

I assent.

(L.S.)

ĊENSU TABONE
President

12th June, 1992

ACT No. IV of 1992

AN ACT to provide for the implementation of the Agreement signed on the 28th day of November, 1991, between the Holy See and Malta relative to the transfer to the State of such immovable property in Malta as is not required by the Catholic Church 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.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Ecclesiastical Entities (Properties) Act, 1992. Short title.

2. In this Act unless the context otherwise requires: Interpretation.

“Agreement” means the Agreement entered into between the Holy See and Malta, signed on the 28th day of November 1991, relative to the transfer to the State of such immovable property in Malta as is not required by the Catholic Church 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; which Agreement was done in two originals in the English and Italian language. The text of the said Agreement (without the annexes thereto) is reproduced in the Schedule to this Act. A copy of the Agreement, was laid on the Table of the House of Representatives on 29th November, 1991 and 25th May, 1992 (as to the annexes).

“appointed day” means the day on which the Government of Malta and the Holy See exchange an official communication that the full implementation of all the provisions of the Agreement through the

appropriate legal instruments according to their respective legal systems has taken place. The Prime Minister shall, by notice in the Gazette, give notification of such appointed day;

“Control Committee” means the Committee set up in terms of article 17 of the Agreement;

“ecclesiastical entity” means any entity of the Roman Catholic Apostolic Church in Malta, in terms of the Code of Canon Law;

“Joint Office” means the office set up in virtue of section 4 of this Act.

Ratification
of Agreement.
Cap. 304

3. The Government of Malta is for the purposes of the Ratification of Treaties Act and of any other law, authorised to ratify the Agreement.

Establishment
of Joint Office.

4. (1) There is hereby established an office to be known as the Joint Office which shall have the functions referred to in the Agreement and any other function which the Parties to the Agreement may, from time to time, by common consent, determine.

(2) Corrections and additions to the lists of property referred to in articles 1, 5, 8, 9 and 10 of the Agreement shall, where necessary, be made by the Joint Office with the approval of the Control Committee, and a copy of such corrections and additions shall be laid on the Table of the House every three months.

(3) Appointments to the Joint Office shall be made by the Government following agreement with the Holy See. Secondments of employees from the Archbishop's Curia shall be regulated by the Agreement.

Registration
at the
Land Registry.

5. (1) Without prejudice to any right belonging to any third party, the title to immovable property to which this section applies shall be registerable and be registered in the Land Registry by the Joint Office in the name of the Government of Malta where such immovable property is transferred in virtue of this Act to the Government of Malta on the appointed day or in the name of the ecclesiastical entity by which the immovable property is retained and confirmed on the appointed day in virtue of this Act, as if the land to which such title refers were situate within a Registration area so declared in virtue of section 10 of the Land Registration Act, and thereupon, subject to the provisions of the following subsections of this section the Land Registration Act shall apply thereto as if that land were so situate.

Cap. 296

(2) Where title to land has been registered in accordance with this section, then, without prejudice to any rights belonging to third parties and in particular without prejudice to any registration made in the Public Registry, Valletta, or Gozo, such title shall be deemed to have been registered on the appointed day.

(3) Without prejudice to any rights belonging to third parties, the Land Registrar shall register the immovable property with absolute title without the need of the production of any proof of title

other than a certificate issued by the Joint Office stating that the property is one to which the Agreement refers, and was on the appointed day in the possession of the ecclesiastical entity in whose name it is being registered or by whom it is transferred to the Government of Malta in accordance with this Act. Such certificate shall state any qualifications or limitations to the title of which the Joint Office may be aware, and the Joint Office shall, where these are available to it, produce any further documentation relative to the title to the property being registered.

(4) With respect to third parties the registration shall have effect as if the title were registered only as one of a possessory nature but with respect to the Government and to ecclesiastical entities the title shall be deemed to be an absolute title (other than any qualification that may arise from the certificate issued by the Joint Office) and shall be indefeasible:

Provided that where the Land Registrar is in accordance with section 49 of the Land Registraion Act, satisfied either from the documents produced with the application for registration or otherwise that he may issue a title which is absolute also in regard to third parties, the said Registrar may issue such a title.

