

COMMUNICATION: REQUEST OF INQUIRY PROCEDURE ON **SERIOUS AND SYSTEMATIC VIOLATIONS** BY ITALY, REGARDING THE ADMINISTRATION OF THE FREE PORT OF TRIESTE — v.1.0

To the attention of: **Office of the High Commissioner for Human Rights – Committee on Economic, Social and Cultural Rights**

Signatories: Sent by 'TRIEST' NGO, by mandate of citizens of the Free Territory of Trieste and/or other citizens interested in the application of the law on the Free Port of Trieste. Data of each signatory includes: name, address, email, date of birth, occupation, ID number and ID scan/photocopy.

This communication is against the State party: ITALY

An inquiry procedure should be established in order to pursue one or more of the following objectives: 1. Immediate application of Annex VI - Article 34 and Annex VIII - Articles 1 to 20 of the Treaty of Peace with Italy, signed in Paris on 10 February 1947, in force since 15 September 1947. 2. Proposal to establish an International Commission for the Free Port of Trieste inspired by Annex VIII - Articles 21 to 26 of the 1947 Treaty of Peace with Italy.

Facts and introduction to Annex VIII:

The Free Port of Trieste is constituted and regulated by Annex VIII of the Treaty of Peace with Italy. This Free Zone of approximately 2.000.000 m² can offer to any potential investor conditions which are absolutely unique in Europe, as confirmed today by GATT/WTO, Tax Justice Network, the US State Department, and more. But most of it literally lies in ruins. It may be even hard to believe that the only International Off-shore Free Zone in the heart of Europe is being boycotted by its very own administrator (currently Italy), but the following pictures will explain loud and clear how Trieste's economy has been devastated, and about one third of the city's population has been lost, thanks to this illegal lack of actions.



A couple of pictures showing how the Old Port of Trieste, a Free Zone in the heart of Europe, looks today, "thanks" to the lack of development caused by the non-application of Annex VIII to the 1947 Treaty of Peace with Italy.

The recent sentence (N.530/2013) of the TAR (Italian Administrative Regional Tribunal), opening the possibility of recourse to international bodies for the issue of sovereignty on Italian Free Territory of Trieste, states clearly and unequivocally the need for strict observance and application by the Italian Republic of Annex VIII to the Italian Peace Treaty of 10 February 1947.

This application must be immediate and productive especially for articles 1 to 20 , as confirmed by the status of a provisional civilian administration acquired with the London Memorandum of 1954.

The Treaty of Peace with Italy was enacted into the Italian law in 1952 (Law n.3054), but – faced with a specific letter of intent signed in 1954 – for 60 years to date the Italian government has never acknowledged its obligations on International Free Port of Trieste, rather considering it the same way as any Italian port .

For example, to date, there is not any law enacted by the Italian Legislation regarding implementation, or execution, key actions necessary in order to implement its obligations that were and are still required as agreed by international treaties.

On the contrary, in daily practical activities the Italian authorities (for instance by adding custom duties, taxes, charging transport fees, etc.) continuously add obstacles, stand in the way by generating illegal and unacceptable interpretations of the Annex VIII of the Peace Treaty, further adding significant heavy damage to the Triestine community, like many disputes in court, including one currently pending at the Regional Administrative Court of Lazio about the illegality of discriminatory tax surcharge at the port of Trieste in article 4 of the Italian Presidential Decree 107/2009.

Italy has intentionally violated since 1954 almost all articles. Here are a few examples:

“Article 1

1. In order to ensure that the port and transit facilities of Trieste will be available for use on equal terms by all international trade and by Yugoslavia, Italy and the States of Central Europe, in such manner as is customary in other free ports of the world:

(a) There shall be a customs free port in the Free Territory of Trieste within the limits provided for by or established in accordance with Article 3 of the present Instrument.”

Italy has been reducing its area at will, for instance with Warehouse n.26, used for public events, illegally: <http://www.azalea.it/Locations.asp?LocID=182>

A number of citizens protested, with the only result being an investion and charges pressed by the Italian authorities. Info: <http://www.triest-ngo.org/clear-violation-of-the-fundamental-human-rights-of-37-citizens-of-the-free-territory-of-trieste-the-reactions/>

The “portocittà” project got stuck: <http://www.ediliziaeterritorio.ilsole24ore.com/art/citta/2013-03-01/trieste-blocca-progetto-recupero-190945.php>

(b) Goods passing through the Free Port of Trieste shall enjoy freedom of transit as stipulated in Article 16 of the present Instrument.

