

# The preparatory work for the Apostolic Constitution *Ut sit*

Cardinal Julián HERRANZ

*President Emeritus of the Pontifical Council for  
Legislative Texts*

## 1. Preparatory phase and technical Commission

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I well recall how this harmony between freedom and law, and in the Church between charism and juridical norm, was clearly reflected in the brief discourse of Cardinal Sebastiano Baggio, Prefect of the Congregation for Bishops, on February 27, 1980, by which he officially initiated the work of the special technical Commission desired by the Dicastery over

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### 1. Preparatory phase and technical Commission

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1. BENEDICT XVI, Lecture that the Holy Father intended to give during a visit to La Sapienza University, Rome, on January 17, 2008: *L'Osservatore Romano*, English edition, January 23, 2008.

which he presided and approved by John Paul II on November 17, 1979, for the purpose of examining the possibility of transforming Opus Dei into a personal prelature. This task would involve studying the copious documentation which had been requested by the same Congregation for Bishops following its ordinary session on June 28, 1979, and which was provided by Opus Dei in respect of all the relevant historical, juridical, pastoral and sociological aspects.

Since in accordance with the *Motu pr. Ecclesiae Sanctae* I, n. 4, and the Ap. Const. *Regimini Ecclesiae universae* n. 49, § 1, the transformation of Opus Dei into a personal prelature would require the establishment of an ecclesiastical circumscription of a personal nature, the Congregation with competence for the matter rightly desired to have all the necessary information before deciding whether and in what way this might be done. It must be acknowledged that the Congregation acted in an exemplary manner in ensuring that the procedures on information and study also brought in those faithful who had a direct interest and for whose pastoral care and apostolic effectiveness the Holy See wished to make suitable provision.

This technical Commission was made up of three representatives of the Congregation—the Undersecretary, Msgr. Marcello Costalunga, future Archbishop Pontifical Delegate for the Basilica of Saint Paul outside the walls; Msgr. Mario Francesco Pompedda, Consultor of the Congregation and future Cardinal Prefect of the Supreme Tribunal of the Apostolic Signatura; and Msgr. Marian Oles, *Officialis* of the Dicastery and future Apostolic Nuncio in Iraq—and three representatives of Opus Dei—Fr. Amadeo de Fuenmayor, Dean of the Faculty of Canon Law of the University of Navarre; Fr. Xavier de Ayala, Counselor of Opus Dei in Brazil and Consultor of the Pontifical Commission for the Revision of the Code of Canon Law; and myself, as Consultor of the General Council of Opus Dei. As is clear, the Commission was of a joint or equal nature; and it was not a question of entering into any sort of negotiation or agreement between parties, but rather of jointly carrying out the necessary detailed study in order to identify all the main points of the

matter under consideration, weigh up the possible difficulties at both the doctrinal and the practical levels, and propose appropriate solutions.

In response to Opus Dei's exercise of its right of petition to the ecclesiastical Authority, the Holy See, and specifically the Dicastery competent for ecclesiastical jurisdictions, to which the Pope had entrusted the relevant study, needed to inform itself well as to the factual situation and the pastoral needs of the institution that was now requesting establishment as a personal prelature. At that time it consisted of over 70,000 lay faithful (men and women, celibate and married, from a great variety of secular professions and trades) assisted by more than a thousand priests and spread over hundreds of dioceses in the five continents. All were united not only by the same foundational charism—as also happens with other ecclesiastical institutions: religious families, “movements” made up of several lay and clerical associations, etc.—but also by a close unity of formation, with common ascetical and apostolic commitments and specific spiritual care furnished by their own priests, formed and incardinated in Opus Dei and proceeding from the lay membership of the same institution. It was clear, therefore, that provision would have to be made for unity of governance or jurisdiction, with a proper Ordinary as head, so as to safeguard the organic structure and pastoral care of this particular apostolic body and guarantee its harmonious insertion into the pastoral activity of the universal Church and the particular Churches.