(5) This section applies to such immovable property which, as certified by the Joint Office, is subject to the Agreement and is on the appointed day in the possession of the relative ecclesiastical entity.

(6) For the purpose of this section, Third Party means any physical or juridical person other than the Government of Malta, a body corporate established by law, an ecclesiastical entity or any person acquiring title to the land in question from the Government of Malta, from a body corporate established by law or from an ecclesiastical entity after the appointed day.

6. (1) The Government of Malta in virtue of this Act, is hereby acquiring with effect from the appointed day and under the terms and conditions and for the price indicated in the Agreement, the immovable property which in accordance with the same Agreement is to be transferred by the relative ecclesiastical entities to whom the Agreement refers, and for this purpose the Minister responsible for Finance shall issue stock under the provisions of the Local Loans (Registered Stock and Securities) Ordinance in payment by the Government to the Ecclesiastical entities of the price due to them, or to the Foundation for Church Schools, as provided for in the Agreement.

Transfer of
immovable
property to
Government.

Cap. 161

(2) The Stock issued in accordance with subsection (1) of this section shall be regulated by the terms of the Agreement and in so far as they are not inconsistent with the said Agreement, by and under the provisions of the Local Loans (Registered Stock and Securities) Ordinance.

Act XXXIII
of 1990

(3) Notwithstanding the provisions of the Malta Stock Exchange Act, 1990 and for the purpose of subsection (3) of section 3 thereof, the stocks issued in accordance with subsection (1) of this section may, subject to the provisions of the Agreement, be traded between ecclesiastical entities outside the Malta Stock Exchange.

Formalities and
Evidence of
transfer.

7. The transfer of the immovable property to which section 6 applies shall be followed by the registration of the transfer of the title to the land in the Land Registry where the title to the land has already been registered, or by the registration of the land in the name of the Government of Malta where the title to the land had not previously been registered. Such registration of title or transfer shall be effected upon the issue of a certificate by the Joint Office to the Land Registrar to the effect that the land has been transferred from the ecclesiastical entity to the Government of Malta, and no further formality shall be required to effect the transfer other than this Act.

Succession in
rights and
obligations.

8. Saving as provided by article 4 of the Agreement, or where any other provision of the Agreement provides otherwise, the Government shall succeed the ecclesiastical entities in all real rights, interests, obligations, burdens, (with the exclusion of pious burdens), and actions pertaining to the properties transferred to it by virtue of the Agreement.

Special
arbitration.

9. (1) Notwithstanding any provision of any other law an award given in an arbitration as is provided for in paragraph 1 of article 13 of the Agreement shall be valid and be enforceable on the Government or ecclesiastical entities as the case may be.

Cap. 12

(2) The provisions of the Code of Organisation and Civil Procedure relating to Arbitration shall in so far as they are not inconsistent with the provisions of subsection (1) of this section or of paragraph 1 of article 13 of the Agreement or unless otherwise agreed between the Government of Malta and the Maltese Episcopal Conference, shall apply to an arbitration as is referred to in subsection (1) of this section.

Agreement to
have force
of law.

10. (1) The provisions of the Agreement shall be part of the law of Malta and enforceable as such, and any provisions of any other law which is inconsistent with this Act or the Agreement shall, with regard to the matters referred to in this Act or the Agreement, be deemed inoperative and unenforceable.

(2) In this Act and in the schedule thereto, if there is any conflict between the English and any other text, the English text shall prevail.

(3) The period established by article 18 of the Agreement as extended by the common consent of the parties shall be operative for the purpose of the Agreement.

(4) Copies of the annexes to the Agreement which have been laid on the Table of the House of Representatives shall be enrolled by the Government in the records of the Chief Notary to the Government.

11. Immediately after section 11 of the Mortmain Act, there shall be added the following new section:

Amendment of the
Mortmain Act
Cap. 201

"Right of
Church or
other pious
or religious
institutions
to own and
administer
property."