Italian “Guardia di Finanza” (customs and finance) has been conducting their activities many times inside the Free Port itself, even causing protests from operators and citizens: http://www1.adnkronos.com/Archivio/AdnAgenzia/1996/09/04/Politica/LEGA-SFRATTO-ALLENTE-PORTO-DI-TRIESTE-2_131400.php

“2. The international regime of the Free Port shall be governed by the provisions of the present Instrument.”

It hasn't so far.

“Article 2

2.1. The Free Port shall be established and administered as a State corporation of the Free Territory, having all the attributes of a juridical person and functioning in accordance with the provisions of this Instrument.”

Should the Port be run from a far away capital, like Rome, that constantly acts against the Free Port itself, or by a local entity? The second option would follow this article much more closely.

“2.2. All Italian state and para-statal property within the limits of the Free Port which, according to the provisions of the present Treaty, shall pass to the Free Territory shall be transferred, without payment, to the Free Port.”

Italy considers these properties theirs, for instance when they were trying to turn illegally the Old Free Port (northern

area) into a residential area.

See: <http://www.portocitta.com/en/project/> a 1,5BLN€ project that is now abandoned - as it was completely illegal. By occupying the Free Port of Trieste (even with military means, such as carabinieri), Italy has occupied all the public property of the Free Port itself.

“Article 3

1. The area of the Free Port shall include the territory and installations of the free zones of the port of Trieste within the limits of the 1939 bound areas.

2. The establishment of special zones in the Free Port under the exclusive jurisdiction of any State is incompatible with the status of the Free Territory and of the Free Port.”

The whole free port is considered today, by Italy, as under Italian jurisdiction.

“3. In order, however, to meet the special needs of Yugoslav and Italian shipping in the Adriatic, the Director of the Free Port, on the request of the Yugoslav or Italian Government and with the concurring advice of the International Commission provided for in Article 21 below, may reserve to merchant vessels flying the flags of either of these two States the exclusive use of berthing spaces within certain parts of the area of the Free Port.”

The areas for the exclusive use of the International Free Port are an invaluable resource that does not and can not be subject to reduction or relocation. To this respect it is noted that the Italian government has initiated not only in the recent period, operations that have gradually led to abuses in large areas of the Free Port, with regard to their prescribed use, both in terms of actual violations of custom borders prescribed in the Treaty of Peace – and more precisely in Annex VIII, as of Article 3.1 *“The area of the Free Port shall include the territory and installations of the free zones of the port of Trieste within the limits of the 1939 boundaries”*, and according to Art. 3.2 *“The establishment of special zones in the Free Port under the exclusive jurisdiction of any State is incompatible with the status of the Free Territory and of the Free Port.”* In this regard it is noted that:

A • There is the inability to move parts of the Free Port because the merger is not expected nor permitted by the Treaty of Peace;

B • The administration should remedy the situations of violation and is therefore obliged to restore to the Free Port all areas it has stolen in the past, not referring only the recent “bretella” (zone illegally removed from the Free Area) and the Warehouse 26, but instead of recalling a general inspection of all previous operations involved such as Pier IV or other areas that can be reconnected to the original customs boundary of the Free Port violated fraudulently. The location of the customs barrier is still physically visible, given the presence of the related facilities;

C • It’s a necessary priority to start an evaluation that takes into account the possibility of extending the area of the Free Port to areas in crisis or in the extremely polluted areas of the coast of Trieste, in order to stimulate the reclamation and conversion to port activity/production and trade.

This action is required by the Treaty of Peace, Annex VIII Art. 3.4: *“In case it shall be necessary to increase the area of the Free Port such increase may be made upon the proposal of the Director of the Free Port by decision of the Council of Government with the approval of the popular Assembly”*. The purpose of our action is to notify a total breach on the part of the Provisional Civil Administration of the Italian Government of the Articles from 1 to 20 of Annex VIII of the Paris Peace Treaty of 10 February 1947, “Instrument for the Free Port of Trieste”, incorporated in the Memorandum of Understanding of London of 5 October 1954, as the *conditio sine qua non* forced upon the Italian Government by the United Kingdom and the United States, to be assigned, and later maintain, the provisional administration of the International Free Port and Zone A of the Free Territory of Trieste.

Evidence proves that to current state, for the Free Port of Trieste the system in place provides for the exclusive Italian management of the port, by means of the structures and the laws of the Italian Republic in such way, that the administrative provisions adopted are exactly the same as those in force within the territory of the Italian Republic, where the Italian State possesses sovereignty and not mere trusteeship (as for Trieste.)

