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of the United Nations

International Provisional Representative of the FREE TERRITORY OF TRIESTE

Rappresentanza Internazionale Provvisoria del Territorio Libero di Trieste
Začasno Mednarodno Predstavništvo Svobodnega Tržaškega Ozemlja
Provisorische Internationale Vertretung des Freien Territoriums Triest

SG/2016/04-en

TO THE COMMISSAR FOR THE COMPLETION OF THE LAND REGISTER
AT THE LAND REGISTRY OFFICE OF TRIESTE

Subject: observations to oppose the request of compilation of the Land Register with protocol number 4/Comp/2016, published on the BUR - FVG (Official Bulletin of Region Friuli Venezia Giulia) No. 21 of 25 May 2016, pages 194-96, with which the Municipality of Trieste, represented by the Mayor *pro tempore*, requests the illegitimate registration within the available assets of the Municipality itself (for the purpose of sale) a relevant, functional, constrained part of the International Free Port of Trieste, which under the law is an unavailable property of State of the present-day Free Territory of Trieste, entrusted to the Italian Government under a mandate of temporary civil administration.

And warning to do a preliminary verification of the order and priority of the request, as well as the registration, in compliance with the law, of those properties in the List of Public Properties at the Land Registry Office, and in case it results that this registration was either omitted, wrong or incomplete, to complete, correct or complete it promptly.

With a request to allow the needed publicity of the procedure of completion in respect of the States who, *ex lege*, are entitled with rights over the properties subject to that request, as listed under following point 10.

And reserving to activate any other instrument to defend the properties and rights under threaten, as well as to find other civil and criminal liabilities, and for the compensation of damages, which includes the instruments for the settlement of disputes established at articles 87 and 86 of the Treaty of Peace with in Italy of 10 February 1947, in force, and at article 24 of Annex VIII to the same Treaty.

1. Legitimation of the opponent.

This International Provisional Representative of the Free Territory of Trieste is a legitimate Representative of State established, accredited and represented as a subject of international law as required, for the reasons and with the roles described in its Instrument of Constitution of date 16 September 2015, attached to the present document in its authentic versions, in English and in Italian (*annexes 1/a and 1/b*).

We precise that individual, direct and indirect delegations to this International Representative from citizens of the Free Territory of Trieste and of other States entitles with general and special rights over the International Free Port of Trieste, to this day, have already increased above 20,000 (twenty-thousand), 15,000 (fifteen-thousand) of which have already been sent with specific requests to the United Nations Security Council for its role of international guarantor of the Free Territory of Trieste.

2. Description and contents of the request of the Municipality of Trieste against which are formulated our observations of opposition.

With an act registered under hand-written protocol number 1498, 33/1-15(188), PG-37549 - 1498 and stamped with date 29 February 2016, the Municipality of Trieste - Administrative Services Area – Strategic Projects and Tenders Area, Contracts and General Business, signed by then Mayor Roberto Cosolini (now dismissed due to the outcome of the 5 and 19 June 2016 election) requests the Commissar for the Completion of the Land Register at the Land Registry Office of Trieste the «*completion of the Land Register “Old Port”*».

The act indicates as the titles of legitimacy that the Municipality wants to activate for this purpose is «*article 1 paragraphs 618 and 619 of law 23.12.2014 No. 190 (Financial Law 2015)*» of the Republic of Italy and, as executive acts, the decision of the City Council No. 7 of 22 February 2016, with annexes.

Among the documents hence attached to the request, is Decree 26 January 2016, with protocol number 19/8-5/2016 of the Commissar of the Government in Region Friuli Venezia Giulia, however, the text of the request does not specify its subject.

Among the same annexes, there are also a “Agreement record” and a “Identification record” for a “*the new delimitation of a public property area*” within the port facilities, both dated 9 July 2015 and undersigned by the Italian State Property Office, Port Authority, Harbor Master’s Office, Interregional Public Works Department, Autonomous Region Friuli Venezia Giulia, and Municipality of Trieste.

As for the right to register ownership pursuant an administrative act of the Municipality, the request recalls article 33 of Italian Royal Decree no. 499 of date 28.03.1929 (Provisions regarding Land Registers in the territories of the new provinces).

As for the procedure of registration of ownership that are activated, the request recalls the law of Region Friuli Venezia Giulia No. 15/2010 (Consolidated Law on Regional legislation concerning the structure and the maintaining of the Land Register), which at Chapter III, articles 24-28, sets out the procedures to complete the Land Register.

On this bases, the request asks the Commissar to begin the procedure of completion «*by registering the former Public Properties, which were removed by law from their previous status*» providing their cadastral data, into new tabular particles to be established «*in the name of “MUNICIPALITY OF TRIESTE - REAL ESTATE HOLDING”*».

The procedural law concerting completion requests (article 24.2, Regional Law 15/2010) prescribing that such procedures, besides precisely identifying the properties «*must provide all elements of use to verify the ownership status and its burdens*» notwithstanding, the act presented by the Municipality does not contain any indication or documentation concerning the original ownership status and burdens that must be found in the mandatory registration of the properties in the List of Public Properties at the Land Registry Office in a form and manner established with the Decree of the

President of the Regional Council of Friuli Venezia Giulia of 21 July 1975, No. 01734/
Pres.

3. Preliminary observations concerning the protocol number of the act.

The origin of the request lodged by the Municipality of Trieste and contained in the file of the Office has, on its title page, a hand-written registration number «1•4/COMP/2016» with date 29 February 2016 stamped on, with a simple stamp.

