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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
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MONITORING OF THE ITALIAN ADMINISTRATION OF THE FREE TERRITORY AND INTERNATIONAL FREE PORT OF TRIESTE

Document IV.1.

FALSIFICATION OF THE TREATIES AND SIMULATION OF SOVEREIGNTY

in Italian administrative and judicial acts:
judgments TAR FVG No. 400/2013 and No. 530/2013
and the documents related or similar to them.

1. Synthesis.

It is known that the Italian Government exercises the sub-mandate of temporary civil administration over the present-day Free Territory of Trieste that was entrusted to in in 1954 by the Governments of the United States and of the United Kingdom, as holders of the special trusteeship mandate established at art. 21.3 and at art. 1 of Annex VII of the Treaty of Peace with Italy signed at Paris on 10 February 1947 and entered into force on 15 September 1947 (see following point 4).

The Italian political-administrative and judicial bodies assigned by their Government to exercise this provisional sub-mandate do, instead, simulate that the Free Territory of Trieste has no legal existence and, therefore, it is subject along with its international Free Port, to the sovereignty, to the laws and to the taxation of the Republic of Italy, as if it were an Italian border province.

This political deceit of provisional Italian authorities has caused and continues to cause billions of Euro of economic damages to the present-day Free Territory, to its citizens, and residents, to its national and international enterprises, to its international Free Port, to the States that hold rights on it, and to their own enterprises.

Also, the false theses supported by Italian authorities to simulate the sovereignty of the State of Italy over the Free Territory of Trieste created international embarrassment due to the claim that Italian sovereignty extends also to the areas of the Free Territory that used to be entrusted to the administration of the Government of Yugoslavia and, since 1992, became subject to the sovereignty of the independent republics of Slovenia and of Croatia.

Since 2012, an increasing number of citizens of the present-day Free Territory started to claim their legitimate rights, contesting with public and legal actions the abuses committed by the defaulting provisional Italian Government.

Administering Italian authorities reacted by actions of propaganda and political-judicial repression, all based on the false theses that claim Italian sovereignty over the Free Territory, but they did adjust them admitting also the sovereignty of former Yugoslavia in an attempt to gain the support of Slovenia and of Croatia.

This is why administering Italian authorities decided to base their simulation of sovereignty on the paradoxical claim that the Free Territory of Trieste «*does not exist and never existed*» and, between July and October 2013, they “codified” this thesis with two judgments issued by the Regional Administrative Court for Friuli-Venezia Giulia – TAR FVG, registered sub No. 400/2013 and sub No. 530/2013.

Italian authorities improperly used and are using the two administrative judgments as if they were sources of law that allegedly demonstrate the non-existence of the Free Territory of Trieste and Italian sovereignty over it.

In particular, they use the two judgments to justify illegitimate actions at the expenses of the international Free Port of Trieste and of the citizens who defend it, legal actions against freedom of press on these subjects, the illegal rise of taxes of the State of Italy, as well as threatening to punish the tax objections of the citizens.

This analysis proves (for the details, please see following point 5.4) that both judgment and all other Italian administrative acts expressing the same theses are actually based on a systematic, scandalous, and unprecedented falsification of the contents of the instruments of International law and of Italian legislation that have establish and recognize the present-day Free Territory of Trieste and regulate its provisional administration.

This behavior of provisional Italian authorities does therefore violate also the principles of good faith and of the impossibility to advocate the provisions of internal law, established at arts. 26 and 27 of the Vienna Convention on the law of Treaties.

The falsification thus verified confirms the illegitimacy of all jurisdictional acts (legislative, administrative, judicial, fiscal) that were carried out in the name and on behalf of the State of Italy at the expenses of the present-day Free Territory of Trieste, of its international Free Port, of its bodies, of its State properties, of its citizens and residents, of its national and international enterprises, as well as of the rights of all other States and their enterprises over the international Free Port.

Follows that all jurisdictional acts of the Italian Government and of its bodies within the Free Territory of Trieste and in its international Free Port are legitimate and have legal force only if they are performed exercising, for the purposes and within the limits, of the sub-mandate of the special trusteeship mandate establishing their temporary civil administration in execution of the specific norms of the 1947 Treaty of Peace and of its successive instruments for implementation.

2. Use of this analysis in legal disputes.

With the consent of the Secretariat General of the I.P.R. F.T.T. and only in the ways and under the conditions established by it, this analysis can be used as evidence of the ultimate, absolute ceasing and non-existence, since 15 September 1947, of the sovereignty of the State of Italy over the Free Territory of Trieste, over its international Free Port, over its bodies, over its properties of State, over its citizens and residents, over its national and international enterprises, and over the rights of all other States and their own enterprises over the international Free Port of the Free Territory in the disputes and international proceedings of jurisdictional, administrative, fiscal, and commercial nature.

3. Nature and contents of the Italian administrative judgments TAR FVG No. 400/2013 and No. 530/2013.

In the Italian legal system, the appeals of the subjects of private law versus acts of the public administration fall under the competences of Administrative Courts, which have a first and a second instance of judgment: the Regional Administrative Court (*Tribunale Amministrativo Regionale – TAR*) is the Court of first instance, and the Council of State (*Consiglio di Stato*) is ordinary Administrative Court second instance. The TAR FVG is the Administrative Court for Region Friuli Venezia Giulia.

Since 1963, Region Friuli Venezia Giulia is delegated to the exercise (see following point 4.6) of certain powers of the temporary civil administration of the Free Territory of Trieste entrusted, since 1954, to the responsibility of the Italian Government (not to the State of Italy).

Judgments TAR FVG No. 400/2013 and No. 530/2013 were drafted together, using different appeals of private subjects to support, with identical false theses, the simulation of the sovereignty of the State of Italy over the Free Territory of Trieste and over its International Free Port. Judgment No. 530 was also confirmed by the Italian Council of State in 2014.

Considering that the decisions of Regional Administrative Courts are issued by a formation of the Court of 3 judges, while those of the Council of State are issued by a formation of no less than five judges, but eventually up to thirteen judges, it is legitimate considering that the falsifications of the law contained in both judgments in question cannot be considered the result of professional malpractice, rather, the result of political influences on the Italian judges (see following point 6).

The complete text of both judgments (in Italian) is public and can be downloaded from the website of Italia Amministrative Justice: <https://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/Ricerca/index.html?showadv=true&tipoRicerca=Provvedimenti>

3.1. Judgment TAR FVG No. 400/2013.

Judgment TAR FVG No. 400/2013 concludes an Administrative appeal brought forward by Portocittà S.p.A. which, in 2010, obtained an illegitimate 70 (seventy) years concession of the major part of the Northern Free Port, often called the “old port”, in order to realize there a urbanization project that violates the norms of both the 1947 Treaty of Peace with Italy and the of sub-mandate of temporary civil administration entrusted to the Italian Government since 1954.

The urbanization project is part of a complex political-economic Italian fraud that aims at reducing the functional, equipped surfaces of the international Free Port of the Free Territory of Trieste to favor illegal building and housing speculations, as well as to divert on Italian ports the traffics of the international Free Port of the Free Territory. This kind of actions is expressly forbidden at arts. 3.1 and 16.3 of Annex VIII of the Treaty of Peace.

The value of the fraud is about EUR 3 billions for the illegal building and housing speculations, and it amounts to several billions Euro as for the illegal diversion of port traffics.