12. (1) With effect from such date as the Prime Minister may by notice in the Gazettee establish (hereinafter referred to as the effective date) any church or other pious or religious institution shall, subject to the provisions of any law dealing with the acquisition of immovable property by non-residents and of any other ordinary law of general applicability have the right to acquire and hold possession of immovable property in Malta without any obligation to dispose of the same within any period and without any restriction arising out of this Act as to its use and may continue to hold any immovable property, which may have been acquired by it before the effective date, without any such obligation or restriction.

(2) The provisions of subsection (2) of section 6 of this Act shall not apply to any deed therein referred to published on or after the effective date.

(3) Any immovable property which on or before the effective date may have been forfeited to the Government in virtue of this Act, and which on the effective date was still in the possession or detention of a church or other pious or religious institution is hereby restored to the church or other pious or religious institution to which it belonged before it was so forfeited;

Provided that where any such property has been disposed of before the effective date in accordance with the provisions of this Act, although not within the time established therein or thereunder, the provisions of this Act shall be deemed to have been complied with and any such disposal shall be deemed to have been validly made".

12. The Devolution of Certain Church Property Act, The Declaration of Certain Rights (Burthens for Masses) Order 1983 as amended by the declaration of Certain Rights (Burthens for Masses) (Amendment) Order, 1983 and the Compulsory Registration (Church Property) Order, 1983 as amended by the Compulsory Registration (Church Property) (Amendment) Order 1983 are hereby repealed with effect from the date of their enactment and the provisions of section 12 of the Interpretation Act shall not apply and the said Act and Orders repealed by this section shall be deemed never to have had effect.

Cap. 305
L.N. 36 of 1983

L.N. 48 of 1983
L.N. 37 of 1983
L.N. 47 of 1983
Cap. 249

SCHEDULE

(Section 2)

(Text of the Agreement in English and Italian)

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 Msgr. Pier Luigi Celata, titular Archbishop of Doclea, Apostolic Nuncio to Malta, and the Republic of Malta, as represented by Dr Edward Fenech Adami, Prime Minister, have by common accord established as follows:

Article 1

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 to 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.

Article 6

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 than 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 ninetyfive 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 viceversa, 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 interests 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 thirtyfirst 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.

Article 8

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 preceeding 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.

Article 11

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 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 of 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 interests 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 sub-paragraph (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.

Article 18

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 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 or 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 28th day of November, 1991, in two originals in the Italian and English languages, both texts being equally authentic.

PIER LUIGI CELATA
For the Holy See

EDWARD FENECH ADAMI
For the Republic of Malta

La SANTA SEDE e la REPUBBLICA DI MALTA,

tenendo conto, da parte della Santa Sede, dei principi affermati dal Concilio Ecumenico Vaticano II e sanciti dal Codice di Diritto Canonico circa l'uso dei beni temporali degli enti ecclesiastici; delle particolari circostanze che caratterizzano le scelte pastorali della Chiesa in Malta; delle necessità derivanti dall'impegno di evangelizzazione e di carità, anche in riferimento ai criteri approvati nel 1973 per la riforma amministrativa nella Provincia Ecclesiastica di Malta; delle esigenze del bene comune della società maltese, soprattutto a riguardo delle maggiori attese sociali;

e tenendo altresì conto, da parte della Repubblica di Malta, dell'utilità di favorire una destinazione sociale dei beni posseduti dagli enti ecclesiastici;

hanno deliberato di stipulare il presente Accordo sul trasferimento allo Stato dei beni immobili ecclesiastici non utili per scopi pastorali e sulla definizione di alcune questioni attinenti i rapporti patrimoniali tra la Chiesa e lo Stato.