Usually this kind of information is added on the original and to the copy of the requests by the Commissar for the Completion, who does also add the stamp of the Land Registry Office that receives them, at the same time, the signature of the Commissar himself, and possibly their personal stamp.

In facts, from the progressive registration number depend the order and priority of the request, which are decisive to establish its priority respect to other requests on the same properties.

In the merit, we observe that on the title page of the original act of the Municipality, the registration number appears graphically different from those on the previous and successive completion requests 3/COMP/15, 7/COMP/2015 and 5/COMP/2016 concerning the same assets. For reference, find attached the copies of all four title pages (*annex 2*).

The deposited original document of the Municipality, in facts, lacks both the stamp of the Office and the signature of the Commissar, while the number assigned to it does not appear to be written at the time the document was lodged, rather, it is traced with strains and corrections on a previously existing, different number, while it appears that said number was added to the attachments afterwards, with a linear calligraphy and even the registration number has a different shape - this number being important to certify the order of presentation, therefore the precedence, of each request.

The shape of number “4” written on the original request appears close, and it has strains that suggest it being traced over another number by someone who wanted to correct an original number “6”, while the “4” of the registration numbers that were then written on the title pages of the attachments (see for reference *annex 3*) is actually open, coherently to the usual writing style of the public officer in charge.

This would correspond with information received at the time opposed request No. 5/COMP/2016 of 11 March 2016 was lodged, when it resulted that to that date, the Municipality had not lodged its request yet.

This information appears to be confirmed also by the fact that the original request lodged by the Municipality results to have been drafted leaving protocol number and date blank; both were added afterwards, one hand-written, the other one with a stamp that dates it to “29 FEB. 2016”. Further verification is needed to demonstrate to whom corresponds Municipal Stamp No. 350, which is found next to the signature of then mayor of Trieste Cosolini.

Additionally, a number with a dot “1•” was added to the ordinary numeration system however, it does not recur in the publication of the procedure on the Official Bulletin of Region Friuli Venezia Giulia No. 21 of date 25 May 2016, pages 194-96.

The system used to number the attachments is as much abnormal, since the decision of the City Council, which should have been “annex 1” to the request, is instead numbered the exact same way as the request itself, while the attachments to the decision, instead, were numbered as annexes to the request.

4. Motived request of preliminary investigation and expert examination on the registration number of the request.

Therefore, we request that, previously to any other act of the procedure under examination, an expert examination on the numeration and dating that were abnormally written on the request of the Municipality is conducted by the competent Judicial Authority.

This request is motived by the manifest abnormalities found and described above, additionally to the notorious, following abnormal circumstances regarding the subject of that request:

a) the subject of the request has is an attempt to privatize, expropriate and sell through the Municipality, for speculative purposes, a complex of public properties for port uses with a notorious, very high functional and material value, in the present day and over time;

b) the value of this speculative operation can be evaluated between EUR 1.5 and 3 billions in regard to real-estate operations, but it is an incalculable value due to the consequent loss of future port traffics and of productions in the international Free Port regime;

c) the attempt to privatize, expropriate and sell for speculative purposes the assets is in fact committed in breach of the ownership titles in force and established under international law, implemented also in the Italian legal system, which subject the assets to permanent constrains as for ownership and destination for port uses, which assign also general rights to all States of the International Community and special rights to some of them;

d) the attempt, therefore illegal, to privatize, expropriate and sell for speculative purposes the assets is lead by influent circles of Italian politics by the expedient of eluding the titles established under international law by forcing unconstitutional, Italian laws which are also subordinate legislation;

e) this attempt and certain anti-corruption and anti-mafia questions related to it were also denounced many times to Italian administrative and criminal Court Authorities as well as to public opinion, the provisional Italian Government has been warned against continuing it, as were warned all other public bodies involved in that (Ministries, Municipality of Trieste, Region Friuli Venezia Giulia, the Port Authority, the State Property Office, Interregional Public Works Department);

f) as preliminary protection of the port public assets and of the rights threatened by this mean, were already presented the requests of completion of the Land Register No. 3/COMP/15 and No. 7/COMP/2015, which require the registration *ex lege* of the pertinent titles and constrains established under international law;

g) the Land Registers of the Italian Administration eluded both the validity of the titles and the correct order and priority of those requests, omitting and inverting the legal procedure to reject both, with decisions which are therefore null and void *ab origine*;

h) following this elusion, was presented analogue, new request No. 5/COMP/2016, which is about to be published in the Official Bulletin of Region Friuli Venezia Giulia;

i) for the same reasons, requests 7/COMP/2015 and 5/COMP/2016 do also contain an official warning to the provisional Italian Authorities against completing the registration of the ownership in favor of other subjects enforcing previous or successive requests in order to elude the prevailing titles of ownership established under international law;

j) the elusion of the precedence as for order and priority of requests 3/COMP/2015 and 7/COMP/2015 allowed the Municipality to present the request subject to ur observations and opposition, as well as to register it with protocol number 4/COMP/2016 to gain precedence on opposite request 5/COMP/2016;

k) with the act of date 21.6.2016 (*annex 4*) we did therefore request the regular opening and conduct, with their specific order and priority, of the two eluded procedures, and this act has already been sent as a report to both criminal and accounting Courts;

l) in the meantime, the order and priority of request 5/COMP/2016 remains pending the outcome of the requested investigations and expert examination on the registration of the request of the Municipality.

5. Fraudulent omission of the specification of the status of ownership and constrains.

The request of the Municipality of Trieste and the whole documentation produced with it do not contain a valid, direct specification on the original status of ownership of the public properties, which they ask be modified.