This strategy takes place in conflict with Article 3 of Annex VIII, still in force, which asserts that the establishment of special zones in the Free Port under the exclusive jurisdiction of a single State is incompatible with the status of Free Territory and Free Port.

The Italian Port Authority, which is the body, by right of the Italian law, present in all Italian ports and which has the task to manage them, is currently issuing concessions, that are administrative provisions adopted in compliance with the regulations of the Italian law, and therefore, not as trustee administrator, but rather as the illegitimate holder of

Sovereignty over the Free Port of Trieste. A further problem exists in the fact that such provisions allow the use of structures and property of the State of the Free Territory of Trieste and its International Port and not of the State property of Italy.

Further proof of such illegal situation is detected in the fact that the area of the Free Port of Trieste appears to be, according to law, *res nullius*, as, in order to operate in a regime of alleged sovereignty and not as a mere trustee, the Italian State has not provided for the registration of the assets under the State property of the International Port of Trieste in the Land Registry, which is the registry of immovable property. We can extensively document the state of total abandonment of the Old Port of Trieste - the most recent safety measures concerning the warehouses, being implemented back in 1984 - in violation of the provisions of Annex VIII, which provided that the Government acting as trustee administrator of the International Port of Trieste operate for the development of the said port through the special system of International Free port.

We believe that the scenario we have described may, at a legal level, widely be borne out of the documents relative to the period of Allied Administration between 1947 and 1954, present at your Foreign Office.

“4. In case it shall be necessary to increase the area of the Free Port such increase may be made upon the proposal of the Director of the Free Port by decision of the Council of Government with the approval of the popular Assembly.”

Italy has decreased the area a number of times, see above. It is now threatening to decrease it even further, more details will be available in the following parts.

“Article 7

1. The Director of the Free Port may also permit the processing of goods in the Free Port.”

No good processing is happening today.

“2. Manufacturing activities in the Free Port shall be permitted to those enterprises which existed in the free zones of the port of Trieste before the coming into force of the present Instrument. Upon the proposal of the Director of the Free Port, the Council of Government may permit the establishment of new manufacturing enterprises within the limits of the Free Port.”

No manufacturing activities are working today.

“Article 9

1. The authorities of the Free Territory will be entitled to fix and levy harbour dues in the Free Port.

2. The Director of the Free Port shall fix all charges for the use of the facilities and services of the Free Port. Such charges shall be reasonable and be related to the cost of operation, administration, maintenance and development of the Free Port.”

As the fundamental basis for the very existence of the Free Port of Trieste, Annex VIII, provides that the Port should be kept *“for use on equal terms by all international trade and [...] in such manner as is customary in other free ports of the world”*. It should be remembered that the GATT/WTO (Art. XXIV 3.2) in force, ratified (1994), also by Italy, and representing approximately 97% of the world trade, expects *“The benefits granted to trade with the Free Territory of Trieste by countries contiguous to the same territory”* to be safeguarded.

In addition, authoritative bodies and institutions in the field of taxation (OECD, Tax Justice Network, the U.S. State Department, etc.) recently recognized, thanks to the Annex VIII being in force, that Trieste is a “free zone/offshore area”. Incredibly, the (until now unaware) Triestines were put in a position to not take advantage of this favorable legal and fiscal status. The Italian Government must therefore facilitate the process of tax exemption of the Free Zones/Free Zone off-shore/Free Port of Trieste, taking into account the tax situation of existing Free Ports, and in particular those located on routes that may be of interest to the port of Trieste (Far East, India, Brazil, etc).

“Article 13

Coastwise shipping and coastwise trade within the Free Territory shall be carried on in accordance with regulations issued by the authorities of the Free Territory, the provisions of the present Instrument not being deemed to impose upon such authorities any restrictions in this respect.”

The Italian “Capitaneria di Porto” (coast guard) depends from the Italian authorities and applies Italian law in the same way it does in all 23 Italian ports. Furthermore, it is a military body.

“Article 15

It shall be the duty of the authorities of the Free Territory to provide the Free Port with water supplies, gas, electric light and power, communications, drainage facilities and other public services and also to ensure police and fire protection.”

The conditions for water, gas, and electric energy are exactly the same as for any other user in the Republic of Italy. There is no autonomous communication system in the Free Port of Trieste.