With his appeal, presented on 28 February 2013, the CEO of Portocittà S.p.A. Enrico Maltauro (arrested in 2014 at Milano for bribing in large public tenders), requested the concession to be cancelled, and a reparation for damages claiming that the Port Authority of Trieste had concealed to him the existence of the constraints of the international Free Port that prevented its urbanization.

The appeal was presented out of time, and the reason was manifestly false, since the legal constraint of the Free Port was known to the public, made evident by the custom barrier of the area, and written communications about it had been sent to all subjects who participated to the call for tender.

This means the Italian administrative judges of the TAR FVG should have declared the appeal inadmissible because it was out of terms, and if they had admitted it anyways, they should have rejected it with a short decisions, declaring that it was based on a clear falsification of the facts and, therefore, ordering Portocittà S.p.A. to the payment of Court costs.

Instead, the judges of the TAR FVG admitted the appeal and used it to issue a 54-pages political judgment that provides a pseudo-juridical cover to the simulation of Italian sovereignty over the Free Territory of Trieste, as well as to the Italian political-economic fraud at the expenses of the international Free Port.

For this purpose, the judgment falsifies the provisions of the Treaties and Italian laws in order to claim in 32 pages, from point 9 to 16.2, that the Free Territory never existed, that Trieste is subject the sovereignty of Italy and, on the bases of this false statement, it claims that therefore the State of Italy has the right to treat the Free Port as its own property, without international constraints, as well as to transfer or extend it also to other ports and interports of the Republic of Italy. The judgment did also exempt Portocittà S.p.A. from Court fees.

3.2. Judgment TAR FVG No. 530/2013.

Judgment TAR FVG No. 530/2013 decides on another Administrative appeal, brought forward by 57 citizens of the present-day Free Territory of Trieste, who requested the act summoning the elections for the Regional Council of Friuli Venezia Giulia be declared null and void.

The appellants affirmed that Italian Constitutional Law No. 1/1963, approving the Statute of the Region, including electoral laws, would be null and void, but also unconstitutional for including within the Region, a body of the Republic of Italy, also the Municipality of the Free Territory of Trieste, which is another State.

In principle, their thesis was correct for the part regarding the absolute lack of jurisdiction of the Republic of Italy over the Free Territory of Trieste, entrusted to the Italian Government under a mandate of temporary civil administration.

However, this thesis was wrong in facts, because the appellants were unaware that this Italian Law had been correctly extended to the sovereign jurisdiction of the Free Territory upon publication on volume No. 7/1963 of the Official Bulletin of the General Commissioner of the Italian Government for the Territory of Trieste (see following point 4.6).

But this mistake was caused by the administering Italian authorities themselves, including the Region itself and the judiciary, because in their public acts they did always conceal that the Italian law is executed in Trieste upon a jurisdiction measure issued by the provisional administration of the Free Territory, not by the State of Italy.

Additionally, the appeal of the citizens (but not in further integrations) referred to the Free Territory within its 1947 boundaries, since they ignored the change occurred in 1992 in favor of Slovenia and of Croatia, after two plebiscites, and upon decisions of the United Nations (see following point 4.2).

However, even this further mistake in the appeal was caused by the misconduct of administering Italian Authorities, because in order to support Italian claims against Slovenia and Croatia, did always conceal or deny the legal effects on international decisions on the matter.

This means Italian administrative judges should have rejected this appeal with a short decision, declaring that Italian Constitutional Law No. 1/1963 is correctly extended to the Free Territory of Trieste, correcting *pro veritate* the theses of the appellants about its present-day borders and, recognizing their good faith, dividing court fees between the parties.

Instead, the judges of the TAR FVG used the appeal to issue a second, 65-pages long political judgment, which repeats, completes and strengthens the pseudo-judicial cover

given with previous judgment 400/2013 to the simulation of Italian sovereignty over the Free Territory of Trieste and over its international Free Port.

It is for this purpose that judgment No. 530/2013 copies the text and numeral points from 9 to 16.2 included in the 32 pages of judgment No. 400/2013 that falsifies the norms of the Treaties in order to claim that the Free Territory of Trieste does not exist and is under the sovereignty of the State of Italy as would be the Free Port, and then uses the next 13 pages to declare, on the bases of this false premise, that denying Italian sovereignty over Trieste is an illegal opinion for it is subversive, that it must be punished as a crime against the State of Italy as well as threatening international stability. For this reason, the judgment does also order the 57 appellants to pay to the Republic of Italy and to the Region EUR 9,000 court costs.

The appellants impugned the judgment before the Italian administrative Court of second instance (Council of State) which, with its judgment No. 1350/2014, confirmed judgment No. 530/2013 of the TAR FVG without taking note of the falsifications of the norms of the treaties nor of the illegitimacy of the threatens against the citizens.

4. Premise about the legal and political status of the present-day Free Territory of Trieste.

In order to evaluate correctly the nature and consequences of the falsifications of international law contained in the two Administrative judgments under examination (and of analogue Italian acts), it is necessary premising to their detailed analysis (see following point 5.4) the fundamental, updated information about the Free Territory and its provisional regime of Government.

4.1. Establishment, sovereignty and borders of the State.

The Free Territory of Trieste is a small European sovereign State provided with an international Free Port at the service of all States, it is established since 15 September 1947 in compliance with the Treaty of Peace with Italy of 10 February 1947 (UNTS Vol. 49, No. 747) under the Provisional Regime of Government established at Annex VII of the same Treaty. Granting its integrity and independence is a direct responsibility of the United Nations Security Council (UNSC Resolution S/RES/16 of 1947, art. 21.1 of the 1947 Treaty of Peace).

The provisions of the Treaty of Peace with Italy that establish and govern the Free Territory of Trieste are arts. 4, 21, 22, 48 No. 5, 78 No.7, 79 No. 6 g, 85 and Annexes I D (Maps), VI (Permanent Statute of the Free Territory of Trieste), VII (Instrument for the Provisional Regime of the Free Territory of Trieste), VIII (Instrument for the Free Port of Trieste), IX (Technical dispositions regarding the Free Territory of Trieste), X (Economic and financial provisions relating to the Free Territory of Trieste).

The Republic of Italy has undersigned, ratified and executed the Treaty of Peace without reserves (Legislative Decree of the Provisional Head of State 890/1947, Law 811/1947, Law 3054/1952), and it has recognized the establishment of the Free Territory of

Trieste, since 15 September 1947, under the Provisional Regime of Government with bilateral agreements in compliance with the Treaty of Peace (Decree of the President of the Republic of Italy 1630/1948), with multilateral agreements and in international organizations (GATT, ERP, ICPO, OEEC, EPU, ECMT and others) as well as with new domestic laws on the matters of diplomatic representation, terrestrial and maritime borders, citizenship, elections, regulation of recognized professions, legal, administrative and customary districts, railways, postal services, car plates, war reparations for damages, etc.

Since the date the Treaty of Peace with Italy came into force, the Free Territory of Trieste and, to a certain extent, its international Free Port, succeeded *ex lege* to the State of Italy as new owners of all former Italian properties of State within the boundaries of the Free Territory of Trieste and of the Free Port respectively (Annex X, art. 1; Annex VIII, art. 2.1).

4.2. Initial administrative divisions and border change in 1992.

As part of the Provisional Regime of Government, the Free Territory of Trieste was initially divided in two administration zones: a main Zone “A”, consisting in the capital city Trieste with the international Free Port and five smaller Municipalities, and a secondary Zone “B” consisting in an additional strip of coast in order to provide the Free Port with a direct access to international waters.