The “Records of land possession” of the Land Cadastre attached to the decision of the City Council, which is itself attached to the request, attribute possession, not ownership of the assets, because in Trieste ownership is certified with registration at the Land Registry office.

Also, the possession of the assets is attributed to «*Demanial property – Merchant Navy*», without explaining whether this definition, which in Trieste refers *ex lege* to the Properties of State of the Free Territory of Trieste, currently entrusted to the Italian Government under a mandate of temporary civil administration, is instead interpreted as a reference to the Italian Demanial Property (whose Agency and other offices do therefore have no legitimate title to make decision on those assets, and consequently have already been officially warned against doing so).

As observed and described above, at point 2, the request does also lack any information or direct documentation concerning the original ownership and consequent constraints of the assets of which the request of the Municipality requests modification, notwithstanding the legal obligation to register them in the List of Public Properties and at the Land Registry Office respectively, pursuant Decree of the President of the Regional Council of Friuli Venezia Giulia of 21 July 1975, No. 01734/Pres.

Such specifications by the requesting subject are a necessary condition for the validity and admissibility of the request under examination, since their omission eludes, hides or subtracts to the mandatory, specific evaluations in the procedure (article 26, No. 2 Regional Law of Friuli Venezia Giulia No. 15/2010) the special, original legal status of the ownership title, constraints and nature of the public properties that the request suggest be modified in favor of the Municipality, in execution of laws of the Italian State.

In this case, this omission prevents to observe directly from the text of the request the existence of a special legal status of the assets, established under international law and determining their destination of use, ownership, and consequent constraints. This information can be deduced, and only partially, by examining the decision of the City Council attached to the request, and from the decree of the Commissar of the Government attached to this decision, which both omits surreptitiously the complete description of the nature, of the legal sources and of the legal force of this special legal status.

The reason of said omissions is that by virtue of this legal status, the public assets that the request of the municipality does reductively define as “*Old Port*” and identifies only with cadastral data and by titles of possession, are in fact a relevant part of the Northern Free Port (also referred to as the “old” port) which is a functional area under constraint and unavailable of the International Free Port that belongs to the present-day Free Territory of Trieste, a sovereign State whose temporary civil administration is entrusted to the responsibility of the Italian Government, not to the State of Italy.

Among the information surreptitiously hidden in the misleading request of the Municipality, as in the acts and titles attached to it, there is the legal fact that the special status of the assets does assign special rights on them to all States of the International Community, and special rights to certain States.

This original legal status of the assets is established by multilateral, international legal instruments in force, which must be maintained by the temporary civil Government, and are ratified and executed also in the legal system of the Italian Republic as international obligations which, due to their nature, are Constitutionally superior to national and regional legislation.

Those instruments and the consequent obligations are therefore directly efficacious *ex lege* both within the jurisdiction of the Italian Government in its role temporary civil administrator of the present-day Free Territory of Trieste, and within the different jurisdiction of State of the Italian Republic.

For the same reasons, the recording of this legal status of the public assets in question, as of all other Properties of State of the Free Territory of Trieste, was and is mandatory

and a priority *ex lege* to all other recordings and cadastral or Land registry acts concerning public properties.

The willful elusion of the direct and complete mention of this legal status of the assets committed in the form of a public act, for the propose of gaining possession of them with a pretense based on misleading legislation and activating titles that would be insufficient without it, and therefore gives raise to civil and criminal violations for fraud, forgery, and damages to the legitimate owners or holders of rights on the assets. To evaluate the intentionality of the crimes, contribute also the further facts referred above at point 4, letters from a) to l).

6. Request of immediate notification of the procedure to the States holding general and special rights on the assets.

The special nature of the assets subject to the request presented by the Municipality of Trieste raises questions on the obligation to publicize the procedure of completion also with respect to the States bearing inviolable rights and duties on the matter, since, being international subjects, cannot be considered effectively informed by an ordinary publication in the Official Gazette of the Region, neither they can be subject to the short terms envisioned for observations and oppositions and, just like this Representative, they have the right to directly address the ordinary international procedures for the settlement of disputes and to the specific procedures established at articles 87 and 86 of the Treaty of Peace with Italy of 10 February 1947 and at article 24 of Annex VIII of the same Treaty.

Therefore, we request that the Commissar for the Completion of the Land Register takes prompter care to effectively extend the publicity of the procedure of completion by notifying the subjects of international law identified at the successive point 10, and providing new terms.

7. The original and present-day legal status of the assets.

The original legal status in force of the assets is the one established and confirmed, without contradictions or modifications by the following main instruments of international law, of the legal system of the Free Territory of Trieste, and of the legal system of the Italian Republic:

- United Nations Security Council Resolution S/RES/16 (1947);
- Treaty of Peace with Italy of 10 February 1947, articles. 4, 21, 22, 48 No. 5, 78 No.7, 79 No. 6 g, 85 and Annexes I D, VI, VII, VIII, IX, X;
- Law No. 811 of 2 August 1947;
- Legislative Decree of the Temporary Head of State No. 1430/1947 of 28 November 1947;
- Law No. 3054 of 25 November 1952;
- Constitution of the Italian Republic (1 January 1948) articles 5, 10 paragraph 1 and 117, paragraph 1;
- Memorandum of Understanding of London of 5 October 1954 concerning the Free Territory of Trieste (entrusting the present-day Free Territory of Trieste to the

responsibility of the Italian Government under a mandate of temporary civil administration);

- Decree of the President of the Republic of Italy of 27 October 1954;
- Italian Constitutional Law No. 1/1963, article 70;
- Italian-Yugoslav bilateral treaty of Osimo of 10 November 1975, article 7.