A tale fine, la Santa Sede, rappresentata da Msgr. Pier Luigi Celata, Arcivescovo titolare di Doclea e Nunzio Apostolico a Malta, e la Repubblica di Malta, rappresentata dal Dott. Edward Fenech Adami, Primo Ministro, hanno stabilito di comune intesa quanto segue:

Articolo 1

1. Sono trasferiti allo Stato tutti i beni immobili appartenenti agli enti ecclesiastici a Malta e a Gozo ad eccezione di quelli qui di seguito descritti:

(a) beni che, facendo fede una dichiarazione o a giudizio dell'Autorità ecclesiastica:

(i) sono utilizzati al presente (Annesso N. 1) o sono previsti utili in futuro (Annesso N. 2) per i fini istituzionali degli stessi enti ecclesiastici possessori o di altri enti ecclesiastici;

(ii) sono attigui, o prospicienti, o comunque collegati con i beni di cui agli Annessi NN. 1 e 2, o subiscono o godono di servitù su di essi (Annesso N. 3);

(iii) sono oggetto di una promessa di compro-vendita, di concessione in enfiteusi o di alienazione a qualsiasi altro titolo, stipulata in data anteriore a quella del presente Accordo e ancora vincolante, e presentata alla Santa Sede per la debita approvazione (Annesso N. 4);

(b) l'utile dominio temporaneo e l'usufrutto dei beni di proprietà di terzi;

(c) beni che risultano necessari per le permutazioni ai sensi dell'articolo 10 (Annesso N. 5);

(d) beni connessi con particolari circostanze (Annesso N. 6).

2. I beni ecclesiastici, da trasferirsi allo Stato ai termini del numero 1 del presente articolo, che sono oggetto di una causa legale in cui è parte un ente ecclesiastico, non saranno trasferiti allo Stato prima della conclusione della stessa causa mediante sentenza definitiva o compromesso tra le parti.

Articolo 2

1. Il Governo utilizzerà i beni ad esso trasferiti in virtù del presente Accordo per favorire la salvaguardia dell'ambiente e lo sviluppo dell'agricoltura, e per soddisfare i bisogni sociali più avvertiti nel Paese, quali l'edilizia popolare e i servizi di pubblica utilità, come pure per scopi umanitari, educativi, culturali. Fra tali scopi tuttavia, nell'interpretazione di questo articolo, non sono da considerare i fini e le attività dei partiti politici o degli enti collegati a questi ultimi direttamente o indirettamente.

2. Gli stessi beni non potranno essere ceduti, direttamente o indirettamente, a persone o enti che hanno natura, fini o attività non conformi con l'insegnamento morale della Chiesa.

3. Il trasferimento degli stessi beni da parte dello Stato, per i fini indicati al numero 1 del presente articolo, avverrà mediante offerte dopo un avviso pubblicato su "Malta Government Gazette" o, nei casi previsti dalla legge, secondo graduatorie basate su punteggi o mediante sorteggio e, salvo quanto stabilito nel presente articolo, dovrà essere altresì effettuato secondo le prescrizioni del "Disposal of Government Land Act, 1976" o, in caso di abrogazione totale o parziale di questa legge, in conformità con i principi che stanno alla base di essa.

Articolo 3

Tutti i beni attualmente posseduti da enti ecclesiastici, sia da questi ritenuti sia trasferiti allo Stato in virtù del presente Accordo, a far tempo dall'entrata in vigore dello stesso Accordo:

(a) sono considerati a tutti gli effetti, salvo eventuali diritti di terzi, come previamente registrati "with absolute title" ai sensi del "Land Registration Act, 1981". Per "terzi" si intendono persone che non sono nè il governo o qualsiasi altro ente pubblico nè la Chiesa o qualsiasi ente ecclesiastico. Ogni parte riconosce, a tutti i fini, il titolo dell'altra parte alla proprietà che essa ritiene o acquista al termini del presente Accordo e, con ciò, ogni parte rinuncia a ogni diritto o azione contro l'altra parte in merito al titolo di detta proprietà incluso, senza pregiudizio per il carattere generale della rinuncia sopra affermata, ogni diritto di azione in base al "Land Registration Act, 1981";

(b) nei confronti del Governo o di altri enti pubblici sono sanati quanto al titolo della loro proprietà e possesso, ove ne sia il caso, da ogni carenza o difetto, in modo che siano considerati come spettanti agli stessi enti ecclesiastici, nonostante ogni altra disposizione di legge;

(c) sono liberati, nonostante ogni altra disposizione di legge, da ogni vincolo e condizione, o comunque da qualsiasi restrizione relativa al loro uso e libera disponibilità, derivanti da ogni altra disposizione di legge o da qualsiasi contratto fra un ente ecclesiastico, da una parte, e il Governo o altro ente pubblico, dall'altra.