In 1992, the United Nations recognized the new independent Republics of Slovenia and of Croatia, after plebiscites, within their present-day borders, that include also the former, accessory Zone “B” of the Free Territory.

The international recognition has therefore modified the original borders of the Free Territory of Trieste with former Yugoslavia by virtue of art. 30.3 of the Vienna Convention on the Law of Treaties. The present-day Free Territory of Trieste does therefore border with the Republic of Slovenia and with Italy.

Due to this, the terms of this analysis on the subject refer to the status of the present-day Free Territory of Trieste, without taking into consideration the former secondary Zone, now subject to the sovereignty of Slovenia and of Croatia.

4.3. The Provisional Regime of Government.

The Provisional Regime of Government of the Free Territory of Trieste consists in a special trusteeship mandate of the United Nations, and its subject is a Sovereign State already established with the 1947 Treaty of Peace.

For this reason, the mandate does not provide time limits, it cannot be entrusted to another sovereign State, it is governed directly with Annex VII of the same Treaty instead of with the UN international Trusteeship System, and the control on its effective implementation is exercised by the UN Security Council, not by the UN Trusteeship Council.

4.3.1. The two phases of the Provisional Regime.

Art. 1 of Annex VII of the 1947 Treaty of Peace divides the Provisional Regime of the Free Territory of Trieste in two phases: an initial phase, entrusted to a provisional Military Government that took office with the establishment of the State (15 September 1947), and a conclusive phase, entrusted to a civilian Governor appointed by the Security Council, in charge of initiating the complete enforcement of the Permanent Statute of the Free Territory, established with Annex VI of the same Treaty. The Treaty does not provide a mandatory due date for the appointment of the Governor.

The functions and roles of the initial provisional Government are extended and regulated with the last paragraph of art. 2 of Annex VII, which does also provide the direct enforcement of all norms of the Permanent Statute that are compatible with the Provisional Regime.

4.3.2. The application of the Provisional Regime.

The first phase of the Provisional Regime of the present-day Free Territory of Trieste was entrusted, as established with art. 1 of Annex VII of the 1947 Treaty of Peace, to a first provisional Government of State, entrusted to the responsibility of the Military Commands of the Governments of the United States and of the United Kingdom, which administered Trieste from 1945 with the Allied Military Government Venezia Giulia – A.M.G. V.G.

The A.M.G. V.G. administered both Trieste, its free port, and a railway collection area that extended up to the border with Austria, and it was established as Military Government of the Occupied Territories in compliance with the clauses of the Italian armistice and unconditioned surrender (Cassibile, 3.9.1943; Malta, 29.9.1943) as well as of the *Agreement between the United States of America, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia relating to the provisional administration of Venezia Giulia*, signed at Belgrade on 9 June 1945 (UNTS Vol. 139, n. 464).

In execution of the Treaty of Peace, on 15 September 1947, the Governments of the United States and of the United Kingdom brought an end to the A.M.G. V.G. and established in main Zone A of the Free Territory of Trieste its first provisional Government of State as Allied Military Government Free Territory of Trieste – A.M.G. F.T.T. held by a Commander with the role of Military Governor, its 1st Proclamation declared that new State had been constituted, implementing the provisions of the Treaty of Peace, under the international protection of the UN Security Council (The Allied Military Government British-United States Zone, Free Territory of Trieste, Official Gazette vol. 1, No. 1 of 16 September 1947).

With successive legislative measures (Orders) the A.M.G. F.T.T. established the first structures of the Government of State of the Free Territory, sparing them completely from those of the State of Italy (Orders No. 2/1947, 8/1947, 76/1947, 55/1948, 78/1948, 146/1948, 182/1948, 264/1948, 345/1948, 152/1949, 172/1949 etc.) and, for this

purpose, it did also establish the present-day Province of Trieste as an autonomous body of the Free Territory (Order 259/1948).

Since the A.M.G. F.T.T. governed the main Zone “A” of the new State, it did also omit international representation of the Free Territory of Trieste, and it exercised it in relations with other States, with the United Nations, with other international organizations, as well as in bilateral and multilateral Treaties, while the analogous administration body of accessory Zone “B” entrusted to the Military Commands of the Yugoslav Federal Government (*Vojaška Uprava Jugoslovanske Armade Svobodnega Tržaškega Ozemlja* – V.U.J.A. S.T.O.) took a secondary role.

4.4. The sub-delegation of the mandate of provisional administration.

After the establishment of the Free Territory of Trieste in the first phase of its Provisional Regime of Government, the political conflicts of the Cold War within the UN Security Council made it impossible appointing the Civilian Governor within the short time, but without a due date, envisioned by the specific norms of the Treaty of Peace.

This delay posed to the Governments of the United States and of the United Kingdom the problem to not extend for too long the involvement of their Military commands in the exercise of the trusteeship mandate of the Free Territory of Trieste on behalf of the United Nations. The two Government did therefore arrange a gradual partition of the mandate in order to sub-delegate temporary civil administration to the Italian Government, and military defense to the NATO.

For this purpose, with a Memorandum of Understanding signed in London on 9 May 1952, the Governments of the United States and of the United Kingdom entrusted civil administration to public officers provided by the Italian Government maintaining the superior functions of government and military defense of the Free Territory and then, on 8 October 1953, they officially announced the withdrawal of their troops and the will to make official a sub-mandate of temporary civil administration to be entrusted to the Italian Government.

With the following Memorandum of Understanding regarding the Free Territory of Trieste (with annexes and exchange of notes) signed in London on 5 October 1954 (UNTS, Vol. 235 No. 3297), the Governments of the United States and of the United Kingdom sub-delegated as a “practical arrangement” the temporary civil administration of the present-day Free Territory of Trieste to the responsibility of the Italian Government (not to the State of Italy, because that would have triggered a conflict of sovereignty between the Free Territory and Italy), while the Yugoslav Government turned its military administration of Zone “B” in a civil administration.

Annex I to the 1954 Memorandum shows the demarcation line between the two administration Zones, with the addition of agreed adjustments, and distinguishes clearly that line from the border of State of the Free Territory with Yugoslavia.

The sub-mandate of temporary civil administration is bound to two minimum guarantee levels, one regarding the treatment of linguistic minorities (art. 4 and Annex II), the other binding the Italian Government to maintain the International Free Port (art. 5) in general accordance with arts. 1 to 20 of Annex VIII of the Treaty of Peace. Those minimum guarantee levels do not substitute the stronger obligations established with the Treaty of Peace on the same matters.

With the sub-mandate of temporary civil administration over the main Zone “A”, the Italian Government received from the A.M.G. F.T.T. also the international representation of the Free Territory of Trieste in relations with other States and international organizations (OECE, EPU, ECMT, ICPO, etc.), which were informed with official declarations of the commitment to exercise that through Italian diplomatic missions (see following points 4.5; 5.4.3.2; 5.4.3.4; 5.4.3.7), and in international economic agreements (GATT, etc.)

Due to this, European Treaties are implemented in the Free Territory of Trieste under the clause concerning European Territories of which a Member State exercises the representation in foreign relations (Italy in this case), but has not sovereignty over them: art. 79 ECSC Treaty, art. 198 Euratom Treaty art. 229 TEC, art. 227 paragraph 4 TEEC, art. 355 paragraph 3 TFEU.