Our Commission held 25 working sessions and concluded its study on February 19, 1981. I would not be so unkind as to tire you with a detailed account of the numerous questions examined, which were grouped around two principal areas put forward by the Congregation: the *quæstio facti*—the analysis of the theological and structural features of Opus Dei as a pastoral and apostolic phenomenon; and the *quæstio iuris*—the study of the juridical figure of the personal prelature and its applicability to the charismatic and social reality of Opus Dei. This naturally involved an examination of the “Statutes” or

*Codex iuris particularis* which universal law required the Prelature to have, should the Roman Pontiff decide to establish it.<sup>2</sup>

The conclusions of the Commission, which declared itself unanimously in favor of the possibility and the specific manner of transforming Opus Dei into a personal prelature, were examined by a special Commission of Cardinals set up by the Holy Father, and were submitted at once for his definitive judgment. In an audience granted to the Prefect of the Congregation for Bishops on November 7, 1981 the Pope manifested his favorable verdict regarding the establishment of the Prelature and the content of the "Statutes"; and he ordered that the Bishops of those nations in which there were centers of Opus Dei be informed accordingly, by means of a Note setting out the characteristics of the future Prelature and allowing them to submit any observations they might wish to make. This was done by the Congregation on November 14, 1981.

The informative Note on the characteristics of the future Prelature dealt with the particular pastoral activity of the Prelate and his clergy in assisting the laity incorporated into the Prelature, and also the common and organic apostolic activity *ad extra* of clergy and laity within the structures of secular life, always with the prior consent of the diocesan Bishop and in respectful union with him.

The extremely wide-ranging nature of the consultation—issued through the respective Nuncios to 2,084 Bishops in 34 countries—and the manner in which it was presented—consisting of a draft of the constitutional and operational norms of the future Prelature—demonstrate the depth and collegial spirit with which the Pope followed and directed our study in the Congregation for Bishops. I say "our" study because those of us who were members of the joint technical

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2. A detailed and documented study of the work carried out, and of the canonical path of Opus Dei, can be consulted, as well as in other writings, in the joint work: A. DE FUENMAYOR, V. GÓMEZ-IGLESIAS and J. L. ILLANES, *The Canonical Path of Opus Dei. The History and Defense of a Charism* (Princeton/Chicago, 1994); cf. especially pp. 403–412.

Commission also collaborated with the Dicastery in the examination of the Bishops' replies to the consultation. There were more than 500 such replies, the vast majority of which expressed a favorable opinion regarding the establishment of Opus Dei as a personal prelature with the characteristics set out in the informative Note. Only 32 raised difficulties, which related to the fears held by some that the Prelature might become a sort of "Church within a Church", or "universal personal diocese" or some other abnormal jurisdictional structure in conflict with the local Churches. The Holy Father was very happy when he was informed by the Congregation for Bishops of the outcome of the consultation, and suggested that as a matter of courtesy replies be sent to the few negative observations that had been received. This was done by explaining that the feared conflict of jurisdiction could not in fact happen, for three main reasons: the nature of the ordinary power of the Prelate (which was limited to what concerned the specific end of the Prelature) and the manner in which it would be exercised; the fact that the clergy would come from the Prelature itself, and would not be taken from the clergy of any particular Church; and the condition of the laity who, although incorporated into the Prelature, would remain faithful of the dioceses in which they were domiciled.

The results of this consultation, especially when taken in conjunction with the studies previously carried out and the conclusions approved by the Legislator, subsequently formed the basis of the two documents by which the establishment of this first personal prelature was effected.

These were the Declaration of the Congregation for Bishops *Prælaturæ personales*, approved by the Holy Father on August 5, 1982, and published in *L'Osservatore Romano* on November 28, 1982, together with the news of the establishment of the Prelature; and the Ap. Const. *Ut sit*, in connection with which the Prefect of the Congregation for Bishops wrote to the Prelate of Opus Dei, Monsignor Alvaro del Portillo, on March 5, 1983, "I am happy to inform you that the long-awaited Papal Bull is at last ready. The Congregation has



arranged for the document to be forwarded to the Apostolic Nuncio in Italy, who will be responsible for executing it.”<sup>3</sup>

Other papers during the course of this Study Day will focus on the specific provisions of the Ap. Const. *Ut sit*, so I will simply refer now to two particular matters that were dealt with during the preparatory work on the draft of this Papal Bull, and which concern the fact that the study of the Apostolic Constitution by which the first personal prelature was established, and the revision of the canons on personal prelatures in the new Code of Canon Law, were carried out simultaneously, and consequently are in harmony with one another.