As an effect of these main legal instruments, both the present-day Free Territory of Trieste and its International Free Port are subject, since 5 October 1954, to the special jurisdiction of the Italian Government as body in charge of temporary civil administration under a sub-delegation of the Government of the United States and of the United Kingdom for their role of primary administrators on behalf of the United Nations, however, since 15 September 1947 there is no legitimate form of sovereignty or jurisdiction of the State of Italy over it.

The laws of the State of Italy, therefore, cannot have direct legal effects on the present-day Free Territory of Trieste, rather, under penalty of inapplicability thus nullity and voidness of the consequent act due to the lack of jurisdiction, these laws must be extended and eventually adapted to it with the pertinent normative instruments of the temporary civil Government or of the bodies it has delegated for this purpose.

The continuation, to this day, of this legal status of the present-day Free Territory of Trieste, of its International Free Port, and therefore, with them, the continuation of the constraints as for ownership, destination of use, and the rights of third parties over the assets that are subject to this observation, is confirmed by the documents of the United Nations Security Council PO/210/PI of 20 May 1983 and S/2015/809, (see also: US Department of State, *Treaties in Force*, 2012).

Since 15 September 1947, any form of direct or indirect imposition of the sovereign jurisdiction of the Italian State over the Free Territory of Trieste does therefore constitute a mere political simulation that violates the law on three levels: international law, the legal order of the Free Territory, and that of Italy. This simulation, if committed by public officers of the Italian State or of the temporary civil administration of the Free Territory entrusted to the Italian Government gives rise to the consequent civil and criminal liabilities.

As a further confirmation, when it comes to the judicial administration of the present-day Free Territory of Trieste entrusted to the Italian Government under a mandate of temporary civil administration, also in regard to the matters of the Land Register, we want to remind that this legal status is confirmed by the fact of judicial nature that this is the reason why in the present-day Free Territory of Trieste judgments and rulings are pronounced with the formulas *«Republic of Italy - in the name of the people of Italy»* and *«Republic of Italy - in the name of the Law»* not pursuant the Italian law that establishes them (Legislative Decree of the President of the Republic of Italy No. 1 of 19 June 1946, Official Gazette No. 134 of 20.6.1946), and not even due to its extension to the Free Territory of Trieste, rather, it is the consequence of an autonomous legislative act of the temporary civil administration of the Free Territory itself, entrusted to the Italian Government, specifically, Decree No. 184 of 7 June 1955 of the General-Commissioner of the Italian Government for the Territory of Trieste, published in the specific Official Bulletin No. 17 of 11 June 1955.

In the same manner, as for the keeping of the Land Registry in the present-day Free Territory of Trieste by Region Friuli Venezia Giulia, we want to remind that Italian Constitutional Law No. 1/1963, which establishes this Region and transfers the (normative and administrative) powers of the administration of the Free Territory of Trieste from the General-Commissioner of the Italian Government for the Territory of Trieste mainly to a Commissariat of the Italian Government in the Region, and in part to a Prefect and to the Region itself (including the competences on the Land Registry), did not come into force in the Free Territory after its publication in the Official Gazette of the Republic of Italy on 1 February 1963, rather, it did after being extended to the Free Territory with the successive publication on the Official Bulletin of the General-Commissioner of the Italian Government for the Territory of Trieste No. 7 of 11 March 1963. Therefore, the jurisdiction of the Region over the Free Territory of Trieste, also in regard to the keeping of the Land Registry, does not represent the jurisdiction in the Republic of Italy like in the Provinces of Gorizia, Udine and Pordenone, rather, it is a functional part of the temporary civil administration of the Free Territory entrusted to the Italian Government.

As for the assets subject to present observations and opposition, we do also want to underline that as for the affirmation of their original legal status in force described above, three legitimate requests of completion *ex lege* of the Land Registry are pending; their registration numbers being 3/COMP/15, 7/COMP/2015 and 5/COMP/2016, all mentioned above.

8. Insufficiency and impossibility to enforce the titles activates in the request.

The request of the Municipality activates (see above at point 2) five main titles, consisting, and recalled in this order, in: a legislative act of the Parliament of the Italian Republic (Law 190/2015, article 1, paragraphs 618, 619, 620), two agreement records on the matter of Properties of State signed by different bodies, a legislative act of the temporary civil administration of the Free Territory of Trieste (decree 19/8-5/2016 of the Commissar of the Government) and an administrative act that implements them (decision of the City Council).

Those titles are all legally insufficient due to their rank, nature and subject to go beyond, exclude or preclude the original title of ownership, in force, established with the multilateral Treaty of Peace with Italy of 10 February 1947, whose effects and obligations are embodied directly and primarily *ex lege*, and, for the following reasons, each of them is legally unenforceable; their illegitimate execution would also constitute a fraud and serious damage to public properties.

8.1 Enforcement of Italian law, inapplicable and unconstitutional for absolute lack of jurisdiction.

The main title activated by the Municipality consists in paragraphs 618, 619 and 620 of article 1 of Italian Law No. 190/2014 (Financial Law of 2015) with which the Italian Parliament, adopting texts drafted and brought forward by politicians who have interest in the illegal speculative operation at the expenses of the Northern Free Port of Trieste:

8.1.1. has provided, but did not dispose, that the Commissar of the Government adopts the measures needed to move away the international legal status of free port (meaning the status of Free Port area) from the whole seaport territory of the so-called “Old Port” of Trieste to other zones.