The Italian Parliament took note of the 1954 Memorandum of Understanding, however it could not vote on its ratification because, being it a trusteeship mandate, it could not produce territorial changes (Italian Constitution, art. 80) and it establishes a separate budget for the administered State.

With successive acts, the Governments of the United States and of the United Kingdom did sub-entrust the military defense of the present-day Free Territory of Trieste to the NATO, extending to it the military protection given to Italy (see in particular: NATO Doc. PO/55/341).

This is why in the Free Territory of Trieste the military forces of NATO Member States, including Italy, can only operate with the roles and in compliance with art. 3 of Annex VI of the 1947 Treaty of Peace, which means in defense of the Free Territory on behalf of the United Nations Security Council, and none of them has the right to draft the citizens of the Free Territory.

4.5. The persistence of the primary trusteeship mandate.

The Memorandum of understanding of London of 5 October 1954 is an executive instrument added to the Treaty of Peace by the Governments of the States involved in the exercise of the first phase of the Provisional Regime of the Free Territory of Trieste, in order to improve its execution with “practical arrangements” which, as such, cannot amend the provisions of the Treaty of Peace.

This means that the sub-delegations of the trusteeship mandate to the Italian Government as for the temporary civil administration of the present-day Free Territory of Trieste and to NATO as for its military defense did not abrogate, rather, they did

execute the primary mandate that, at art. 1 of Annex VII of the Treaty of Peace, entrusts to the Governments of the United States and of the United Kingdom, therefore they maintain it both as an obligation to the United Nations Security Council and to the citizens of the Free Territory, and as a right and duty to control and monitor the sub-administering Italian Government.

This structure of the international relations concerning the special trusteeship of the present-day Free Territory of Trieste was also confirmed by the bilateral Italian-Yugoslav Treaty of Osimo of 10 November 1975, drafted for Cold War era strategic reasons as an act of mutual renounce to territorial claims between the two State without mentioning and without affecting the status of the Free Territory of Trieste and the pertinent norms of the Treaty of Peace (see following point 5.4.3.8).

Art. 7 of the bilateral Treaty of Osimo «*entre la République Italienne et la République Socialiste Fédérative de Yougoslavie*» (UNTS 1466, No. 24848), has actually recognized the validity of the 1954 Memorandum of Understanding and of its annexes, affirming that they ceases to have effects (only) in the relations between the two States: «*cessent d'avoir effet dans les relations la République Italienne et la République Socialiste Fédérative de Yougoslavie*» which, being States, were not signatories of the Memorandum.

The international agreements listed above and the main Italian laws of ratification and execution are all in force (see: UNSC letter dated 20.5.1983, protocol number PO 210 PI; UNSC Document S/2015/809, Annex, Chapter V, Free Territory of Trieste; US Department of State Treaties In Force, 2013).

4.6. The temporary civil administration of the Italian Government.

To exercise its sub-mandate of temporary civil administration, the Italian Government instituted a “civilian government” (see following point 5.4.3.3) under a General Commissioner appointed with Decree of the President of the Republic of Italy of 27 October 1954 (Italian Official Gazette No. 249 of 28.10.1954) who exercised «*the administration of the Territory of Trieste placed, with the withdrawal of the Allied Military Government, under the responsibility of the Italian Government*».

With his Decree No. 6/1954, the first General Commissioner declared to have received its legislative and administrative powers as delegate to the exercise of civilian Government in the Free Territory of Trieste (“top management” of services of States, monitoring local services, maintaining law and order), established a Legislative Commission to exercise his legislative powers and established a Government-like structure with Directorates (*Direzioni*) ranking as Ministries as the A.M.G. F.T.T. did before. To promulgate his decrees, the General Commissioner substituted the Official Gazette (*Gazzetta Ufficiale – Uradni List*) of the A.M.G. F.T.T. with the Official Bulletin of the General Commissioner for the Territory of Trieste.

Nine years later, the Republic of Italy established with its own Constitutional Law No. 1/1963 Autonomous Region Friuli Venezia Giulia consisting, within the Italian national territory, in the Italian provinces of Udine and Gorizia, to which are aggregated, for

administrative purposes and recalling international obligations, the Municipalities of the Free Territory of Trieste (see following point 5.4.3.5).

For this purpose, art. 70 of that law has transferred the normative and administrative powers deriving from the special trusteeship mandate over the present – day Free Territory of Trieste exercised and delegated to the General Commissioner of the Government, to three new bodies, which came into office in 1964: the main part to a “Commissioner of the Italian Government in Region Friuli Venezia Giulia” and, as for all other competences, to a Prefect and to the Region itself.

Being Constitutional Law 1/1963 a Law of the State of Italy that came into effect after being published on that State’s Official Gazette, it was implemented in the jurisdiction of State of the Free Territory of Trieste with the successive publication on volume 7/1963 of the Official Bulletin of the General Commissioner for the Territory of Trieste.

The delegated functions of temporary civil administration over the present-day Free Territory are exercised, to date (2016) by the Commissar of the Government, who issues normative decrees with the legal force of laws (especially with reference to the international Free Port), by the Region, with legal acts on the matters that fall within its competences, and by the Prefect with other administrative acts.

4.7. The double role of the bodies that exercise Italian administration.

Accepting the sub-mandate of temporary civil administration over the Free Territory of Trieste, the Italian Government gained a double role, to which correspond two jurisdictions –each with its own powers and duties which are completely different and have no direct legal connection.

In facts, as for its ordinary role of Government of the Republic of Italy, the Italian Government exercises executive powers, it is responsible for that to the Italian Parliament and to the citizens of Italy, but also to all other States and to the International Community when it comes to the international obligations of Italy.

The legal relations between the Republic of Italy, its Government in that ordinary function, and the Free Territory of Trieste do only consist in compliance with the international obligations established with the Treaty of Peace of 10 February 1947 and with the Memorandum of Understanding of London of 5 October 1954 as additional executive instrument of the same Treaty of Peace.

Instead, in the entrusted role of provisional civil administrator of the Free Territory of Trieste, the Italian Government exercises the jurisdiction of State of the Free Territory with legislative and administrative roles, as well as being bound to grant also the rights of all other States over the International Free Port of Trieste, established as a state corporation of the Free Territory under arts. 34 of Annex Vi and 2.1 of Annex VIII of the Treaty of Peace.

In practice: the powers exercised by the Italian Government and by the bodies it delegates to this role in the Free Territory of Trieste, including magistracy (administrative, civil, criminal and finance Courts) and Region Friuli Venezia Giulia, are all legitimate as long as their powers are exercised in the name and on behalf of the entrusted Free Territory, in accordance with the roles and purposes set out by the special trusteeship mandate. This does also apply to the presence of Italian armed forces in the Free Territory.

But the same powers become completely illegitimate if they are exercised in the Free Territory of Trieste but in the name and on behalf of the State of Italy, simulating that the Free Territory does not exist and the State of Italy has either maintained or obtained sovereignty over it.

4.8. The simulation of Italian sovereignty.

The provisional, administering Italian Government has gradually simulated the sovereignty of the State of Italy over the Free Territory of Trieste taking advantage of the complex political frames of the Cold War (1945-1989), of the political crisis of Yugoslavia (1989-1991) and of its dissolutive conflict (1991-1995; Kosovo 1996-1999).

For this purpose, the Italian Government has also omitted to exercise the international provisional representation of the Free Territory. Since 16 September 2015 this international representation was therefore reactivated by the I.P.R. F.T.T. upon direct delegation of a relevant number of legal subjects who hold the rights that were violated by the Italian Government and by the State of Italy.