## 2. The Ap. Const. *Ut sit* and the new *Codex Iuris Canonici*

As we know, it was the same Legislator, His Holiness Pope John Paul II, who was the author of those two legislative acts, which he personally followed with particular interest: the new Code of Canon Law, universal law of the Church, and the Ap. Const. *Ut sit*, particular law of the first personal prelature. Furthermore, these two pontifical acts—which were the fruit of two simultaneous studies, carried out by the will and under the supervision of the same Legislator—were promulgated (i.e. the laws in question were brought to completion, or in technical terms “perfected”) within a period of just over two months from each another. The new Code of Canon Law was promulgated on January 25, 1983, while the Ap. Const. *Ut sit*, although bearing the date November 28, 1982, had its definitive text finalized on March 4, 1983 and was promulgated on March 19 by means of its solemn reading by the Apostolic Nuncio in Italy in the formal ceremony of execution. The Constitution was later published in *Acta Apostolicæ Sedis* on May 2 of the same year. That is to say, in accordance with the famous *dictum* of Gratian (post c. 3 D.IV) also taken

3. Letter from Cardinal Sebastiano BAGGIO (Sacra Congregatio pro Episcopis), Prot. 317/62, March 5, 1983.

up by the Code (cf. can. 7) "*leges instituuntur cum promulgantur*" ["laws come into being when they are promulgated"], the Ap. Const. *Ut sit* was instituted—i.e. it acquired its own proper existence within canon law—*after* the promulgation or institution of the new universal law of the Church.

But the question remains: why did the Ap. Const. *Ut sit*, promulgated two months after the new Code of Canon Law, bear an earlier date? Some canonists have, quite naturally (bearing in mind that this pertains to the hermeneutic of canonical science), asked themselves this question and come up with various theories to explain it. But in reality there is a very simple explanation, of a procedural nature, as was very well pointed out by Archbishop Costalunga, at that time Undersecretary of the Congregation for Bishops and a member of the joint technical Commission, over whose work he patiently and diligently presided.

At the conclusion of this kind of process, and always with the approval of the Roman Pontiff, the practice of the Congregation for Bishops is to make provision for the establishment of ecclesiastical circumscriptions (usually territorial, although they can be personal) by means of a special Decree, in which all the necessary juridical requisites are set out: the nature and limits of the specific hierarchical juridical entity that is being established, the place where it will have its curia, etc. At the same time arrangements are made for *L'Osservatore Romano* to publish details of the appointment of the ecclesiastic (diocesan Bishop, Apostolic Administrator, Prelate, etc.) who will be entrusted with the pastoral governance of the circumscription in question. However, since the new body being established forms part of the hierarchical jurisdictional organization of the Church, the Decree from the Congregation, which is an act of an administrative nature, is transmitted to the Secretary of State to be turned into a legislative act of the Roman Pontiff: in other words, into the Apostolic Constitution or Papal Bull to be promulgated in *Acta Apostolicæ Sedis* in accordance with the relevant provisions of the Code of Canon Law.



This distinction between the two stages (Decree of the Congregation, and Apostolic Constitution) explains why the two acts take place at different times, as happened in the case of the “Opus Dei” Prelature. There are also historical and technical reasons to explain why, in the Constitution *Ut sit*, the Legislator chose to retain substantially the same text as was contained in the Decree, including the date November 28, 1982.

As we have seen, the promulgation of the Code of Canon Law had taken place in the intervening period. This would have given the Legislator the opportunity to amend the Decree of establishment and introduce new dispositions into the still-to-be-published Constitution, had such changes and additions been deemed necessary for adapting the particular law of this first personal prelature to the general norms on prelatures established by the new universal legislation of the Church. It is clear that the Legislator did not consider this to be necessary, precisely because of the substantial conformity that existed, and that he himself highlighted, between the general norms established in the *Motu pr. Ecclesiae Sanctae* I, n. 4 on personal prelatures, the corresponding norms in the new Code (cann. 294–297), and the provisions on the governance of the first Prelature established in the Decree, as taken up and approved in the Apostolic Constitution.