This is a prevision, not a mandatory legal disposition, since the Parliament of the Italian Republic has no jurisdiction over the present-day Free Territory of Trieste entrusted to the Italian Government under a mandate of temporary civil administration, nor over the Commissar delegated by the Government itself to exercise the normative and administrative powers of such administration, neither over the International Free Port of Trieste. The non-imperative formulation of the sentence does also constitute an implicit recognition of this juridical condition.

The end of Italian sovereignty over the Free Territory of Trieste and over its International Free Port, in facts, is ruled by the Treaty of Peace with Italy of 10 February 1947, in force since 15 September 1947, as ratified and implemented in the legal system of Italy with the laws in force listed at point 7, the observance of which is established and prevails on national legislation of the Italian Republic under articles 10 paragraph 1 and 117 paragraph 1 of the Constitution of the Republic of Italy.

Due to this, the interpretation of the Municipality of Trieste, or any other subject, of this norm as imperative legislative measure and as a prevailing instrument of the Italian legal order, affirming the sovereignty of the Italian Republic over the Free Territory of Trieste, and legitimizing all consequent norms, makes it unenforceable for absolute lack of jurisdiction, as well as constituting a contextual violation of the Italian Constitution, of international law, and of the sovereignty of the Free Territory of Trieste, entrusted to the Italian Government under a mandate of temporary civil administration.

The prevision expressed by the norm is also legally inapplicable as per se, since the provisional Government and the Commissar is has delegated have no power to issue a legal act that breaches their own mandate, for that does not allow nor it makes it necessary moving the free port regime from the Northern Free Port to extend it to other areas (see following point 8.2).

8.1.2. it disposed that «as a consequence» of these legal measures, the Commissar of the Government, for instance, successively and subject to them, the areas «belonging» to the Maritime State Property, excluding the Adriaterminal and the shore, are removed from the properties of State and «assigned to the available assets of the Municipality of Trieste», to be removed from port used and redeveloped as urban areas to be sold on the real estate market, transferring the revenues of this sale to the Port Authority of Trieste;

This disposition is legally impracticable:

- a) for the absolute lack of jurisdiction of the Italian Parliament, like for the previous;
- b) because the legally impracticable nature of the previous norm, which prejudices the enforcement of all successive norms, causes *ipso facto* its inapplicability;
- c) because the ownership of those assets does belong *ex lege* to the State Property Office of the Free Territory of Trieste - International Free Port of Trieste, not to the

Maritime State Property of the Italian State, which does have only temporary possession of them for the purposes of the temporary civil administration entrusted to the Italian Government;

d) because the provisional Government and all bodies and offices it has delegated to such roles have the obligation to execute the norm pertinent with the subject of their mandate, thus they cannot breach them;

e) because such duties and norms include full respect for the permanent constraints as for ownership and destination of International Free Port and for the rights of the States as provided with the Treaty of Peace, article 34 of Annex VI and with Annex VIII, as well as excluding the intromission of any local or regional body in the exclusive management of the International Free Port, which is assigned to a Director of the Port and to an international supervisory body;

f) because even in the Italian legal system, whose general principles were extended to the Free Territory of Trieste with Decree No. 100/1955 of the General-Commissioner of the Government for the Territory of Trieste, the characteristics of a public good are factual, not on-paper.

Consequently, a State Property can be deprived of its status, and then ceded to private parties (with or without an intermediate passage to the available assets of another public body) only when there is an objective, consolidated evidence of the supervening irreversible, material impossibility to use it for the original public interest destination or another convenient one (thus not a temporary impossibility, caused surreptitiously by bureaucratic means) and that the removal of the asset from the Properties of State consists in a demonstrated, effective and certain economic advantage, not in a fiscal or patrimonial damage for the public good.

In this specific case, therefore, it would be necessary demonstrating, and there is no way to do it, that there is technical evidence that the areas to be removed from State Property are factually and irreversibly become impossible to use for the destination and for productive port uses of the International Free Port of Trieste, and for this reason it is necessary and inevitable subtracting them to port uses.

Instead, there are technical evidence of opposite nature and of public domain, including the acts of concession tenders in 2003, 2009, and 2015, all showing that the areas are unused and, in facts, can be extended, for such uses, and their present condition of disuse is the result of mere bureaucratic tricks and political deception activated obstinately by subjects that are already identified, also with criminal complaints, who acted to support the illegal speculative operation that is now culminating with the illegal request of registration of ownership titles presented by the Municipality, which is also the subject of the present observations and opposition.

8.1.3 disposes that the delimitation of the areas to remain part of the Maritime State Property is carried out by the Port Authority, in agreement with the President of Regione Friuli Venezia Giulia and the Mayor of Trieste, and the fact that the use of the areas that remain property of the State is governed by a pertinent regulation to be issued by the Port Authority of Trieste in accordance with Law No. 84/1994 (*Reform of port legislation*).

This kind of dispositions cannot be enforced for the same reasons as the previous, of which they are a consequence.

8.1.4. disposed that the rights and duties established with contracts in force regarding concessions in the free port areas lasting longer than 4 years are reverted in rights of use the same areas, for the remaining concession time, after they are deprived of the free port regime, the status of State Property, and port use;

This disposition cannot be enforced for the same reasons of the previous dispositions, and because following the general principles of the Italian legal system, extended to the Free Territory of Trieste with Decree No. 100/1955 of the General-Commissioner of the Government for the Territory of Trieste, concession contracts for areas with an advantageous regime like that of the International Free Port cannot be legally transformed in a right of use on a private area which does even lack that advantageous regime without giving the consent of the concessionaire due to this radical and unfavorable modification of the subject and nature of the contract, or without eluding or coercing this consent by simulating a legitimate imperative legal act.

