CONVENTIO*

INTER APOSTOLICAM SEDEM ET REM PUBLICAM MELITENSEM DE BONIS ECCLESIAE TEMPORALIBUS

AGREEMENT BETWEEN
THE HOLY SEE
AND THE
REPUBLIC OF MALTA
ON THE
TEMPORAL GOODS
OF THE CHURCH

THE HOLY SEE AND THE REPUBLIC OF MALTA,

considering, on the part of the Holy See, the principles declared by the Second Ecumenical Vatican Council and enforced by the Code of Canon Law concerning the use of temporal goods belonging to ecclesiastical entities; the particular circumstances that characterize the pastoral decisions of the Church in Malta; the needs resulting from the commitment to evangelization and charity, also with reference to the criteria approved in 1973 for the administrative reform in the Ecclesiastical Province of Malta; the exigencies of the common good of Maltese society, above all with regard to major social expectations;

and considering also, on the part of the Republic of Malta, the need to facilitate the application to social purposes of the property of ecclesiastical entities;

have decided to enter into the present Agreement on the transfer to the State of such immovable ecclesiastical property as is not required for pastoral purposes and on the determination of certain issues pertaining to the relations between the Church and the State as regards matters of patrimony.

Wherefore, the Holy See, as represented by Mgr Pier Luigi Celata, Titular Archbishop of Doclea, Apostolic Nuncio to Malta, and the Republic of Malta, as repreented by Dr Edward Fenech Adami, Prime Minister, have by common accord established as follows:

- **1.** All the immovable property belonging to ecclesiastical entities in Malta and Gozo is transferred to the State, with the exception of that described hereunder:
- **a**) the property which, as attested to by means of a declaration or in the judgement of the ecclesiastical Authorities:
- i) is currently used (Annex 1),** or foreseen to be useful in future (Annex 2), for the institutional purposes of the ecclesiastical entities that possess it or of other ecclesiastical entities;

- **ii**) is contiguous to, or overlooking, or in any way connected with, any property mentioned in Annexes 1 and 2, or is subject to or enjoys easement over it (Annex 3);
- **iii**) is the object of a promise of sale, emphyteusis or alienation under any other title that was entered into before the date of the present Agreement and that is still binding, and has been presented for due approval to the Holy See (Annex 4);
- **b**) the temporary utile dominium and the right of usufruct of property belonging to third parties;
- **c**) property which is required for the purpose of exchange as mentioned in article 10 (Annex 5);
- **d)** property connected with particular circumstances (Annex 6).
- **2.** Ecclesiastical property to be transferred to the State in terms of paragraph 1 of this article, which is the subject-matter of a lawsuit to which an ecclesiastical entity is a party, shall not be transferred to the State before such suit is determined by means of a final judgement or of a compromise between the parties.

Article 2

- 1. The Government shall use the property transferred to it by virtue of the present Agreement to promote the safeguarding of the environment and the development of agriculture, and to meet the Country's most pressing social requirements, such as social housing and public utilities, as well as for humanitarian, educational and cultural purposes. The aims and activities of political parties and of entities directly or indirectly connected with them are not, however, to be considered among such purposes in the interpretation of this article.
- **2.** This same property shall not be transferred, directly or indirectly, to persons or entities whose nature, aims and activities are not in conformity with the moral teachings of the Church.
- **3.** The transfer of this same property by the State, for the purposes set out in paragraph 1 of this Article, shall be made by tender after a call for same in the Malta Government Gazette or, in the cases contemplated by law, on the basis of a graduated scale of points or by lot and, saving what is laid down in this article, shall be effected also according to the provisions of the Disposal of Government Land Act, 1976 or, in case of total or partial repeal of this law, in conformity with its basic principles.

Article 3

As on the date of coming into force of the present Agreement all the property at present in the possession of ecclesiastical entities, whether retained by them or transferred to the State by virtue of the present Agreement:

a) is deemed for all intents and purposes as having been already registered with absolute title for the purposes of the Land Registration Act, 1981, saving any rights belonging to third parties. "Third parties" is understood to refer to persons other than the Government or any other public entity and the Church or any ecclesiastical entity. Each party recognizes for all

purposes the title of the other party to property it retains or acquires in accordance with the terms of the present Agreement and thereby each party renounces any right or action against the other party concerning the title of said property including, without prejudice to the generality of the above stated renunciation, any right of action under the Land Registration Act, 1981;

- **b**) with regard to the Government or to other public entities is confirmed as to its title of ownership and possession, whenever necessary, in respect of any lack or defect of title, in such a way that it is considered as belonging to those same ecclesiastical entities, notwithstanding any other provision of law;
- **c**) is freed, notwithstanding any other provision of law, from any obligation and condition, or in any case from any restriction whatsoever relating to its use and free disposability, deriving from any other provision of law or from any contract entered into by an ecclesiastical entity of the one part and the Government or another public entity of the other part.