In this regard it is worth reading—because of their notable scientific and documentary value—the various reports and information provided by Archbishop Costalunga concerning Pope John Paul II’s constant solicitude and personal dedication in following the various phases of the study of the norms by which the particular law of the Prelature of Opus Dei was to be ratified and promulgated.<sup>4</sup> I can personally confirm—and it is also borne out by the archive

4. Cf. M. COSTALUNGA, “The Establishment of Opus Dei as a Personal Prelature”, *L'Osservatore Romano*, November 28, 1982, p. 3; ID., “I lavori preparatori alla promulgazione della Costituzione Apostolica *Ut sit*. Appunti personali di un testimone”, Lecture given on the occasion of the 15th anniversary of the establishment of Opus Dei as a personal prelature, April 1, 1998 (*pro manuscripto*).

documentation of the Pontifical Commission for the Revision of the Code of Canon Law—that at the same time, during the whole of that period *de lege condenda*, the Legislator was well acquainted with the canons being prepared for the new Code of Canon Law, specifically those on personal prelatures.

I recall, among other things, how happy the Prefect of the Congregation for Bishops, the sadly missed Cardinal Sebastiano Baggio, was on March 4, 1983 when he received from the Secretary of State the parchment with the text of the Ap. Const. *Ut sit*, to be passed on, as I have mentioned, to the Nuncio in Italy and the Prelate of Opus Dei. Cardinal Baggio was delighted—something he also told me, as a member of the study Commission—precisely for the reason I have mentioned, namely that the Legislator, aware that the two sets of legislation were being prepared in parallel, had considered that the norms proposed by the Congregation and received by himself for the promulgation of the Apostolic Constitution fell perfectly within the scope of the recently-promulgated universal legislation. In other words, the Legislator acknowledged that the Ap. Const. *Ut sit* and the *Codex iuris particularis Operis Dei* approved by Art. II of the Constitution were in substantial conformity with the general legal framework on personal prelatures contained in the new *Codex Iuris Canonici*.

### 3. The question of the lay faithful

I am well aware that the statement I have just made could give rise to doubts concerning the position or juridical relationship (condition or *status*) of the lay faithful in personal prelatures in general, and in the “Opus Dei” Prelature in particular. The universal legislation, after stating that personal prelatures consist of “deacons and priests of the secular clergy” (can. 294), establishes in a general way that the laity “can dedicate themselves to the apostolic work of a personal prelature by way of agreements” (can. 296), but this apostolic “dedication” of the laity is referred to not as “incorporation” in the Prelature, but as “organic cooperation”

(*organica cooperatio*). However, the particular legislation of the Prelature of Opus Dei, while similarly confirming the contractual dedication of the laity to the apostolic activities of the Prelature, goes on to specify the manner of this dedication and organic cooperation.

According to Art. III of the Ap. Const. *Ut sit* and the proper Statutes of the Prelature sanctioned by the same Constitution (Art. II), this organic cooperation takes the form of a true incorporation ("*incorporatio*") into the Prelature itself, so that the lay faithful form part of its body, even though they remain at the same time faithful of the particular Churches to which they belong "*ratione domicilii*" (cf. *Codex iuris particularis Operis Dei*, Art. 1, 6, 172 § 2 and *passim*). As a result of this incorporation of the laity into the Prelature, by means of a (canonical and stable) contractual bond which juridically regulates the formative, ascetical and apostolic demands arising out of a specific divine vocation, it is clear that the laity also come under the jurisdictional authority of the Prelate *ad normam iuris* (cf. Ap. Const. *Ut sit*, Art. III).

Having made these clarifications concerning the juridical condition and ecclesiological position of the laity in the Prelature of Opus Dei, and in order to remove the possible doubt I mentioned earlier, I feel I should add that this norm in the particular law of the first personal prelature (on the "*incorporatio*" of the laity) should not be interpreted as being juxtaposed—and still less opposed, by way of privilege—to the universal norm (the "*organica cooperatio*") in can. 296 of the Code. In fact it constitutes a particular norm that is already contained as a possibility *within* the general norm: in other words, it is simply a particular norm that determines *ad casum* the specific manner in which the universal norm is to be applied.