8.2. Execution of a manifestly illegitimate, null and void, ineffective act of the Commissar delegated by the Italian Government to exercise the powers of temporary civil administration over the Free Territory of Trieste.

The decree with protocol number 19/8-5/2016 of date 26 January 2016, with which the Commissar of the Government in Region Friuli Venezia Giulia claims the *«international legal regime of free zone is moved from the Free Port of Trieste»* to other areas is manifestly illegitimate, ineffective, null and void, because hiding behind deceptive reasons, exercising the normative powers of temporary civil administration of the Free Territory of Trieste entrusted to the Italian Government, it takes a harmful decision that such powers do not allow.

The normative powers exercised to issue that decree are the autonomous, executive powers previously entrusted to the General-Commissioner of the Government for the Territory of Trieste and transferred to the Commissar of the government in Region Friuli Venezia Giulia with Italian Constitutional Law No.1/1963, published on the Official Gazette of the Republic of Italy on 1 February 1963 and then extended to the Free Territory of Trieste with publication on the Official Bulletin of the General-Commissariat of the Government for the Territory of Trieste No. 7 of 11 March 1963.

The exercise of those autonomous and exclusive normative powers is confirmed by the main reference, in the Decree itself, to that specific norm, while the norms adopted by the Italian Parliament with paragraphs 618, 619 and 620 of article 1 of Law 190/2014 are referred to, likewise to other references, with a cognitive value only.

The exercise of the powers of the Italian Government as temporary civil administrator and of the Commissar it has delegated for this propose is established and bound to the obligations given in the mandate, as established with the Treaty of Peace with Italy of 10 February 1947 and with its additional executive instrument, the Memorandum of Understanding of London of 5 October 1954.

Those obligations consist in exercising the first phase of the Provisional Regime of Government of the Free Territory of Trieste (Annex VII), including the obligation to apply all compatible norms of the Permanent Statute (Annex VI) and all norms on the International Free Port (Annex VIII), for which the Memorandum of Understanding of London sets out also a minimum guarantee scheme consisting in the duty of the Italian Government to maintain the Free Port in accordance with articles from 1 to 20 of Annex VIII.

Article 2 of Annex VIII rules that the Free Port (article 34 of Annex VI, article 1 of Annex) is established as a state corporation of the Free Territory of Trieste. Due to this, there is no legal possibility to maintain the Free Port outside the sovereignty of the Free Territory of Trieste, without changing the Treaty of Peace with the procedures provided for therein.

Article 2.2 of Annex VIII established that all Italian State and para-state property within the limits of the Free Port pass to the Free Territory be transferred, without payment, to the Free Port itself. Due to this, there is no legal possibility to dispose of this unavailable property without changing the Treaty of Peace with the procedures provided for therein.

Article 3 of Annex VIII establishes that the areas under permanent constraint of free zones of the International Free Port of Trieste are those within the limits of the 1939. This does clearly include also the Northern Free Port, referred to as the “old port” making its destination of use permanent and unchangeable. Due to this, there is no legal possibility to move the Free Port regime from that area without changing the Treaty of Peace with the procedures provided for therein.

Article 3.4 of Annex VIII rules that it is possible increasing freely the Free Port regime to new areas with legal acts *ad hoc*, without need or legal possibility to remove them from the areas under constraint. This possibility to increase the Free Port area has already been exercised many times by the Allied Military Government of the Free Territory of Trieste before, and then by the Commissar of the Italian Government with a series of Decrees from 1954 to the present day (see: Commissarial Decree with protocol number 19/8-33/2015 in favor of Samer Seaports and Terminal s.r.l.).

The pretense that in order to extend further the Free Port regime to new areas it is necessary removing, or “moving” it from the Northern Free Port is, therefore, a mere deceit invented by the politicians who promote the speculative fraud at the expenses of the area to simulate that it is possible removing the permanent constraint the use of port areas.

Referring to this deceptive motivation to justify the act with which the Commissar of the Government F.A. Garuffi illegitimately declares the “moving” of the Free Port regime from the Northern Free Port, with abuse of her powers and in breach of her obligations, she does therefore associate to the consequent nullity and voidness *ab origine* of her Decree the possible criminal liabilities of her and of false in a public act.

The intentionality of the fault appears certain due to the fact that Commissar F.A. Garuffi herself, under the pressing of the politicians who promote the illegal speculation, in an official interview published by the media on paper and on line by local newspaper Il

Piccolo of date 28.2.2013 declared to public opinion her awareness to have no legal power to “move” te regime of Free Port away from the Northern Free Port.

This circumstance recalls the evidence of the legal fact that the regime of the International Free Port of Trieste is established with multilateral international legal instruments in force, the eventual modification of which might be requested and negotiated, following the procedures established with the Treaty and under the surveillance of the Security Council of the United Nations, only by the Government of one of the contracting States or either by the provisional Government of the Free Territory of Trieste of the International Representative of the Free Territory, but it cannot be changed with an act of the Commissar of the government who is delegated to exercise this temporary administration.