Article 4

- **1.** Any arrears due to ecclesiastical entities in respect of property transferred by them to the State by virtue of the present Agreement, shall be paid to the same ecclesiastical entities to which they are due.
- **2.** Notwithstanding the transfer of the property mentioned in the preceding paragraph having been effected, the said ecclesiastical entities shall retain unimpaired against their debtors, with priority over any future rights of the State, all their rights of action, of execution and of recourse resulting from non-payment.

Article 5

Ecclesiastical property transferred to the State by virtue of the present Agreement is classified and valued on the basis of the categories, the prices and the rates of capitalization specified in Annex 7. The said property is listed, according to such criteria, in Annex 8.

- **1. a)** In compensation for the property transferred to it, the Government issues Local Registered Stock and delivers to the Church bonds of the nominal value of one hundred Maltese liri and multiples thereof, free of duty on documents, maturing after ten years, at a seven per centum annual rate of interest payable every six months, negotiable, and made out, according to the obtaining canonical norms, in the name of the ecclesiastical entities transferring the property and, in the amount determined by the ecclesiastical Authorities, in the name of the Foundation for Church Schools.
- **b**) The annual rate of interest of such bonds shall be revised upon the lapse of every period of two years, starting from the date of emission of the same bonds, in such a way as to maintain it at one percentage point lower that the normal maximum lending rate of interest allowed by law, it being understood that it cannot fall below seven per centum.
- **c**) On the date of maturity, the same bonds shall be redeemed by the Government at a premium of ten per centum over their nominal value.

- **d**) The said bonds may be freely sold to the public with the prior authorization of the Maltese Episcopal Conference, up to a total nominal value of not more than five million Maltese liri per annum. Beyond this amount, these bonds may be transferred only with the authorization of the Ministry of Finance. The transfer of bonds between ecclesiastical entities, however, does not require such authorization, is not taken into account in the computation of the total amount that can be transferred annually and shall be exempt from duty on documents.
- **2. a)** On the date when the present Agreement comes into force, the Government shall deliver to the Maltese Episcopal Conference, which shall in turn transmit to those entitled to them, certificates for the total nominal value equal to ninety-five per centum of the total value of the property transferred to the State, as determined according to Annexes 7 and 8 mentioned in article 5.
- **b**) On completion of the procedures required for the transfer of all the property to the State, any difference that might result between the total nominal value of the bonds issued to the Church and the value of the property actually transferred to the State according as to whether this latter value exceeds the former or vice-versa, shall be made good by the Government through the issue of bonds of the same tenor as those mentioned in paragraph 1 of this article and maturing on the same date as those bonds, together with the interest due from the date of the coming into force of the present Agreement, or, respectively, shall be reimbursed to the Government by the Maltese Episcopal Conference together with the interest received from the same date.

Article 7

- 1. If in any future alienation of property transferred to it by virtue of the present Agreement the Government shall realize a price exceeding by more than thirty per centum—after taking into account inflation calculated according to the index published in terms of Ordinance XIXA, of 1959, as subsequently amended—, the amount paid to the Church for the same property, the Government shall issue to the Foundation for Church Schools bonds of the same tenor as those mentioned in article 6, of the nominal value equal to the difference between such price and the figure resulting from the sum of the amount already paid to the Church, increased by the rate of inflation that might have intervened, and of thirty per centum of the amount so calculated.
- **2.** What is laid down in paragraph 1 of this article shall apply for a period of thirty years from the date of the coming into force of the present Agreement.
- **3. a)** The Government (Land Department) shall, within the thirty-first day of March of each year, supply the Maltese Episcopal Conference with the list of transfers, made during the preceding year to third parties, of property acquired by the State in virtue of the present Agreement.
- **b)** Within the thirtieth day of June of each year, the Government shall pay to the Foundation for Church Schools whatever amount shall be due to it, on account of the transfers effected during the preceding year, in application of what is laid down in paragraph 1 of the present article.