“Article 16

- 1. Freedom of transit shall, in accordance with customary international agreements, be assured by the Free Territory and the States whose territories are traversed to goods transported by railroad between the Free Port and the States which it serves, without any discrimination and without customs duties or charges other than those levied for services rendered.*
- 2. The Free Territory and the States assuming the obligations of the present Instrument through whose territory such traffic passes in transit in either direction shall do all in their power to provide the best possible facilities in all respects for the speedy and efficient movement of such traffic at a reasonable cost, and shall not apply with respect to the movement of goods to and from the Free Port any discriminatory measures with respect to rates, services, customs, sanitary, police or any other regulations.*
- 3. The States assuming the obligations of the present Instrument shall take no measures regarding regulations or rates which would artificially divert traffic from the Free Port for the benefit of other seaports. Measures taken by the Government of Yugoslavia to provide for traffic to ports in southern Yugoslavia shall not be considered as measures designed to divert traffic artificially.”*

This is a very heavy violation by Italy, as the connections from Trieste to the Italian and Slovenian rail network are old and severely under-utilized.

Furthermore, the Italian railway network owner, RFI, controlled by the Italian ministry of Transport, makes it really difficult to connect Trieste to Central Europe, even with passengers, for instance by charging for 3 segments to reach Austria.

This is a clear obligation given to Italy by the allied powers, which is being violated clearly, causing a huge and constant damage to the Triestine economy. The city of Trieste has, in the last few decades, reduced by almost one third.

The current deplorable situation is in contrast with art. 16.2 of Annex VIII, whereby it is provided that Member States who have assumed the obligations of the same “shall do all in their power to provide the best possible facilities in all respect for the speedy and efficient movement of such traffic at a reasonable cost”.

Also, the introduction of particular security controls with very slow and cumbersome procedures, managed with more intent for the ambiguous role of Italian Customs personnel, represents a very serious damage to the port activities, giving that competitive foreign competitors are not affected. We recall thus the requirement that the Director of Free Port article 19 of Annex VIII to the effect that “Subject to the provisions of the present Instrument, the Director of the Free Port shall take all reasonable and necessary measures for the administration, operation, maintenance and development of the Free Port as an efficient port adequate for the prompt handling of all the traffic of that port. Immediate abolition article 4 of Italian Presidential Decree No. 107 of 28/5/2009 with reimbursement of what has been unlawfully obtained by the Italian Republic in a fund allocated to the works of the International Free Port of Trieste.

The above listed article says: “in order to balance [...] possible distortions of competition” that due to the particular legal regime of the Free Port of Trieste, to apply a fee on commercial operations that is adequate “taking however based on 100% (and not 75% – like the other ports ed) the official rate of inflation.”

This is in blatant contradiction with Article 16.3 of Annex VIII, which obliges the Contracting States (one of the signatories is Italy) to this: “The States[...] shall take no measures regarding regulations or rates which would artificially divert traffic from the Free Port for the benefit of other seaports.”

The legitimacy of the application of any transaction tax Sales in the Free Port of Trieste is also invalidated by article 5.2 of Annex VIII which reads: “In connection with importation into or exportation from or transit through the Free Port, the authorities of the Free Territory shall not levy on such goods customs duties or charges other than those levied for services rendered.”

The revenues from this surcharge are discriminatory to Trieste and have been levied unlawfully since 2009 and therefore have to be returned to a fund for the Free Port of Trieste.

“Article 17

The Free Territory and the States assuming the obligations of the present Instrument shall, within their respective territories and on non-discriminatory terms, grant in accordance with customary international agreements freedom of postal, telegraphic, and

telephonic communications between the Free Port area and any country for such communications as originate in or are destined for the Free Port area.”

The Free Port of Trieste is today part of the Italian telecommunication system, since 1954 there has been no check whatsoever on the application of Annex VIII by any State, while according to Annex VIII the Free Port should have a completely autonomous communication network, as well as a separate international phone prefix.

“Article 18

1. The administration of the Free Port shall be carried on by the Director of the Free Port who will represent it as a juridical person. The Council of Government shall submit to the Governor a list of qualified candidates for the post of Director of the Free Port. The Governor shall appoint the Director from among the candidates presented to him after consultation with the Council of Government. In case of disagreement the matter shall be referred to the Security Council. The Governor may also dismiss the Director upon the recommendation of the International Commission or the Council of Government.

2. The Director shall not be a citizen of Yugoslavia or Italy.”

Since 1954 ALL directors of the Port Authority (illegally run as a regular Italian Port administration) have been Italian citizens. This violation is blatant, and needs to be fixed right away. In order to achieve the internationalisation that Annex VIII describes for the Free Port of Trieste, we propose the constitution of an International Commission inspired by articles 21-26 of Annex VIII to the Treaty of Peace with Italy.

“3. All other employees of the Free Port will be appointed by the Director. In all appointments of employees preference shall be given to citizens of the Free Territory.”

This preference was never applied by the Italian administration.