Articolo 4

1. I crediti arretrati a favore di enti ecclesiastici e relativi a beni da questi trasferiti allo Stato in virtù del presente Accordo, dovranno essere corrisposti agli stessi enti ecclesiastici creditori.

2. Nonostante l'avvenuto trasferimento dei beni di cui al numero precedente, gli enti ecclesiastici creditori manterranno integri nei confronti dei debitori, con priorità su eventuali diritti dello Stato, tutti i diritti di azione, di esecuzione e di rivalsa derivanti dal mancato pagamento.

Articolo 5

I beni ecclesiastici trasferiti allo Stato in virtù del presente Accordo sono classificati e valutati sulla base delle categorie, dei prezzi e degli indici di capitalizzazione specificati nell'Annesso N. 7. Gli stessi beni sono elencati, secondo tali criteri, nell'Annesso N. 8.

Articolo 6

1. (a) A titolo di compenso per i beni ad esso trasferiti, il Governo emette un "Local Registered Stock" e trasferisce alla Chiesa obbligazioni del valore nominale di lire maltesi cento e multipli di cento, esenti da tassa di bollo, della durata di dieci anni, al tasso annuo di interesse del sette per cento pagabile ogni sei mesi, negoziabili, intestate, secondo le norme canoniche vigenti, agli enti ecclesiastici cedenti i beni e, nella misura determinata dall'Autorità ecclesiastica, alla Fondazione per le Scuole della Chiesa.

(b) Il tasso annuo di interesse di tali obbligazioni sarà rivisto alla scadenza di ogni biennio, a partire dalla data di emissione delle stesse obbligazioni, in modo tale da mantenerlo di un punto percentuale più basso del tasso normale di interesse massimo sui prestiti ("normal maximum lending rate of interest") consentito dalla legge, fermo restando che non potrà diminuire al di sotto del sette per cento.

(c) Alla scadenza, le stesse obbligazioni saranno rimborsate dal Governo con un premio del dieci per cento rispetto al loro valore nominale.

(d) Le stesse obbligazioni potranno essere liberamente vendute al pubblico, previa autorizzazione della Conferenza Episcopale Maltese, per un ammontare complessivo nominale non eccedente cinque milioni di lire maltesi all'anno. Al di sopra di questa cifra, esse potranno essere negoziate solo con l'autorizzazione del Ministero delle Finanze. Il trasferimento di obbligazioni tra enti ecclesiastici, tuttavia, non richiede tale autorizzazione, non rientra nel computo dell'ammontare complessivo trasferibile annualmente ed è esente da tassa di bollo.

2. (a) Alla data dell'entrata in vigore del presente Accordo, il Governo consegnerà alla Conferenza Episcopale Maltese, che a sua volta le trasmetterà agli aventi diritto, obbligazioni per un valore nominale complessivo pari al novantacinque per cento del valore totale dei beni trasferiti allo Stato, determinato secondo gli Annessi NN. 7 e 8 di cui all'articolo 5.

(b) Al termine degli adempimenti previsti per il trasferimento di tutti i beni allo Stato, l'eventuale differenza risultante tra il valore nominale complessivo delle obbligazioni cedute alla Chiesa e il valore della proprietà effettivamente trasferita allo Stato, a seconda che questo valore ecceda il primo o viceversa, sarà regolata dal Governo mediante la cessione di obbligazioni aventi caratteristiche uguali a quelle di cui al numero 1 del presente articolo con scadenza alla stessa data di esse ed il pagamento degli interessi maturati dalla data dell'entrata in vigore del presente Accordo, o, rispettivamente, sarà restituita al Governo dalla Conferenza Episcopale Maltese insieme con gli interessi ricevuti dalla stessa data.