The Government, notwithstanding any other provision of law, is hereby returning to the Church the property previously expropriated from her of which it has not made use and which is required for pastoral purposes. Such property is listed in Annex 9.

Article 9

- 1. The State transfers the directum dominium that it owns to such ecclesiastical entities as shall have the perpetual or temporary utile dominium of property utilized for pastoral purposes, in such a way that the same entities acquire absolute ownership of such property. This property is listed in Annex 10.
- **2.** The amount due for the redemption and the relative acquisition referred to in the preceding paragraph is determined at the rate established by law or, where the rate is not specified by law, according to the criteria of valuation set out in Annex 7 mentioned in article 5.
- **3.** The redemption and the relative acquisition of the property mentioned in paragraph 1 of the present article have the effect of freeing that same property for the future from every obligation and condition or, in any case, from any restriction whatsoever relating to their use, and free disposability, deriving from any provision of law or contract entered into by an ecclesiastical entity of the one part and the Government or another public entity of the other part.

Article 10

- **1.** The Government, notwithstanding any other provision of law regarding the disposal of immovable property by the State, transfers to the Church such immovables owned by it requested by her for pastoral purposes, and which are listed in Annex 11.
- **2.** The Government agrees to exchange the immovables mentioned in the preceding paragraph for others belonging to ecclesiastical entities and which are of equal value, as shall be determined by mutual agreement.
- **3.** Should agreement not be reached about the exchange mentioned in the preceding paragraph, the value of the immovables mentioned in paragraph 1 of this article shall be determined according to the criteria of valuation specified in Annex 7 mentioned in article 5.

- 1. In the drawing up of plans for an area designated for residential housing, the Government, after reaching agreement with the diocesan Bishop concerned, shall allocate an adequate and suitable area for the Church's pastoral allocate services (such as, for example, a church, rectory, religious house, buildings and open spaces for religious, catechetical, charitable, socio-cultural activities).
- **2.** The acquisition in ownership by the Church of the area mentioned in the preceding paragraph shall be made and be financially regulated as follows:
- **a**) If the area forms part by the property transferred to the State by the present Agreement, the Government, notwithstanding any other provision of law regarding the disposal of immovable

property by the State, shall transfer it to the Church for a consideration equal to that which had been paid by the Government to the ecclesiastical entity that had possessed it.

- **b**) If the area forms part of the State's property and had derived to it from other sources, the Government, notwithstanding any other provision of law regarding the disposal of immovable property by the State, shall transfer it to the Church at the price equal to that established by law as compensation for land expropriated for public purposes.
- **c**) If the area belongs to third parties, the Government shall expropriate it, and shall claim from the Church a consideration equal to that which it will pay to the owner according to what the law determines for the acquisition of property for public purposes.

Article 12

All transfers contemplated by the present Agreement shall be exempt from duty on documents.

Article 13

- 1. Pending cases concerning expropriations of ecclesiastical property made by the Government in terms of the Land Acquisition (Public Purposes) Ordinance or otherwise, shall be resolved in a definitive manner by means of an arbitration award given by a judge or a retired judge appointed by common agreement between the Government and the Maltese Episcopal Conference; he shall proceed to determine the value of each property on the basis of Maltese law, availing himself of the services of an expert appointed by the ecclesiastical Authorities and of another appointed by the Government.
- **2.** In the absence, in terms of the preceding paragraph, of agreement about the appointment of the arbitrator, or of appointment of an expert within two months following a request submitted by the other party, the pending cases shall be decided in accordance with the normal procedure established by law for expropriations, provided that the Commissioner of Land shall issue the notices to treat within twelve months from the coming into force of the present Agreement and, where necessary, file the relative application before the Land Arbitration Board within three months from the service of the judicial letter in reply by the interested ecclesiastical entity.
- **3.** The amount established according to the procedure mentioned in paragraphs 1 and 2 of the present article shall be paid by the Government within one year of the date on which the case is decided, together with the interest or damages established by law.

Article 14

Cognizant of the fact that the provisions of the Devolution of Certain Church Property Act, 1983; of Legal Notice 36 - Declaration of Certain Rights (Burthens for Masses) Order, 1983, also as subsequently amended by Legal Notice 48 of 1983; of Legal Notice 37 - Compulsory Registration (Church Property) Order, 1983, also as subsequently amended by Legal Notice 47 of 1983; and of Legal Notice 38 of 1983, are no longer in force, having been declared null by the First Hall of the Civil Court, the said Act No. X of 1983 and Legal Notices 36, 37, 38, 47 and 48 of 1983 are being repealed.