Italian politicians took advantage of this simulation of sovereignty to justify Italian territorial claims over “Zone B” and of the Slovenian and Croatian parts of Istria, as well as to favor Italian ports by illegally suffocating the economy and the Free Port of the Free Territory by forcing illegal taxes on them and with other illegal actions.

Italian territorial claims were dangerously increased during the dissolution of Yugoslavia. Italian revanchist propagandas of State against Slovenia and Croatia were then attenuated, but never dismissed (2016).

The Italian operations to suffocate the economy and the International Free Port of the Free Territory of Trieste with illegal taxation and other crimes are greatly increased since 2015, and it is proven that the two judgments TAR FVG analyzed here are primary instruments of those operations.

From the legal perspective, the simulation of Italian sovereignty over the present-day Free Territory of Trieste is a political abuse that breaches the rights of State and the rights of the citizens of the Free Territory, the rights of all other States over the Free Port, international law, and the very Constitutional legal order of Italy.

Public officers and administrators who perpetrate acts of simulation of Italian sovereignty over the present-day Free Territory do therefore assume not only moral

responsibilities for it, but they do also take all criminal, civil and administrative liabilities (see following point 7).

4.9. The structure of the simulation of sovereignty.

The simulation of sovereignty was constructed by gradually confusing and overlapping the different functions of the Italian Government and of its bodies within the State of Italy and in the Free Territory of Trieste, covering the deceit with hammering propaganda actions and disinformation, as well as deactivating the international representation of the Free Territory.

Since this simulation is indefensible before the United Nations, the Italian Government limited itself to impose it in the Free Territory, repressing local dissent, and to the Italian public opinion, which is unaware of this international legal and economic question.

As time passed, this operation prevented or cancelled the awareness of the existence and of the rights of the Free Territory of Trieste in wide portions of its own sovereign population, in the Italian public opinion, and even in the Italian officers who serve their duties in the Free Territory, as well as influencing many historians with false information, which therefore is widespread also on the internet.

The deactivation of the international representation of the Free Territory did also make many other States “forget” about the existence of the Free Territory under a special trusteeship, but also the fact that Italy violates also their rights over the International Free Port paralyzing its relevant role for the economic and political-strategic balances of South-Eastern Europe and of the Mediterranean sea.

4.10. The conflicts of interests of the administering Italian Government.

The simulation of the sovereignty of the State of Italy over the Free Territory of Trieste has created an evident conflict of interests between the two different functions of the Italian Government as Government of the Republic of Italy and as special trustee of the Free Territory and of its International Free Port.

The conflict of interests is not theoretic or ideological, rather, its nature is purely economic because the Italian Government itself does illegally assign to the State of Italy, of which it is the permanent Government, all productive, financial and fiscal resources of the little bordering State of which it is the provisional Government.

The violation of the special trusteeship mandate is evident, because the provisional Government has the duty of defending the status and legal order of the Free Territory, the needs and wellbeing of its sovereign population, and the rights of all other States over its International Free Port (Treaty of Peace with Italy, art. 21, Annex VII art. 2, Annex VIII).

The conflict of interests, and the consequent economic damages are worsened by increasing pressing (2013-2016) of the Italian Government to suffocate the economy

and the International Free Port of the present-day Free Territory of Trieste for the advantage of the economy and of the ports of the State of Italy.

In order to re-establish international legality, the Italian Government should therefore put an end to the simulation of sovereignty of the State of Italy over the Free Territory of Trieste and over its International Free Port, and resting at the earliest possible time the correct sub-administration (trusteeship) until the appointment of the Governor (Treaty of Peace with Italy, Annex VII, art. 1).

The Governments of the United States and of the United Kingdom, as primary administrators, maintain the power to suspend the sub-mandate entrusted to the Italian Government and to resume the direct exercise of the mandate of temporary administration over the present-day Free Territory of Trieste and over its International Free Port, or to sub-delegate it to the Government of another State, upon information to the United Nations Security Council.

The negative precedent case of the Italian Government seems to suggest the sub-mandate be not entrusted to the Government of a bordering State and, at the same time, it suggests to entrust it to a Government with legitimate interests to the economic development of the Free Territory of Trieste and of its International Free Port.

A relevant part of the people of the Free Territory has already expressed itself in favor of the Austrian Government (which defended Trieste from 1382 to 1918, as well as having established and developed its Free Port from 1719 to 1918), with a collection of signatures a part of which has already been sent to the United Nations Security Council by the Free Trieste Movement, which delegated their representation to the I.P.R. F.T.T.

5. The falsification of International Treaties and of Italian law in judgments No. 400/2013 and 530/2013.

The illegal behaviors and the conflict of interests of the Italian Government are confirmed without any doubt by the punctual analysis of the falsifications of the international treaties and Italian laws used in the two judgments No. 400/2013 and No. 530/2013 in order to simulate the sovereignty of the State of Italy over the Free Territory of Trieste.

5.1. Analysis samples.

The identical points from 9 to 16.2 of judgments TAR FVG No. 400/2013 and No. 530/213 provide the most complete and updated sampling of the falsifications of international and of Italian law, committed in order to simulate the sovereignty of the State of Italy over the Free Territory of Trieste and over its International Free Port.

The false conclusion of the analytical sample is the same, with only small exceptions, in both judgments, and it is summarized at point 25 of judgment No. 530/2013:

«25. In extreme and ultimate synthesis, legally, the so-called Free Territory of Trieste has never existed and does not exist. Its abstract prevision, as part of the

1947 Treaty of Peace of Paris, never enforced, was expressly and legitimately abrogated by other international Treaties, in particular with the Memorandum of Understanding of London of 1954, with the Treaty of Helsinki of 1975, and with the Treaty of Osimo, again of 1975, with provisions that were confirmed by many other international agreements.»

At following point 5.4 we are demonstrating *per tabulas* that all those claims are roughly false, disproven by the norms of the international instruments that misrepresented and scandalously falsified in both judgments, as well as by the instruments of international and Italian Law that they avoid to mention.

5.2. Consequences for subordinate matters.

The logic-legal consequences of the demonstration of the legal, historical, and factual existence of the present-day Free Territory of Trieste since 15 September 1947, and of the non-existence of Italian sovereignty over it since that date, do extend to all subordinate statements, demonstrating:

a) the falsity and illegality of all theses supporting the presumed sovereignty of the Republic of Italy over the International Free Port of Trieste (see following point 5.4.3.9), and about its downgrading from International Free Port to Italian and European free port expressed in judgment TAR FVG No. 400/2013, that summarizes them at point 50:

«50. In extreme and ultimate synthesis: the free port of Trieste constitutes a binding international obligation of Italy, it is a delimited Zone, to serve the port, under Italian sovereignty, and it is a territory of the European community considered customs-free, offering the benefit of free allowance and other related benefits, including deferred customs payment.[...]».

b) the falsity and illegality of all claims with which, on the assumption of Italian sovereignty, judgment TAR FVG No. 400/2013 at point 43, attributes the State of Italy, to its bodies and to its laws the non-existing jurisdictional power to reduce, to increase, and to move the free zones of the International Free Port of Trieste in the present-day Free Territory (defining it as “the Province of Trieste”) with acts of the Commissar of the Government, and to Italian areas that are outside the borders of the Free Territory (Monfalcone, Cervignano, and others much further) with Italian Ministerial Decrees.

c) the illegitimacy of all legislative, administrative, fiscal, and judicial acts declaring or implying the non-existing sovereignty of the State of Italy over the Free Territory that were issued by Italian authorities at the expenses of the International Free Port of Trieste, and of the enterprises that work or request to work in it.

d) the illegitimacy of all legislative, administrative, fiscal, and judicial acts issued by Italian authorities at the expenses of institutions, properties of State, citizens, residents, national or foreign enterprises of the present-day Free Territory of Trieste declaring or implying the non-existing sovereignty of the State of Italy over the Free Territory.