Articolo 7

1. Se dalla eventuale alienazione di beni ad esso trasferiti in virtù del presente Accordo il Governo avrà un ricavato superiore di oltre il trenta per cento — tenuto conto dell'inflazione calcolata secondo l'indice pubblicato ai termini dell'Ordinanza XIXA, 1959 e dei successivi emendamenti — a quanto versato alla Chiesa per gli stessi beni, il Governo cederà alla Fondazione per le Scuole della Chiesa obbligazioni di caratteristiche uguali a quelle di cui all'articolo 6 per un importo nominale pari alla differenza fra tale ricavato e la cifra risultante dalla somma del valore già versato alla Chiesa, aumentato dell'importo dell'inflazione eventualmente intervenuta, e del trenta per cento del valore così calcolato.

2. Il disposto del numero 1 del presente articolo sarà applicato per la durata di trenta anni a far tempo dall'entrata in vigore del presente Accordo.

3. (a) Il Governo (Land Department), entro il trentuno marzo di ogni anno, fornirà alla Conferenza Episcopale Maltese, l'elenco delle alienazioni, effettuate nell'anno precedente a favore di terzi, dei beni acquisiti dallo Stato in virtù del presente Accordo.

(b) Entro il trenta giugno di ogni anno il Governo verserà alla Fondazione per le Scuole della Chiesa quanto ad essa dovuto, per le alienazioni effettuate nell'anno precedente, in applicazione del disposto del numero 1 del presente articolo.

Articolo 8

Il Governo, nonostante ogni altra disposizione di legge, restituisce alla Chiesa i beni ad essa espropriati e non utilizzati che sono necessari per fini pastorali. Tali beni sono elencati nell'Annesso N. 9.

Articolo 9

1. Lo Stato trasferisce agli enti ecclesiastici il diretto dominio che possiede dei beni dei quali essi hanno l'utile dominio perpetuo o temporaneo e che sono utilizzati per fini pastorali, in modo che i medesimi enti acquisiscono l'assoluta proprietà di tali beni. Questi stessi beni sono elencati nell'Annesso N. 10.

2. L'importo dovuto per il riscatto ed il relativo acquisto di cui al numero precedente è determinato secondo il tasso stabilito dalla legge oppure, ove esso non sia legalmente determinato, secondo i criteri di valutazione specificati nell'Annesso N. 7, di cui all'articolo 5.

3. Il riscatto e il relativo acquisto dei beni di cui al numero 1 del presente articolo hanno l'effetto di liberare gli stessi beni, per il futuro, da ogni vincolo e condizione, o comunque da qualsiasi restrizione relativa al loro uso e libera disponibilità derivanti da qualsiasi disposizione di legge o contratto fra un ente ecclesiastico, da una parte, ed il Governo o altro ente pubblico, dall'altra.

Articolo 10

Il Governo, nonostante ogni altra disposizione di legge relativa alla concessione della proprietà immobiliare da parte dello Stato, trasferisce alla Chiesa gli immobili di sua proprietà da essa richiesti per fini pastorali e che sono elencati nell'Annesso N. 11.

2. Il Governo accetta di permutare gli immobili di cui al numero precedente con altri immobili appartenenti ad enti ecclesiastici e di pari valore, da determinare di comune intesa.

3. Qualora non si raggiunga un'intesa per la permuta di cui al numero precedente, il valore degli immobili da cui al numero 1 di questo articolo sarà determinato secondo i criteri di valutazione specificati nell'Annesso N. 7 di cui all'articolo 5.

Articolo 11

1. Nel predisporre il piano di una zona destinata all'edilizia abitativa, il Governo, previa intesa con il Vescovo diocesano interessato, determinerà un'area adeguata e idonea al servizio pastorale della Chiesa (come, ad esempio, chiesa, casa canonica o religiosa, locali e spazi per attività religiosa, catechetica, caritativa, socio-culturale).

2. L'acquisizione in proprietà alla Chiesa dell'area di cui al numero precedente sarà effettuata e finanziariamente regolata come segue:

(a) Se l'area sarà compresa tra i beni trasferiti allo Stato col presente Accordo, il Governo, nonostante ogni altra disposizione di legge relativa alla concessione della proprietà immobiliare da parte dello Stato, la trasferirà alla Chiesa dietro un compenso uguale a quello da esso dato a suo tempo all'ente ecclesiastico che la possedeva.