“Article 19

Subject to the provisions of the present Instrument, the Director of the Free Port shall take all reasonable and necessary measures for the administration, operation, maintenance and development of the Free Port as an efficient port adequate for the prompt handling of all the traffic of that port. In particular, the Director shall be responsible for the execution of all kinds of port works in the Free Port, shall direct the operation of port installations and other port equipment, shall establish, in accordance with legislation of the Free Territory, conditions of labour in the Free Port, and shall also supervise the execution in the Free Port of orders and regulations of the authorities of the Free Territory in respect to navigation.”

The port and in particular the Free Zone Port North also called “Porto Vecchio” (Old Port) has/is been left to decay in an intolerable manner, in a manner like that of a Third World Country.

From what imposed by Annex VIII and in particular with Articles 15, 16 and 19 (see Point 3 in this document), the Italian Government and its agencies have assumed the obligation to keep it in perfect efficiency and well connected from the point of view of the rail, road and communications.

This obligation involves fees and costs that are to be assumed by the Italian Administration and its agencies.

It can not be considered maintenance effort, moreover failure to transform, jointly or miserly sectionize an area degraded as an improbable “stew” of tourist site/residential/commercial, especially in the presence the current crisis. Therefore, the maintenance of the site conditions to be at least decent is an obligation that must be respected.

Articles 21 to 26 were not applied, but they were never even used as a credible and useful guideline for further (or any at all) development of the Free Port: such further development which was never pursued, most likely as it would have directly and severely damaged Italian ports. They are reported here for documental purposes.

Article 21

1. There shall be established an International Commission of the Free Port, hereinafter called “the International Commission”, consisting of one representative from the Free Territory and from each of the following States: France, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the United States of America, the People’s Federal Republic of Yugoslavia, Italy, Czechoslovakia, Poland, Switzerland, Austria and Hungary, provided that such State has assumed the obligations of the present Instrument.

2. The representative of the Free Territory shall be the permanent Chairman of the International Commission. In the event of a tie in

voting, the vote cast by the Chairman shall be decisive.

Article 22

The International Commission shall have its seat in the Free Port. Its offices and activities shall be exempt from local jurisdiction. The members and officials of the International Commission shall enjoy in the Free Territory such privileges and immunities as are necessary for the independent exercise of their functions. The International Commission shall decide upon its own secretariat, procedure and budget. The common expenses of the International Commission shall be shared by member States in an equitable manner as agreed by them through the International Commission.

Article 23

The International Commission shall have the right to investigate and consider all matters relating to the operation, use, and administration of the Free Port or to the technical aspects of transit between the Free Port and the States which it serves, including unification of handling procedures. The International Commission shall act either on its own initiative or when such matters have been brought to its attention by any State or by the Free Territory or by the Director of the Free Port. The International Commission shall communicate its views or recommendations on such matters to the State or States concerned, or to the Free Territory, or to the Director of the Free Port. Such recommendations shall be considered and the necessary measures shall be taken. Should the Free Territory or the State or States concerned deem, however, that such measures would be inconsistent with the provisions of the present Instrument, the matter may at the request of the Free Territory or any interested State be dealt with as provided in Article 24 below.

Article 24

Any dispute relating to the interpretation or execution of the present Instrument, not resolved by direct negotiations, shall, unless the parties mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 25

Proposals for amendments to the present Instrument may be submitted to the Security Council by the Council of Government of the Free Territory or by three or more States represented on the International Commission. An amendment approved by the Security Council shall enter into force on the date determined by the Security Council.

Article 26

For the purposes of the present Instrument a State shall be considered as having assumed the obligations of this Instrument if it is a party to the Treaty of Peace with Italy or has notified the Government of the French Republic of its assumption of such obligations.

There is one more evident violation of Annex VIII by Italy, which is also the latest. On **20 December 2014**, at the Italian Senate, an amendment to the Italian Financial Act (legge di stabilità), presented by senator Francesco Russo, provided for the de-nationalisation of almost all of the area of the old port (northern port) of the Free Port of Trieste, entrusting it to the city council of Trieste, pretending to move the Free Zone/Free Port area. As a quick reminder, we would like to mention article 3.1 of annex VIII, that states: The area of the Free Port shall include the territory and installations of the free zones of the port of Trieste within the limits of the 1939 bound areas.

The Northern part of the Free Port of Trieste is fully included in the 1939 area, and can not therefore be "moved" by Italy under any circumstances. Mr. Russo voted (and got approved by the Italian parliament) the following content:

"Il Commissario di Governo previa intesa con il presidente della Regione e con il sindaco di Trieste, adotta, d'intesa con le istituzioni competenti, i provvedimenti necessari per spostare il regime giuridico internazionale di Punto Franco dal Porto Vecchio ad altre zone opportunamente individuate, funzionalmente e logisticamente legate alle attività portuali".