5.3. Criterion for analysis.

The identical parts of judgments TAR FVG No. 400/2013 and No. 530/2013 that should demonstrate the non-existence of the Free Territory of Trieste and Italian sovereignty over it fill 32 pages, with an argumentative structure arbitrary confused, redundant and careless in the use of language, as fellas being constructed with a fallacious system of “circular reasoning” (*circulus in probando*).

In facts, the conclusive thesis that the Free Territory of Trieste «*never had legal existence and does not exist*» is even anticipated in the premises and it is repeated to the point it gets lost in a tangle of false statements, interpretations, false syllogisms, opinions, political opinions, and other irrelevant considerations.

Due to this, we had to separate from the verbose, unorganized texts of the two judgments a synthesis of the main claims that set out the inner logical structure of the whole deceptive argument, and they are all disproved by a direct comparison with the legal instruments that are misrepresented – or omitted – by the Italian administrative judges.

5.4. Falsifications contained in the two judgments and their refutation.

The thesis that the Italian administrative Court supports in both judgment 400/2013 and judgment 530/2013 in order to falsely declare the non-existence of the Free Territory of Trieste and Italian sovereignty over it can be summarized as follows, and refuted following the logical hierarchy of the arguments presented:

5.4.1. Falsification of the norms of the Treaty of Peace.

Judgments No. 400 and 530/2013 of the TAR FVG do completely base their logical-legal thesis of the non-existence of the Free Territory of Trieste and, consequently, of the sovereignty of the Italian State over it the claim that, in order to establish the Free Territory under the Provisional Regime provided within the Treaty of Peace it was necessary appointing a Governor, which has not happened yet.

It is for this purpose that the Italian administrative judges states, in both judgment, that «*the part of the Treaty of Peace regarding the Free Territory was never enforced*» since «*the establishment of the Free Territory and the consequent transfer of sovereignty to it were conditioned, to at least the first establishing act of this Free Territory, which means, by the appointment of its Governor by the Security Council*» because «*only the appointment of a Governor would make possible enforcing first the Provisional Statute and then the Permanent Statute*» but «*The appointment of the Governor did never take place, therefore the Free Territory never came into existence and there was no transfer of sovereignty to it.*», and because of that «*the territory designated by the Treaty of Peace to become part of the Treaty was administered, from 1947, as for zone B, [...] by a Yugoslav Military Government and, as for zone A, [...] by an Anglo-American Government*» as «*double, post-armistice military occupation*».

Refutation.

Stating that the appointment of the Governor was necessary to establish the Free Territory of Trieste under the Provisional Regime of Government and, therefore, the Free Territory remained under post-armistice military occupation are major falsifications of the related norms of the Treaty of Peace and misrepresentations of their actual enforcement, because:

a) in reality, the norms of the Treaty of Peace rule the immediate establishment of the Free Territory of Trieste as a sovereign State, and the consequent termination of Italian sovereignty, at the coming into force of the Treaty of Peace (art. 21.2), under the “Provisional Regime” of government initially entrusted, until the appointment of the Governor, to the Allied military commands already in that area (Annex VII, arts. 1 and 5 a), and the Provisional Regime of Government does also rule that all compatible provisions of the Permanent Statute are enforced as well (Annex VII, art. 2 penultimate subparagraph).

Note: Treaty of Peace with Italy, signed at Paris, on 10 February 1947, Art. 21: «1. There is hereby constituted the Free Territory of Trieste, [...]. The Free Territory of Trieste is recognized by the Allied and Associated Powers and by Italy, which agree that its integrity and independence shall be assured by the Security Council of the United Nations. 2. Italian sovereignty over the area constituting the Free Territory of Trieste, as above defined, shall be terminated upon the coming into force of the present Treaty. [...]».

Annex VII, art. 2: « [...] Likewise all other provisions of the Permanent Statute shall be applicable during the period of the Provisional Regime as and when these provisions prove to be applicable and in so far as they are not superseded by the present Instrument.».

b) In execution of these norms, the Free Territory was correctly established as sovereign State subject to the provisions of the first phase of the Provisional Regime at the coming into force of the Treaty of Peace with Italy, on 15 September 1947, with the immediate and coordinated installation of the British-United States Allied Military Government Free Territory of Trieste –A.M.G. F.T.T.) in the relevant Zone A, which did also exercise international representation of the Free Territory, and its Yugoslav counterpart V.U.J.A. S.T.O. in accessory Zone B, and both Governments organized the early Government bodies of the new State (see previous point 4.4).

c) contrarily to former Italian colonies, placed under direct international administration (Libya) or under trusteeship (Italian Somaliland) for a set period of time, the Free Territory of Trieste is a State established directly by the Treaty of Peace. This is why the Treaty does not provide a set time for the Provisional Regime of Government of the Free Territory of Trieste –neither for the lasting of its first phase or for the appointment and coming into office of the Governor – which, instead, the Treaty subjects to the international political assets with the general formula «*at the earliest possible moment*» (Annex VII, art. 1). The wait for the appointment of the Governor can therefore cause practical inconveniences, but it does not influence the legal existence of the Free Territory of Trieste as a sovereign State, established under the first phase of its Provisional Regime of Government, and the existence of the international Free Port of the Free Territory of Trieste as its “state corporation”.

d) The Free Territory of Trieste established in these terms does have *ab origine* all qualifications of an effective person of international law (principle of effectiveness) established with the Montevideo Convention: a permanent population, a defined territory, government and capacity to enter into relations with the other States;

e) The State assets of the Free Territory of Trieste were established with the succession *ex lege* (Treaty of Peace, Annex X, art. 1; Annex VIII, art. 2.1), immediate and without payment, of the Free Territory of Trieste and of its international Free Port as new owners of all former Italian properties and of all former properties of the dissolved Fascist party, included within the boundaries of the Free Territory and Free Port respectively. The management of the assets became a responsibility of the Financial Administration of the Free Territory of Trieste.

Note: the automatic transfer of the former Italian properties for succession of State in execution of the Treaty of Peace with Italy took place at the coming into force of the Treaty, on 15 September 1947, *ex lege*, therefore without requiring the registration of the new ownership (UN Doc. A/CN.4/226, Third report on succession of States in respect of matters other than treaties, Extract from the Yearbook of the International Law Commission, 1979, Vol. II, Part Two, Article 2. Property appertaining to sovereignty, III Automatic Transfer, 27 (b), Note 102).