(b) Se l'area farà parte delle proprietà dello Stato e sarà di diversa provenienza, il Governo, nonostante ogni altra disposizione di legge relativa alla concessione della proprietà immobiliare da parte dello Stato, la trasferirà alla Chiesa ad un prezzo pari a quello stabilito dalla legge per il compenso dei terreni espropriati a scopo di pubblica utilità.

(c) Se l'area apparterrà a terzi, il Governo la esproprierà, esigendo poi dalla Chiesa un compenso pari a quello che esso dovrà versare al proprietario secondo la misura fissata dalla legge per l'acquisto di proprietà a scopo di pubblica utilità.

Articolo 12

Tutti i trasferimenti contemplati dal presente Accordo sono esenti da tassa di bollo.

Articolo 13

1. I casi pendenti relativi alla espropriazione di beni ecclesiastici effettuati dal Governo nei o al di fuori dei termini del "Land Acquisition (Public Purposes) Ordinance", saranno risolti in modo definitivo attraverso la decisione arbitrale di un giudice o di un ex-giudice designato di comune intesa dal Governo e dalla Conferenza Episcopale Maltese, il quale procederà alla determinazione del valore dei beni in base al diritto maltese, valendosi della assistenza di un esperto designato dall'Autorità ecclesiastica e di uno designato dal Governo.

2. In caso di mancanza, ai sensi del numero precedente, di intesa sulla designazione dell'arbitro o di designazione di un esperto entro due mesi dalla richiesta fatta dall'altra parte, i casi pendenti saranno risolti secondo la normale procedura prevista dalla legge per le espropriazioni, restando inteso che il "Commissioner of Land" dovrà spedire le "notices to treat" entro dodici mesi dall'entrata in vigore del presente Accordo e, ove necessario, dovrà presentare il ricorso relativo presso il "Land Arbitration Board" entro tre mesi dalla data della notifica della lettera ufficiale di risposta da parte dell'ente ecclesiastico interessato.

3. Il valore stabilito secondo le procedure di cui ai numeri 1 e 2 del presente articolo sarà corrisposto dal Governo entro un anno dalla data della definizione del caso, salvi gli interessi o danni dovuti per legge.

Articolo 14

Preso atto che le disposizioni del “Devolution of Certain Church Property Act, 1983”; della “Legal Notice” 36 — “Declaration of Certain Rights (Burthens for Masses) Order, 1983”, anche come successivamente emendata dalla “Legal Notice” 48 del 1983; della “Legal Notice” 37 — “Compulsory Registration (Church Property) Order, 1983”, anche come successivamente emendata dalla “Legal Notice” 47 del 1983; e della “Legal Notice” 38 del 1983, non sono più in vigore essendo state dichiarate nulle dalla “First Hall of the Civil Court”, vengono abrogati lo stesso Atto N. X del 1983 e le stesse “Legal Notices” 36, 37, 38, 47 e 48 del 1983.

Articolo 15

Nonostante ogni altra disposizione di legge, dalla data dell’entrata in vigore del presente Accordo la proprietà, l’acquisizione, il possesso, l’amministrazione, l’alienazione dei beni immobili da parte di enti ecclesiastici, come pure la successione ad essi a favore degli stessi enti, sono regolati dalle leggi ordinarie di applicazione generale.

Articolo 16

1. A cura ed a carico del Governo è costituito, in una sede messa a disposizione dallo stesso Governo, un “Joint Office” che ha il compito di: amministrare la proprietà trasferita allo Stato in virtù del presente Accordo; svolgere quanto necessario per la registrazione di cui all’articolo 3 lettera (a) dell’articolo 3, per i trasferimenti ed ogni altro adempimento ai sensi ed agli effetti del presente Accordo; apportare, se necessario, correzioni o aggiunte agli elenchi degli Annessi NN. 1, 2, 3, 4, 5 e 6 dei quali all’articolo 1, N. 8 di cui all’articolo 5, N. 9 di cui all’articolo 8, N. 10 di cui all’articolo 9 e N. 11 di cui all’articolo 10.