"In conseguenza dei sopracitati provvedimenti, le aree, le costruzioni e le altre opere appartenenti al Demanio marittimo compresi nel confine della circoscrizione portuale, escluse le banchine, l'Adriaterminal e la fascia costiera del Porto Vecchio, sono sdemanializzate e assegnate al patrimonio disponibile del Comune di Trieste per essere destinate alle finalità previste dagli strumenti urbanistici".

"Il Comune di Trieste aliena, nel rispetto della legislazione nazionale ed europea in materia, le aree e gli immobili sdemanializzati e i relativi introiti sono trasferiti all'Autorità portuale per gli interventi di infrastrutturazione del Porto Nuovo e delle nuove aree destinate al regime internazionale di Punto Franco".

“Sono fatti salvi i diritti e gli obblighi derivanti dai contratti di concessione di durata superiore a quattro anni in vigore, che sono convertiti, per la porzione di aree relative, in diritto di uso in favore del concessionario per la durata residua della concessione. Il presidente dell’Autorità portuale, d’intesa con il presidente della Regione e con il sindaco delimita le aree che restano vincolate al Demanio marittimo”.

Legal situation and domestic steps taken:

The establishment of the Free Port of Trieste was granted by Article 34 of the Treaty of Peace of 1947, which says: “A free port shall be established in the Free Territory and shall be administered on the basis of the provisions of an international instrument drawn up by the Council of Ministers, approved by the Security Council, and annexed to the present Treaty (Annex VIII). The Government of the Free Territory shall enact all necessary legislation and take all necessary steps to give effect to the provisions of such instrument.”

In the same year, the United Nation Security Council has ratified this regulatory provision, with its Resolution n° 16. Subsequently, the Memorandum of Understanding of London, signed in 1954, in its Article 5, establishes how “The Italian Government undertakes to maintain the Free Port at Trieste in general accordance with the provisions of Articles 1-20 of Annex VIII of the Italian Peace Treaty.”

This provision prescribes accurate international obligations, still in effect, which the National Institutions are obliged to fulfil.

Although the Article 7 of the Treaty of Osimo (1975) establishes that “On the date of the entry into force of this Treaty, the Memorandum of Understanding signed at London on 5 October 1954 and its annexes shall cease to have effect in relations between the Italian Republic and the Socialist Federal Republic of Yugoslavia.”, it appears clearly, by a literal interpretation and in observance to general interpretation principles too, that this provision did only affect the relations between Italy and the formerly Socialist Republic of Yugoslavia, being these the only two parts concerned in the agreement.

In others terms, the aforementioned Article 7 does not pretend purposely to affect what previously established by further legal rules. This reinforces the interpretation by which the limitation of the aforementioned field of application determines further conclusions: the provisions of the Treaty of Peace of 1947 regarding the establishment of the Free Port of Trieste are still in effect or, at any rate, they are not affected by a contingently application of the subsequent Treaty of Osimo.

The main reason of what above asserted resides in the simple fact that the very legal rules that create and regulate the Free Port of Trieste (placed in the aforementioned Annex VIII of the Treaty Of Peace, and partially resumed by Article 5 of the Memorandum of London too, which indeed pacifically acknowledge the legal status provided by Articles 1-20) establish rights which can be activated by other States, being these very States, on the contrary, not restricted by the parts concerned by the agreement of Osimo.

The fact that the Treaty of Osimo did not affected at all the applicability of the above mentioned provisions has been asseverated indeed by the very same jurisprudence of the local Regional Administrative Tribunal (TAR, Tribunale Amministrativo Regionale), which asserted: “the legal status of the free port of Trieste [...] preserved, both explicitly by the Treaty of London, at the Article 5, and implicitly by the Treaty of Osimo which, at the Article 7, has abolished the Memorandum for what concern the bilateral relations between Italy and Jugoslavia, therefore preserving the very Article 5 of the Memorandum concerning the free port. [...] The article 5 of the Memorandum, indeed, preserves either “in general accordance” some parts of the Annex VIII (Articles 1-20) regarding the free port of Trieste, becoming in such way compulsory for the Italian State.” (TAR FVG Judgement n. 530/13 [Sentenza Tar FVG n. 530/13]). Judgement n. 1350/14 confirmed on appeal by the Council of State (Consiglio di Stato) dd. 18-3-2014.