Therefore, it is plausible thinking that the successive, opposite Decree issued on 26.1.2016 by the previous Commissar of the Government, committing a clear abuse of power and going against the law, was issued due to as much illegal abnormal pressing, on which have already been requested criminal investigations to the competent authorities.

For all those reasons, we take care to provide, separately from the present act, a request to the current Commissar of the Government to revoke the decree of her predecessor for self-protection.

8.3. Executions of agreements on the matter of State Property that are clearly illegitimate and ineffective.

The decisions on the matter of State Property made by public bodies in compliance with paragraphs 618, 619 and 620 of article 1 of Law 190/2014 as made official in the “Identification record for a new public property area”, and in the “Agreement Record”, both dated 9 July 2015, and attached to City Council decision No. 7 of 22 February 2016 to be then activated in the request of the Municipality as opposite titles are null and void for the reasons that cause the inefficacy of those laws, as explained above at point 8.1, and for breaching those norms as well.

This is because those norms require that the delimitation of the areas that remain part of the Maritime State Property takes place after the Decree of the Commissar of the Government to move the Free Port regime is issued, because that Decree would be their ground of legitimacy, also, the delimitation should be made by the President of the Port Authority, in agreement with both the President of Region Friuli Venezia Giulia and with the Mayor of Trieste.

Instead, from the above mentioned records it appears that the delimitation was decided and concluded on 9 July 2015, more than six months before the issuing of the Decree of the Commissar, which was issued on 26 January 2016 and mentioned that as one of its reasons, reverting the sources of legitimation of the acts, which was established by the very law they both recall.

This reversion of legitimacy of the acts causes, additionally to the other, already observed reasons, a further cause of the nullity and voidness of the delimitation of a new public property area, and of the Decree of the Commissar as well.

Also, the delimitation results to have been made with the operational cooperation of bodies that were not required by the specific law, precisely, the Italian State Property Office, the Interregional Public Works Department for Veneto, Friuli Venezia Giulia and Trentino Alto Adige, the Harbor Master's Office of Trieste. The intervention of these Bodies in the procedure must therefore be considered null and void, as well as a cause of nullity and voidness of the acts themselves.

8.4. Execution of an administrative act with no legal ground, insufficient and without financial cover.

The decision of the City Council No. 7 of 22 February 2016, with annexes, which was activated by the Municipality of Trieste as title for the registration of the ownership of the assets lacks legal ground, is insufficient for its purpose and has no financial cover.

The subject of the decision is *«Article 1, paragraphs 618-620 of Law No. 190/2014. Removal from State Property of the Old Port of Trieste. Taken note of the transfer of the legal status of Free Port and beginning the procedure for the registration of ownership of the corresponding real estate holdings.»*.

The act points out, at point 5, that the recorded parcels *«must be recorded as part of the assets of the Municipality of Trieste.»*

The title cannot be activated for this purpose for the reasons we have expressed above, as cause of the nullity and voidness of the titles used to justify the decision, and because that lacks financial cover, a lack justified by simulating against truth and evidence that the act does not have direct and indirect financial and effects or balance impacts for the public body, instead, those are now to be expected very high and potentially devastating for the accounts of the Municipality.

At point 7, the act of the City Council does not surprisingly declare *«to reserve to take care of measuring the burdens on the budget of the Municipality after the inclusion of the real estate holdings of the Old Port among its assets, for their management and maintenance before the operation for the enhance the holdings themselves»* and declares, again at point 7, that the decision is *«immediately enforceable due to the urgent need for a definition of the judicial-administrative procedure connected with the removal from State Property of the Old Port.»*

This means the City Council approved this decision being aware that its enforcement is causing relevant burdens on the budget of the Municipality, as well as relevant changes in its real estate holdings, but it has delayed the quantification of both the burdens and the financial cover they need due to the alleged necessity and urgency of defining the judicial-administrative procedure of the real estate holdings of the Port.

However, the fact that the reasons of this alleged necessity and urgency are not clearly stated suggests that they consist in the awareness, impossible to declare, that the action is illegal and of the possibility that it is prevented with efficacious oppositions.

Attached to the decision, there is the mandatory opinion on the regularity of accounting procedures of the Municipal Officer in charge who declares, against the truth and

factual evidences, that this decision *«is considered free from direct and indirect effects on the financial situation and on the assets of the Body»*.

This statement is false, and it is aggravated also by the notorious circumstances that the financial consequences and effects on the assets of the Municipality would be extremely onerous and have no economic cover, also, the Municipal Administration has already decided, allowed and completed, since 2015, significant expenses of public money for the same Port assets, *uti dominus* but without having received legitimate possession on them and without having requested yet the registration of new ownership titles, therefore, without legitimate titles to authorize the expenses.

The use of this decision, as a title for the illegitimate registration of the assets of the Port Area would therefore constitute also a serious danger for the Municipal Administration.

For all those reasons, we take care to provide, separately from the present act, a request to the current Mayor of Trieste to revoke the request to register a new ownership of the assets presented by his predecessor for self-protection.

Also, it is manifestly evident that the enforcement of the illegitimate request of registration of ownership requested by the Municipality of Trieste would constitute a serious danger also for the Public Administration of the Free Territory of Trieste entrusted to the Italian Government under a mandate of temporary civil administration, as well as for the Administrations of the Italian State that did illegally interfere in the procedure.

9. Damage caused to the States entitled with rights of use over the International Free Port of Trieste.

Due to the reasons expressed above, it is equally manifest that the illegitimate subtraction of the assets to their constrain, to their destination of use, and to the rights and duties established with the Treaty of Peace with Italy in force would constitute a serious danger and damage for all the States that hold these rights, including the Free Territory of Trieste, all of them having direct access to the specific procedures for the settlement of disputes established with the Treaty of Peace, which exclude the competent of local or national judges.