This technical-juridical explanation becomes clearer in the light of an event which I think it is worth mentioning. In the "*Schema novissimum*" or definitive draft of the new Code of Canon Law, presented on April 22, 1982 to the Legislator in

an emotional audience which I still fondly recall, the text of the present can. 296 read: "*Conventionibus cum prælatura initis, laici operibus apostolicis prælaturæ personalis sese dedicare possunt; modus vero huius incorporationis...*" ["Lay people can dedicate themselves to the apostolic work of a personal prelature by way of agreements made with the prelature. The manner of this incorporation..."]. This precise term—"incorporatio"—remained unchanged even after the Legislator had personally examined the "*Schema novissimum*" in conjunction with the two expert commissions he had appointed. However, at the last moment, when the proofs of the entire Code were already at the printers, it was decided to replace the expression "*incorporatio*" with that of "*organica cooperatio*", as now appears in the Code. This modification was made for the technical reason referred to earlier: namely, to give the general norm a more flexible and more generic formulation, so that the genus "*organica cooperatio*" might include not only "*incorporatio*" (the maximum degree of belonging and collaborating) but also other possible kinds of dedication of lay people to the apostolic ends of prelatures, involving different forms of commitment and juridical bonds. The text of can. 296 expressly indicates the variety of forms that "*organica cooperatio*" may take, according to the provisions of the respective Statutes: "The manner of this organic cooperation and the principal obligations and rights associated with it are to be duly defined in the Statutes."

Nor should we overlook the great juridical importance of proper Statutes, bearing in mind the variety of personal prelatures that can exist. These referrals to particular law concern the more important aspects of the constitution and organization of each Prelature: its special apostolic task, the appointment of the Prelate and the scope of his jurisdiction, its governmental regime, the formation and incardination of its own clergy, the way in which the laity can organically cooperate, relations with the local Ordinary of the particular Churches in which the Prelature is present, and so on.

#### 4. Conclusion

I need to end my humble... “organic cooperation” to the Study Day organized to commemorate the Ap. Const. *Ut sit*.

I can assure you that—as will certainly also be the case for the Prelate of Opus Dei and Chancellor of this Pontifical University—this event represents for me not simply an academic commemoration, but something more intimate and personal: a *true remembrance*, a “*recordatio*”, in the profound Latin sense of this expression.

The Latin words “*memorare*”, as well as “*reminiscor*” or “*recordari*”, are evocative verbs that connect the events one wishes to commemorate not only with the “memory”, but also with the “*cor*”, the heart, the center of one’s soul. In my own case, together with the solemn pontifical act of creation of the first personal prelature, I recall—that is to say, there come to my memory and my heart—the names of a number of dearly-loved persons whom Divine Providence wished to link—spiritually if not physically—to those historic circumstances. In the first place, the very author of the Constitution *Ut sit*, the Holy Father John Paul II who, trail-blazer as he was of so many new paths and pastoral horizons in the Church, turned the new canonical figure of the personal prelature desired by the Second Vatican Council into a concrete reality. In the second place, the venerated Founder of Opus Dei, Saint Josemaria Escrivá—like Abraham, the Father of a huge “generation”—who, like the great Patriarch, walked for many years “*in spe contra spem*”, always convinced that the divine mercy and the sweet intercession of Mary would prepare the sure path.

There also come to my memory and heart, among other names, those of the worthy Cardinals Pericle Felici and Sebastiano Baggio, the then Archbishop Rosalio José Castillo Lara, and Msgr. Willy Onclin; also the four beloved members of the special technical Commission whom the Lord has already called to himself: Cardinal Pompedda, Archbishop Oles, and Monsignors De Fuenmayor and de Ayala.

I consider it a grace and an honor to have been able to work with each one of them in the preparation of the various *schemata* or drafts of the universal legislation on personal prelatures and the particular law of the first of these prelatures. And I remember in a very special way Bishop Alvaro del Portillo, the most faithful son of Saint Josemaría, first Prelate of Opus Dei and first Chancellor of this illustrious University.

For his episcopal coat of arms he chose the motto "*Regnare Christum volumus*" ["We want Christ to reign"]—a phrase that linked in a very direct manner the pastoral commitment of the "Opus Dei" Prelature with that of the universal Church, while also evoking the same two powerful words which form the title of the Apostolic Constitution: *Ut sit*. It is very pleasing to think how these two words—for many years repeated by the Founder of Opus Dei as an aspiration—are also in some way biblical words. Saint Paul uses them in his letter to the Colossians, in asserting the universal primacy of Christ: "*Ipse (Christus) est caput corporis Ecclesiae*" ["He (Christ), is the head of the body, the Church"], and he concludes "*ut sit Ipse in omnibus primatum tenens*" ["that in everything He might be pre-eminent"] (Col 1:18).