This aforementioned prosecution of legal status appears also affirmed by the Port Authority of Trieste, which in its own media channels asserts: “The main instrument that regulates the legal status of the Free Port Of Trieste is the Annex VII of the Treaty of Peace of 1947 [...] In the Articles 1-20 are included the fundamental principles of the regulation of the Free Port, the general parameters as a reference for the Italian State, enabled to putting them in effect with its own acts”.

Indeed, the very same Port Authority recalls the attention on the transformations occurred after 1947, particularly about “the subsequent assumption by Italy of international responsibility towards the city and the port of Trieste in what the Protocol of understanding signed in London in 1954 concern.”

This clearly implies that no abolition of the provisions of the Annex VIII has never occurred, being these part of a legal status “unique in the Italian and communitarian legal system”.

Another acknowledgement comes from the Article XXIV, paragraph 3 of the GATT, which states: “3. The provisions of

this Agreement shall not be construed to prevent: [...]

(b) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.”

In this way, the GATT convention, although may not refer explicitly to the free port's provisions, enounce clearly that the general commercial status which establishes does not have any priority on the specific legal status of exchanges for the Free Territory, which nowadays seems to be constituted by the first 20 Articles of the Annex VIII to the Treaty of Paris of 1947.

The above mentioned legal situation has been also confirmed at least on occasions by the Tribunal of Trieste, by revoking the subject matter by releasing goods from seizure according to the following argumentation:

“...also the second communitarian act about free zones, adopted with CEE regulation n° 2504 of the European Council of 25.7.1988, brought to the Annex VIII of the Treaty of Peace between Italy and the Allied and Associated Powers, signed in Paris on February 10, 1947, and became an object (orig: “ha formato oggetto”) of the London Memorandum of October 5, 1954.”

It is significant only to underline that the legislation of 1988 yet recalled represents the regulation of the relations between the communitarian regulation for the free zones and the legal status of the Free port of Trieste, while the subsequent legislation n° 2913/1992, which nevertheless has abolished the first, constitutes more strictly a unique text, mere integrating provision, not presenting a different legislation, except for some modification judged marginal.

The previously mentioned content of the aforementioned admission, relatin to the declaration, reported at the verbal procedure, of the E.U. Council that adopted the 1988 EU regulation, while doing the exact opposite of implying the abrogation of the regulation on the Free Port of Trieste, overcomes any doubts over the norms of Annex VIII relating to Art. 307 of the EU Treaty, with a double effect, already made clear: first of all, that Annex VIII is fully compatible with EU community law even regarding Art.307.2; secondarily, it represents a positive stand in order to let the aforementioned norms be put into effect, therefore in order for Annex VIII regulations to come into effect possibly affecting also the relationships between Italy and the European Community member countries.

Even case-law has qualified the Free Port of Trieste as an “extra-custom territory, between the custom line and the political border of the Italian State” [ordinance Trib. Trieste, penal section, 7/6/1996; Trib. Trieste II civil section, ordinance 21/9/1989], and it even got to state expressly that in the Free Zones of Trieste there is a special legislation according to which it is allowed to manufacture and transform goods, here introduces free from any customs limitation. “It is therefore forbidden to the customs administration to establish activities that should violate the subjective right to carry out such operations (Tribunal of Trieste, 13/5/1997, in Dir. Trasporti 1998, 757, with Longobardi note)” [Trib. Trieste, re-examination penal section, ordinance 16-12-2014].

The same considerations were confirmed, among others, by the Tribunal of Trieste, penal section, in the subsequent ordinance dd. 22-3-2015.

In particular, the Tribunal of Trieste (13/5/1997) in the case Crossbow srl Vs Financial Ministry and Port Authority, with the already quoted injunction 13/5/1997 has recognized, in principle, the obligation of the Italian Authority not to develop activities that could damage the claimant's right to carry out operations of goods' handling with a duty-free status in the “old free zone” (Punto Franco Vecchio) of the Port of Trieste