10. List of the subjects of international law to whom we request the procedure in question be notified for the purpose of allowing their observations and oppositions.

The Treaty of Peace with Italy of 10 February 1947, at article 21, assigns the protection of the Free Territory of Trieste to the responsibility of the United Nations Security Council and at Annex VIII it assigns to all States rights of use without discriminations on the International Free Port, special rights to Yugoslavia (which means to its successor States) and to Italy, as well as rights to supervise its management to the present-day Free Territory of Trieste, the United States of America, the United Kingdom of Great Britain and Northern Ireland, France, Switzerland, Austria, Hungary, Poland, Czech Republic, Slovakia, Slovenia, Croatia and other successor States of Yugoslavia, Italy, Russia and other successor States of the USSR.

The illegal procedure for the registration of ownership presented by the Municipality of Trieste with the collusion of other Bodies of the provisional administration of the Italian Government or Bodies of the Italian State avoids and threatens in full the rights of all other States.

Therefore, we request the Commissar for the Completion of the Land Register to promptly take care of extending the publicity of the request of registration of ownership presented by the Municipality of Trieste, providing to them new terms to present observations and oppositions, to the following subjects of international law:

a) **Security Council of the United Nations** in person of its President *pro tempore*, at its institutional forum in 405 East 42nd Street on the South, New York NY 10017, USA, for its role of direct international guarantor of the Free Territory of Trieste (UNSC Resolution S/RES/16 (1947); Treaty of Peace with Italy of 10 February 1947, article 21, paragraph 1).

b) **General Assembly of the United Nations** in person of its President *pro tempore*, at their institutional forum in First Avenue at 46th Street, New York NY 10017, USA, for information, through it, to all UN Member States, for their role of holders of rights on the properties to be registered, precisely, the equal rights of all States and their enterprises to use without discriminations the areas of the Free Port of Trieste for their ships, freight, and for all other commercial activities, the manufacturing of goods and industrial activities, under tax exemption where applicable;

c) **Governments** of the Countries which are members *de iure* of the International Free Port of Trieste, and entitles to have within its areas *siège social* and offices subtracted to local jurisdiction, all to be notified to their Diplomatic Missions in Italy:

- United States of America, Embassy, 00187 Rome, Via Vittorio Veneto 119/a;
- United Kingdom of Great Britain and Northern Ireland, Embassy, 00187 Rome, Via XX Settembre 80/a;
- France, Embassy, 00186, Rome, piazza Farnese 67;
- Switzerland, Embassy, 00197 Rome, Via Barnaba Oriani 61;
- Austria, Embassy, 00198 Rome, Via g. Pergolesi 3;
- Hungary, Embassy, 00161 Rome, Via dei Villini 12/16;
- Poland, Embassy, 00197 Rome, via P. Paolo Rubens 20
- Lithuania, Embassy, 00198 Rome, Viale di Villa Grazioli 9;
- Latvia, Embassy, 00198 Romae, via G. B. Martini 13;
- Estonia, Embassy, 00198 Rome, via Liegi 28, int. 5;
- Czech Republic, (as Successor State of Czechoslovakia), Embassy, 00192 Rome. Via dei Gracchi 322;
- Republic of Slovakia, (as Successor State of Czechoslovakia), Embassy, 00135 Rome. Via dei Colli della Farnesina 144;
- Russia (as Successor State of the USSR), Embassy, 00185 Rome, via Gaeta 5;
- Belarus, (as Successor State of the USSR), Embassy, 00141 Rome, via delle Alpi Apuane 16;
- Ukraine, (as Successor State of the USSR), Embassy, 00198 Rome, via Guido d'Arezzo 9;
- Kazakhstan, (as Successor State of the USSR), Embassy, 00189 Rome, via Cassia 471;

- Slovenia (as Successor State of Yugoslavia), Embassy, 00197 Rome. Via Leonardo Pisano 10;
- Croatia (as Successor State of Yugoslavia) Embassy, 00191 Rome. via L. Bodio 74/76;
- Bosnia–Herzegovina (as Successor State of Yugoslavia), Embassy, 00195 Rome. Piazzale Clodio 12/III;
- Serbia (as Successor State of Yugoslavia), Embassy, 00197 Rome, via dei Monti Parioli 20;
- Montenegro (as Successor State of Yugoslavia), Embassy, 00197 Rome. via A. Gramsci 9;
- FYROM (as Successor State of Yugoslavia), Embassy, 00198 Rome, viale Bruxelles 73-75;
- Italy, *Presidency of the Council of Ministers*, 00187 Rome, Palazzo Chigi - piazza Colonna 370.

11. Reserves for defensive purposes.

This International Provisional Representative of the Free Territory of Trieste expresses full reservation to integrate this act, as well as to activate, in person or together with the Representatives of other States, all other instruments needed to defend the assets and the rights under threaten, as well as to ascertain civil and criminal liabilities and actions for damages, including the instruments for the settlement of controversies established at articles 87 and 86 of the Treaty of Peace of 10 February 1947, in force, and included in article 24 of Annex VIII to the same Treaty. For this purpose, both the text of the Italian version and its present English version, certified by the I.P.R. F.T.T. are equally authentic.

Trieste, 23 June 2016.

For the I.P.R. F.T.T.: Paolo G. Parovel, Secretary General

N. 05 (five) annexes *ut supra*.