As for the transfer of the former properties of the dissolved Fascist party, the Financial Administration (State Property Office) of the Free Territory of Trieste requested and obtained the registration of their ownership to the “*Demanio dello Stato del TLT*” (Property of the FTT State) anyways; see Land Registry Office of Trieste, acts sub GN 1822/49.

f) With the installation of the British-United States Government and of Yugoslav military administration of the Free Territory of Trieste, established as a new sovereign State since 15.9.1947, ceased also the previous post-war occupation regime of 1945-47, which administered the much bigger former “Venezia Giulia”, itself divided into two buffer zones A and B (see previous point 4.4).

g) The Republic of Italy has ratified and executed without reserves the Treaty of Peace (Law No. 811 of 2 August 1947, authorizing the Government of the Republic to ratify the Treaty of Peace without reserves; Legislative Decree of the Temporary Head of State No. 1430 of 28 November 1947, executing the Treaty of Peace; Law No. 3054 of 25/11/1952, ratifying Legislative Decree No. 1430 of 28 November 1947) and it has directly recognized the actual and effective establishment of the Free Territory of Trieste as a sovereign State under a provisional regime of Government since 15 September 1947, its legal effects and international representation, exercised by the A.M.G. F.T.T. also with bilateral agreements (DPR 1630/1948), in the international organizations of which both became member States: ERP, ECA; MSA, OEEC (present-day OECD), EPU (then IMA) ECMT; ICPO (Interpol) in free trade organizations and agreements (GATT – WTO), and also with Italian national laws on the matters of international and diplomatic representation, terrestrial and maritime borders, citizenship, elections, regulation of recognized professions, legal, administrative and customary districts, railways, postal services, car plates, war reparations for damages, etc.

Note: see also:

– Decree of the Provisional Head of State 1430/1947: art. 1: «The annexed Treaty of Peace between Italy and the Allied and Associated Powers, signed at Paris on 10 February 1947, it executed fully and completely, being in force since 16 September 1947.» art. 4: «[...] This Decree, provided with the Seal of the State, shall be included in the Official Series of Laws and Decrees of the Italian Republic. It is necessary that everyone complies with it and to has others doing the same for this is a law of the State.»

– Decree of the President of the Republic of Italy 1630/1948, Annex 1: «Agreement between the British-United States Military Command with functions of Government in the relevant Zone of the Free Territory of Trieste (hereinafter referred to as "the Command of the Zone") and the Government of the Italian Republic to regulate certain in financial questions arising from the execution of the Treaty of Peace. The Command of the Zone and the Government of the Italian Republic, desiring to put in execution the clauses of the Treaty of Peace signed in Paris on the 10th

February, 1947, between the Allied and Associated Powers, of the one part, and Italy, of the other part; whereas the said Treaty came into force on the 15th September, 1947, and – whereas, within the meaning of Art. 21, the Free Territory is constituted from that date and the instrument for the provisional regime, as in Annex VII of the Treaty, has come into force, and – whereas, in the sense of art. 1 of that Annex, pending assumption of office by the Governor, the Free Territory shall continue to be administered by the Allied Military Commands, within their respective zones; in view of the request of the Command of the Zone in respect of application of Art. 11 of that Annex, on the basis of which, pending the establishment of a separate currency regime, Italy shall supply the necessary currency, have agreed on the following provisions: [...]

– UNTS vol. 20 No. 314; Italian Law 1108/1948: Economic Cooperation Agreement between the United States of America and Italy, signed at Rome, on June 28 1948, art XI «As used in the Agreement, the term "participating country" means: 1. Any Country that signed [...] 2. Any other Country (including any of the zones of occupation of Germany, any areas under international administration or control, and the Free Territory of Trieste or either of its zones) [...] for so long as such country is a party to the Convention for European Economic Cooperation.».

h) the Government of the Republic of Italy has recognized directly the existence of the present-day Free Territory of Trieste under the Provisional Regime of Government also by accepting, with the Memorandum of London of 5 October 1954, the sub-mandate to its temporary civil administration, and establishing there, for this purpose, a proper «civilian government under a Commissioner General» (see previous points 4.4 and 4.6).

Note: as for the declaration of the Italian Government when it substituted the AMG FTT in the administration and international representation of the present-day Free Territory of Trieste, see in particular: OEEC (now OECD), archive documents, Code OEEC-319, 10/1948-02/55, Trieste, communication of the Italian Government with note of November, 22, 1954; ECMT, *First Report on the activities of the European Conference of Ministers of Transports* (Council of Europe – Parliamentary Assembly, Doc. 363 – 15 June 1955, ECSC, Archive document CEAB01149, pages 006-007.

5.4.1.2. Consequent nullity and voidness of all subordinate theses.

The evidence of the falsity of the legal-logical premise: the claim that the Free Territory of Trieste has never been established, is enough to disprove all consequent, secondly statements about the legal status of the Free Territory of Trieste and of its international Free Port contained in both judgments and in all acts of Italian authorities that are drawn upon the same theses.

However, it is necessary analyzing also the complete structure of those judgments to properly evaluate their severity, systemic coordination, as well as political-diplomatic and economic implications.

5.4.2. Deceptive misrepresentation of the principles and convention of international law.

Both judgments claim that, pursuant the principles of international law generally recognized and codified with the Vienna Convention on the Law of Treaties, a multilateral treaty, like the Treaty of Peace with Italy, can be amended with successive treaties (art.30) by two or more parties as between themselves alone (art. 41), in case of supervening impossibility of performance (art. 61), in case of a fundamental change of circumstances (art. 62, the so-called clause “*rebus sic stantibus*”) and if, in facts, the provisions were never executes and were then abrogated (the so-called “principle of effectiveness”).

Refutation:

The representation of the principles and conventions of international law proposed within both judgments is deceptive, since it omits to precise:

a) that according to the Vienna Convention on the Law of Treaties the provisions of the multilateral Treaty of Peace with Italy that establish boundaries cannot be terminated invoking a fundamental change of circumstances (art. 62.2.a), but only following the required formal procedures (arts. 39, 40), and if the fundamental change is the result of a breach of a Treaty by the party invoking it (arts. 61.2 and 62.2.b), like in the case of Italy towards the present-day Free Territory of Trieste;

b) that when it comes to main Zone “A” of the Free Territory of Trieste, art. 34 of Annex VI and art. 24 of Annex VIII of the Treaty of Peace with Italy make it necessary that any amendment is approved by all the States to which the Treaty assigns general and special rights over the international Free Port of the Free Territory;

c) that all disputes on the matter are subtracted to national Courts and can be only settled with the procedures established with the *Charter of the United Nations*, with art. 66 of the Vienna Convention on the Law of Treaties and, when it comes to the Free Territory of Trieste and to its international Free Port, with arts. 87 and 86 of the Treaty of Peace with Italy and art. 24 of its Annex VIII;

d) that the right to self-determination of the inhabitants must be granted was established and regulated with the Charter of the United Nations (ratified by Italy with its Law 848/1957), with the Declaration of Principles of International Law, Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (UN General Assembly Resolution 2625/1970), with the International Covenant on Civil and Political Rights (ratified by Italy with its Law 881/1977) and with the Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1.8.1975);

e) that the change of the borders of the Free Territory of Trieste with the consent of all Signatory States of the Treaty of Peace and of all other States, in full respect of the right to self-determination, took place in 1992 in favor of Slovenia and of Croatia, but it never occurred in favor of Italy.

5.4.3. Falsification of the contents of instruments and acts of international and of Italian law subsequent to the Treaty of Peace.

In both judgments, the Italian administrative judges included the deceptive misinterpretation of the principles and conventions of international law analyzed above in order to simulate, given the false premise of the impossibility to establish the Free Territory of Trieste, that the provisions of the Treaty of Peace that regard it were abrogated in favor of Italy and of Yugoslavia with successive partial agreements and with Italian domestic laws.