2. (a) Il “Joint Office” sarà composta anche da impiegati della Curia Arcivescovile di Malta, i quali continueranno a lavorare alle condizioni vigenti nella stessa Curia e saranno da questa retribuiti. Il Governo rifonderà mensilmente all’Arcidiocesi di Malta il costo di tale personale.

(b) Quando si tratti di beni trasferiti allo Stato dalla Diocesi di Gozo o da un Istituto Religioso, il “Joint Office” potrà valersi della collaborazione di un rappresentante della Curia Vescovile di Gozo o, rispettivamente, dell’Istituto Religioso interessato.

(c) Il “Joint Office” sarà diretto da un responsabile nominato d’intesa fra le due Parti.

3. Gli enti ecclesiastici metteranno a disposizione del “Joint Office” i documenti relativi ai beni da essi trasferiti, per tutto il tempo necessario ai previsti adempimenti. Tali documenti saranno poi restituiti agli stessi enti ecclesiastici.

Articolo 17

1. È costituito un Comitato di Controllo con il compito di promuovere e vigilare sulla corretta e tempestiva applicazione delle disposizioni del presente Accordo con particolare riguardo a quanto stabilito all'articolo 7 ed il lavoro assegnato al "Joint Office" di cui all'articolo 16.

2. Il Comitato di Controllo sarà composto da due membri designati dalla Santa Sede e da due membri designati dal Governo di Malta; dovrà radunarsi almeno ogni due mesi; sarà presieduto, alternativamente, da un rappresentante della Santa Sede e da un rappresentante del Governo di Malta, il quale presiederà la prima seduta.

Articolo 18

1. Il presente Accordo entrerà in vigore al momento in cui le Parti si scambieranno ufficiale comunicazione dell'avvenuta piena applicazione di tutte le disposizioni di esso mediante gli strumenti giuridici propri dei rispettivi ordinamenti.

Lo scambio di tale comunicazione dovrà avvenire entro centoventi giorni dalla firma del presente Accordo.

2. Trascorso inutilmente il termine di tempo di cui al numero precedente senza che sia stata data piena applicazione al presente Accordo, questo stesso Accordo non avrà alcun effetto e le Parti non saranno obbligate da esso.

Articolo 19

1. Se in avvenire sorgessero difficoltà di interpretazione o di applicazione delle disposizioni del presente Accordo, la Santa Sede e la Repubblica di Malta affideranno la ricerca di un'amichevole soluzione ad una Commissione paritetica, che sarà composta, per parte della Santa Sede, dal Nunzio Apostolico a Malta e dal Presidente della Conferenza Episcopale Maltese o da loro delegati e, per parte della Repubblica di Malta, dal Ministro degli Affari Esteri e dal Ministro responsabile per l'Educazione o da loro delegati.

2. In caso di mancato adempimento di quanto previsto al numero precedente, o di mancata soluzione amichevole di eventuali difficoltà di interpretazione o di applicazione delle disposizioni del presente Accordo mediante quanto previsto al numero precedente, o di mancato adempimento degli obblighi assunti in virtù del presente Accordo, salvi sempre i diritti spettanti alle Parti secondo il diritto internazionale, un ente ecclesiastico o il Governo che si ritengono creditori di qualsivoglia obbligazione derivante da questo stesso Accordo, avranno il diritto di adire, contro la parte inadempiente, gli organi giudiziari che abbiano giurisdizione e competenza, salvi i diritti dei titolari delle "obbligazioni" di cui all'articolo 6.

Fatto alla Valletta, Malta il 28 di novembre, 1991, in doppio originale, in lingua italiana e inglese, ambedue i testi facendo ugualmente fede.

PIERLUIGI CELATA
Per la Santa Sede

EDWARD FENECH ADAMI
Per la Repubblica di Malta

Passed by the House of Representatives at Sitting No. 23 of the 8th June, 1992.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.