The principal and defining contents of the legislation regarding the status of the Free Port of Trieste included in the Annex VIII focus on the following principles: the free port of Trieste is placed outside the tariff barrier (art. 1 d.m. 20-12-1925; art. 4 Commission's decree n. 29/1955; art. 2 Commission's decree n. 53/1959); the free zones have extra tariff-barrier nature (art. 2 d.m. 20/12/1925); the free port has extra tariff-barrier nature (art. 5 Commission's decree n. 29/1955 and art. 4 Commission's decree n. 53/1959); the area of the free port may be extended, “should it be necessary” (art. 3, 4° comma, Annex VIII); it is possible to effectuate, without any duty restriction, all the operation regarding the load, unload and transhipment of material and goods; regarding too their storage, dealing, handling and transformation even of industrial nature (art. Commission's decree 29/1955 and art. 2 Commission's decree n. 53/1959); cargo ships and goods of all Countries will take advantage without restrictions of the right of access to the free port in order to load and unload (art. 5 Allegato VIII); the free port is open to cargo ships and goods of all Countries, which will take advantage of exemption and liberties in accordance to legal rules and international consuetude and to the provisions of this very decree (art. 2 Commission's decree n. 29/1955 and art. 6 Commission's decree n. 53/1959); foreign goods imported in the free port may be liberally dispatched, through the accomplishment of the essential formalities, in order to grant the correctness of the carriage through the duty territory, regarding the shipments by land and by observing the provisions concerning the transit outside the custom status of port (art. 1 d.m. 20/12/1925; art. 4 Commission's decree n. 29/1955 and 2 Commission's decree n. 53/1959); it is granted, according to international conventions and obligations, the liberty of transit through ordinary way between the free

port and foreign countries or vice-versa, without any toll or equivalent tax being collected, except for the rights representing rendered services; it cannot be adopted any discriminatory act concerning tariffs, services, and custom and fiscal legal rules towards goods to and from the port of Trieste (art. 16 Annex VIII and art. 7 Commission's decree n. 29/1955 e n. 53/1959); the load and unload of goods in free zones may take place without intromission of custom authorities (art. 11 d.m. 20/12/1925).

Therefore, even when an economic subject that has its own activity of interest in the Free Port of Trieste has progressed through the judicial system in order to demand the application of the special regime provided by the current norms, among which Annex VIII; not even in this case the application of such provisions has been granted. Such is the case of the Società Italiana per l'Oleodotto Transalpino (SIOT) Vs Ministero Italiano Delle Finanze, Ministero Della Marina Mercantile, Circonscrizione Doganale Di Trieste E Ente Autonomo Del Porto Di Trieste: it has been incomprehensibly stated that "the existence, in the Community, of a custom union, defined by the free circulation of goods, implies the liberty of communitarian transit. Given such liberty, a single member Country cannot apply on goods circulating on its own territory, to or from another member Country, any transit rights or any other imposition concerning the transit.

Nevertheless, it cannot be defined incompatible with the liberty of transit in such way defined the collection of rights representing shipment's charges or the price of other performances concerning the transit. This regarding not only performances directly and specifically concerning the displacement of goods, but advantages of more general nature too, resulting by the exploit of waters or port facilities, depending their maintenance upon the public administration. 2° It does not exist any legal rule that any individual could apply in order to oppose himself to the collection, on goods in transit to the Republic of Austria, of taxes such as fees on loading or unloading, collected in Italy thanks to the decreto legge 28 febbraio 1974, n. 47, converted in the act 16 aprile 1974, n. 117."

The provisions violated:

All the facts and details described until now, represent clear and long-term violations to the following articles.

Article **1.2** of the International Covenant on Economic, Social and Cultural Rights: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.[...]"

Article **1.3** of the International Covenant on Economic, Social and Cultural Rights: "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, [...]" (per es direttore italiano del porto)

Article **4** of the International Covenant on Economic, Social and Cultural Rights: "The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society." Article 6.2 of the International Covenant on Economic, Social and Cultural Rights: "The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment [...]"

Article **25** of the International Covenant on Economic, Social and Cultural Rights: "Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources."

Article **28** of the International Covenant on Economic, Social and Cultural Rights: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions."

These breaches to the Human Rights of the citizens of the City of Trieste, as well as of the whole Free Territory of Trieste, represent a clear and constant violation by Italy, which is today even trying to neglect and overwrite Annex VIII and, in fact, dissolve part of the Free Port of Trieste. A Free Port is, when activated, the socioeconomical engine for fair growth and development for a wider region; yet it's the city of Trieste, in particular, that has been hit hard by the Italian violations: it lost almost one third of its inhabitants in only four decades, mainly thanks to the lack of jobs

and/or development. Furthermore, the violations are committed by both the Italian government and by local Italian administrative bodies. In such a geographical position, with unusually deep waters and with such specific International laws in force, the Port of Trieste represents a source of wealth, as the only natural resource of the Territory of Trieste. Neglecting its International legal status and avoiding any sustained development of the Free Port itself represents a clear violation by Italy that has been ongoing and has been aggravated by recent actions: this has to stop now. We, the signatories, demand that action is taken as quickly as possible to end the current state of illegal administration and lack of development of our main source of wealth and natural resource: the Free Port of Trieste.

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