood and respected, so that conformity on any given issue of doctrine or practice is only important as a prerequisite to staying in the Communion, what is the reason for the Communion? Others however, may view the concept of such Communion-wide harmony as being inextricably bound to the nature of being "in communion."

It is necessary, before embracing any Communion-wide structure, to resolve the issue of how being in the Communion itself informs or changes our Church's ability to receive the doctrine and practice of the Christian faith?

Paragraph 4.1.3 provides that

. . . such mutual commitment does not represent submission to any external ecclesiastical jurisdiction. Nothing in this Covenant of itself shall be deemed to alter any provision of the Constitution and Canons of any church of the Communion, or to limit its autonomy of governance. The Covenant does not grant to any one church or any agency of the Communion control or direction over any church of the Anglican Communion.

The implementation of the Covenant, and especially of Section 4, could arguably provide a mechanism by which other churches of the community or agencies of the Communion could seek to exert influence if not control and direction over any church of the Communion whose actions (such as ordaining non-celibate gay and lesbian persons or authorizing blessing of same sex unions) was deemed (by said other church or agency) to threaten the relationship of the churches of the Communion. This may create legislative conflict in light of the connectivity of our Constitution and Canons with the Book of Common Prayer, and the special nature of the role we accord to our bishops in defending, but not themselves establishing, the Doctrine, Discipline, and Worship of the Church; and the limited prerogatives of bishops to authorize special forms of worship. Certainly, in considering the adoption of a Covenant, we would have to consider carefully its effect on the discretion historically accorded to diocesan bishops in the Episcopal Church.

Paragraph 4.1.5 presents an intricately defined set of foreseeable circumstances wherein any one of the "Instruments of Communion" might invite another church to adopt the Covenant, and might indeed invite membership in the Communion without the consent or concurrence of other "Instruments of Communion."

It is not particularly clear what the effect would be for any church deciding not to adopt the Covenant, although paragraph 4.3.1 regarding withdrawal from the Covenant suggests that there would be a continuing relationship of an undefined nature with the Communion. In remarks concerning the Covenant, the Archbishop of Canterbury has likened the relationship between

those Provinces not adopting the Covenant to those who elect to adopt it with the present relationship between the Anglican and Methodist Churches.

Section 4.2.1 begins to make clearer the intention that adherence to the Covenant would be a prerequisite to mutual recognition and communion between the respective churches. The adoption of such an explicit structure is a historic and significant departure for the Anglican Communion churches. The constitutional and canonical conundrum arising from this statement is that the positions and actions of the Church (often expressed through its Constitution and Canons) may determine whether the Episcopal Church continues to be recognized as a member of the Anglican Communion, however, there is no agreed standard for compliance any given action by the Episcopal Church could be considered to be offensive by one or more other member churches or by one of the "Instruments of Communion." The other constituent members of the Communion ascribing to the Covenant would, presumably, be similarly situated. This would give rise to a "dispute" as contemplated in Section 4.2. The matter would be referred to the Standing Committee of the Anglican Communion, which by this Covenant seems to be granted a new juridical authority without accountability to anyone or any other entity, as the Covenant does not, in its present form, provide for review of or appeal from decisions of the Standing Committee. There is no provision that decisions of the Standing Committee may be appealed to the Anglican Consultative Council. Some may be concerned that the recommendation ultimately rendered by the Standing Committee and the "relational consequences" described within the recommendation may effectively be the banishment or other reduction in status for the offending church.

Section 4.2.3 seems to be the enforcement mechanism for Section 3.2. Section 3.2 has significant consequences concerning our understanding of autonomy and the respect for how a church receives its understanding of the doctrine and practice of the Christian faith. It has been interpreted by some to preclude the right of a church to live into any newly received understanding of the doctrine or practice, including (for example) any changes to the Book of Common Prayer, approval of new liturgies, etc. The process for consideration and approval of such changes is a constitutional element, with no provision therein for deferring to a separate process within the Anglican Communion. Our Constitution might therefore have to be amended to acknowledge a mechanism for deferring to such a separate process if the Covenant is to be approved.