Article 15

Notwithstanding any other provision of law, as from the date of coming into force of this Agreement, the ownership, acquisition, possession, administration, alienation of and succession to immovable property by ecclesiastical entities are regulated by the ordinary laws of general applicability.

Article 16

- 1. A Joint Office is set up, by and at the expense of the Government, in premises provided by the Government, which office has the function to: administer the property transferred to the State by virtue of the present Agreement; do all that is necessary for the registration mentioned in subparagraph a) of article 3, for the transfers and every other legal requirement in terms of and for the purposes of the present Agreement; make such corrections or additions as may be required in the lists of Annexes 1, 2, 3, 4, 5 and 6 mentioned in article 1, Annex 8 in article 5, Annex 9 in article 8, Annex 10 in article 9, and Annex 11 in article 10.
- **2. a)** The Joint Office shall also comprise employees of the Archbishop's Curia, Malta, who shall continue to work under the conditions now obtaining at the said Curia and shall be remunerated by it. The Government shall each month refund to the Archdiocese of Malta the cost of such personnel.
- **b**) In the case of property transferred to the State by the Diocese of Gozo or by a Religious Institute, the Joint Office may avail itself of the assistance of a representative of the Bishop's Curia, Gozo, or, respectively, of the Religious Institute involved.
- **c**) An official appointed by agreement between the two Parties shall be in charge of the Joint Office.
- **3.** The ecclesiastical entities shall place at the disposal of the Joint Office the documents relating to the property transferred by them, for such time as is necessary to effect the required procedures. These documents shall subsequently be returned to the same ecclesiastical entities.

Article 17

- **1.** A Control Committee is set up with the function of promoting and monitoring the correct and timely application of the provisions of the present Agreement with particular reference to what is laid down in article 7 and to the work assigned to the Joint Office mentioned in article 16
- **2.** The Control Committee shall be composed of two members nominated by the Holy See and two members nominated by the Government of Malta; it shall meet at least every two months; it shall be chaired, alternately, by a representative of the Holy See and by a representative of the Government of Malta, who shall chair the first meeting.

1. The present Agreement shall come into force when the Parties exchange an official communication that the full implementation of all its provisions through the appropriate legal instruments according to their respective legal systems has taken place.

The exchange of such communication shall take place within one hundred and twenty days of the signing of the present Agreement.

2. If full implementation of the present Agreement and exchange of official communication do not take place within the period mentioned in the preceding paragraph, this same Agreement shall not have any effect and the Parties shall not be bound by it.

Article 19

- 1. If in future there shall arise difficulties of interpretation or of application of the provisions of the present Agreement, the Holy See and the Republic of Malta shall entrust the search for an amicable solution to a Joint Commission that shall be composed of the Apostolic Nuncio to Malta and of the President of the Maltese Episcopal Conference or of their delegates for the Holy See and of the Minister of Foreign Affairs and of the Minister responsible for Education or of their delegates for the Republic of Malta
- **2.** In case of default of performance of what is contemplated in the preceding paragraph, or in the absence of an amicable solution of difficulties of interpretation or of application of the provisions of the present Agreement in the manner contemplated in the preceding paragraph, or in case of default of performance of the obligations undertaken by virtue of the present Agreement, saving always the rights of the Parties at international law, an ecclesiastical entity or the Government which consider themselves as being due any obligation whatsoever deriving from this same Agreement, shall have the right to take the appropriate legal measures against the party not fulfilling its obligations before the Courts having jurisdiction and competence, saving the rights of the holders of the bonds mentioned in article 6.

Done at Valletta, Malta, on the twenty-eighth day of November, 1991, in two originals in the <u>Italian</u> and English languages, both texts being equally authentic.

For the Holy See
PIER LUIGI CELATA
Tit. Archbishop of Doclea, Apostolic Nuncio

For the Republic of Malta
EDWARD FENECH ADAMI
Prime Minister

^{*}A.A.S., vol. LXXXV (1993), n. 7, pp. 569-588.

^{**} All the Annexes mentioned in the present Agreement are deposited at the Apostolic Nunciature in Malta.