Section 4.2.4 requires referral to the Standing Committee where "a shared mind has not been reached." However, the Covenant fails to define the criteria for determining if the Communion is of a "shared mind" on any particular theological issue. There is no specific process or timetable within which the Standing Committee of the Communion is expected to act in resolving such questions and no appeal from any undue delay. Accordingly, the constitutional autonomy of the Episcopal Church in its future articulation of doctrine or practice could be compromised by this provision. Referral of the question of "shared mind" to the Anglican Consultative Council and the primates' meeting "for advice" is beyond any previously established authority or mandate for these groups. The Covenant is also unclear as to whether, in those Provinces that decline to adopt its provisions, individual dioceses may assent to the Covenant. Although some TEC dioceses have purported to adopt the Covenant through legislative action, the effect of such actions is unclear, especially given that TEC has not yet acted as a body on the Covenant.

Paragraph 4.2.8 defines the structure, process, and apparent authority of the Standing Committee, as described in the Covenant, to churches who have adopted or are "in the process of adopting" the Covenant. This provision could be interpreted to supersede any constitutional or other governing provisions of the respective church and of other respective Instruments of Communion regarding their decision-making processes.

Section 4.2 would require substantial Constitutional and canonical action on the part of the Episcopal Church. It would purport to require the Episcopal Church to put into place

“mechanisms, agencies, or institutions,” necessary to assure the compliance with the Covenant of all levels of the Church and respective dioceses. It further implies an expectation that the Constitution and Canons of the Episcopal Church be amended to empower the Presiding Bishop to become the Anglican Communion de facto compliance officer for the Episcopal Church, which would clearly exceed her present constitutional and canonical authority.

### The Constitution and Canons of TEC

The Preamble to our Constitution describes a relationship with the Anglican Communion, in that we are a constituent member of a fellowship of dioceses, provinces and regional churches in communion with the Archbishop of Canterbury. There is no accession clause or limitation of jurisdiction or autonomy associated with this relationship. Likewise, there is no accession or deference to the Anglican Communion in provisions of the Constitution and Canons where deference would be relevant.

Article V provides for the creation of new dioceses in the Episcopal Church, with no reference to Anglican Communion approval or consent. New dioceses are also required to include an unqualified accession to the Constitution and Canons of the Episcopal Church, without reference to the Anglican Communion.

Article VIII and IX require compliance by the clergy of the Rules and Canons of the Episcopal Church, with no reference to assent by the Anglican Communion.

In Article X the Book of Common Prayer provisions describe the preservation of the Book of Common Prayer and amendments thereto by the General Convention of this Church, without deference to or assent required by the Anglican Communion.

Article XII provides for procedures for amending our Constitution, without requiring consent or approval by the Anglican Communion.

### Applicable Canonical Provisions

In Title I, Canon 2.4, the role of the Presiding Bishop as chief pastor and primate is described, with no express duty or authority regarding our participation in the Anglican Communion.

Title I, Canon 4.2, provides that the Executive Council will elect a representative to the Anglican Consultative Council.

Title I, Canons 9.2 and 10, describe the process for approving new dioceses, with no accession to or approval by the Anglican Communion.

Title I, Canon 10.4, explicitly provides for the requirement of new dioceses to submit an unqualified accession to the Episcopal Church, with no reference to the Anglican Communion.

Title I, Canon 11.2(b) and Canon 11.3, describe ecumenical missions without requiring accession to or deference to the Anglican Communion.

Title I, Canon 11.4, requires notice to all Archbishops and Metropolitans and all Presiding Bishops of churches in communion with the Episcopal Church of the establishment of any area mission or change in status of any missionary diocese outside the United States, but with no assent or approval required by the Anglican Communion. That Canon goes on to prescribe the exercise of any jurisdiction by more than one church in communion in the same place except by concordat.

Title I, Canon 15.1, provides for congregations in foreign lands to respect the territory of other churches in the Anglican Communion.

Title I, Canon 20, describes the Episcopal Church as a member of the Anglican Communion with a relationship of full communion with those churches of the historic episcopal succession and with whom it has entered into covenant agreements. It does not otherwise define what being a member of the Anglican Communion means or infer any accession to the Anglican Communion.

Title II provides for authorized translations of the Bible in the Canons or by the diocesan bishop, with no reference to the Anglican Communion.

Title II, Canon 3, provides for the Book of Common Prayer and changes thereto without reference to the Anglican Communion.

Title II, Canon 4, provides for the authorization of special forms of service by the bishop of the diocese without reference to the Anglican Communion.

Title III, Canon 1.2, provides that there shall be no discrimination in access to the discernment process for ordination or licensing, without reference or deference to the Anglican Communion.

Title III, Canon 11, describes the process for the election of a bishop, without reference to the Anglican Communion.