In order to do this, Italian judges included in both judgments false statements about the contents of the Memorandum of understanding of London of 5 October 1954, about the

contextual declarations of the Governments of the United States, of the United Kingdom and of France, of the official communications to the UN Security Council by the four Governments that signed the Memorandum itself, of the provisions of the European Treaties, of Italian Constitutional Law No. 1/1963, of the positions of the United States of America (1974), of the Final Act of the Conference on Security and Co-operation in Europe of 1975, and of the bilateral Italia-Yugoslav Treaty of Osimo of 10 November 1975, as well as of civil and Constitutional Italian laws.

5.4.3.1. Falsification of the contents of the 1954 Memorandum of Understanding.

The Italian administrative judges did completely misrepresent the contents of the Memorandum of Understanding of 5 October 1954, declaring in both judgments the following statement; we underlined the parts that are either falsified or completely invented:

«In truth, article 1 of the Memorandum [...] in consideration of the fact that it proved to be impossible enforcing the provisions of the Treaty of Peace regarding the Free Territory of Trieste, [...] affirms that the States of Italy, Yugoslavia, United Kingdom and United States, for their roles of Countries most interested to the question, decided that “the United Kingdom and the United States will cease military occupation of zone A and withdraw their military forces from the area north of the new border established between Italy and Yugoslavia”, and that the latest two Countries shall respectively take over the administration of zone A and of zone B, with the previously mentioned slight territorial changes set with the same Memorandum in favor of the State of Yugoslavia.» thus «deciding the partition of said Free Territory and consequently defining the new boundary between Italy and Yugoslavia, with a legitimate amendment to the Treaty of Peace».

Refutation.

The Memorandum of Understanding of 5 October 1954 (see previous point 4.5) is an additional executive instrument of the Treaty of Peace between the four Government that were involved the most, as such, in the initial conduction of the Provisional Regime of the Free Territory of Trieste to in order to adapt it to the delay in the appointment of the civil Governor in charge of the successive phase of the Provisional Regime itself.

Due to this, the signatories are not the State, but the Governments of the United Kingdom, of the United States and of Yugoslavia, for they are directly entrusted with the direct mandate of temporary military administration pursuant the Treaty of Peace, and the Government of Italy, involved with a secondary role by the Governments of the United States and of the United Kingdom with the previous Memorandum of Understanding of 9 May 1952.

With the 1954 Memorandum of Understanding, the four Governments, having noted that it was impossible to put into effect the provisions of the short-term temporary military administration, agreed as *practical arrangements* to transform it into a temporary civil administration, which was sub-entrusted by the Governments of the United States and of the United Kingdom, both of which withdrew their troops, to the

responsibility of the Italian Government in Zone A and, as for accessory Zone B, the military administration was transformed into a civil administration of the Yugoslav Government, making some changes to the demarcation line between the two administration zones.

The claims of Italian judges do majorly falsify both the nature and the contents of the 1954 Memorandum of Understanding, in order to make it seem like that it a Treaty between States, that it would have abrogated the provisions of the Treaty of Peace relating to the Free Territory of Trieste, ending a post-armistice military administration in the two Zones, and then affirming that it would have recognized the sovereignty of Italy and of Yugoslavia.

The falsification does precisely consist:

a) in making it appear that the Memorandum states that it *«proved impossible enforcing the provisions of the Treaty of Peace regarding the Free Territory of Trieste»*, implying that it proved to be impossible establishing it. The truth is that, since seven years, the Free Territory was already established and it was governed with the norms for its Provisional Regime of Government and for this reason, the Memorandum recognized that **«it has proven impossible to put into effect the provisions of the Italian Peace Treaty relating to the Free Territory of Trieste»** but this only refers to the fact that **«the Governments of the United Kingdom, the United States and Yugoslavia have maintained since the end of the war military occupation»** [1945-47, a/n] **«and government»** [from 1947, a/n] **«in Zones A and B of the Territory»** and that **«When the Treaty was signed, it was never intended that these responsibilities should be other than temporary»**.

Note: as a further confirmation of this reason, see:

– the declaration, recalled as reason of the 9 May 1952 Memorandum of Understanding, released on 27 March 1952, published by the British Foreign Office about the decision of the British, United States and Italian «to examine jointly arrangements in Zone A of the Free Territory of Trieste».

– **The Anglo-American Statement on Trieste** of 8th October 1953: «For reasons that are know, it proved impossible to reach agreement with the other signatories of the of peace treaty for setting up the permanent regime for the Free Territory provided for in the treaty.» [...] «The two Governments [...] are no longer prepared to maintain their responsibility for the administration of Zone A. They have, therefore, decided to terminate Allied Military Government, to withdraw their troops, and, and having in mind the predominantly Italian character of Zone A, to relinquish the administration of the Zone to the Italian Government. [...] The withdrawal of troops and the simultaneous transfer of administration authority will take place at the earliest practicable date, which will announced in due course.»

b) in making it appear that the signatories of the Memorandum were *«the States of Italy, Yugoslavia, United Kingdom and United States, for their roles of Countries most interested to the question»*, while the text of the Memorandum identifies them as **«the Governments of Italy, the United Kingdom, the United States and Yugoslavia, as the countries principally concerned»** [by the administration of the Free Territory, a/n].

c) in avoiding to explain tot the decisions of the signatories are defined by the Memorandum itself as **«practical arrangements»**, which as such do execute the provisions of the Treaty of Peace adapting them to the situation.

d) in presenting those decisions by quoting, pretending it to be a direct reference to the text of the Memorandum, the made-up sentence: «... *“The United Kingdom and the United States will cease military occupation of zone A and withdraw their military forces from the area north of the new border established between Italy and Yugoslavia.”...*».

This sentence is a complete falsification of the text of the Memorandum, because what it actually states is that «**The Governments of the United Kingdom, the United States and Yugoslavia will terminate military government in Zones A and B of the Territory. The Governments of the United Kingdom and the United States will withdraw their military forces from the area north of the new boundary and will relinquish the administration of that area to the Italian Government. The Italian and Yugoslav Governments will forthwith extend their civil administration over the area for which they will have responsibility.**». This is the “*responsibility*” that identifies all trusteeship mandates.

e) in falsely concluding that the Memorandum established Italian and Yugoslav sovereignty over the Free Territory «*deciding the partition of said Free Territory and consequently defining the new border (boundary) between Italy and Yugoslavia, with a legitimate amendment to the Treaty of Peace.*»

This sentence does as well falsify completely the nature, subject, and the effects of the Memorandum of Understanding of London, and this is why it does also arbitrary assign to word “*boundary*” the exclusive meaning of border as a State border.

The falsification is clear, considering that Annex 1 to the Memorandum clarifies the difference «*Boundary between the areas to come under civil administration of Italy and Yugoslavia in accordance with the Memorandum of Understanding*» and «*Boundary between Yugoslavia and the Free Territory of Trieste*» (UN Doc. S/3301/Add.1, 5 October 1954), as well as being confirmed by all executive acts, diplomatic documents, and even the border signs define it as “*linea di demarcazione – demarkacijska črta*” and “*Interzonal Boundary*” (The Department of State Bulletin, vol. XXXI, No. 799, October 18, 1954, page 337: «*Interzonal Boundary as agreed Oct. 5, 1954*»).

5.4.3.2. Falsification of the contents of the declarations of the Governments of the United States, United Kingdom, and France on 5 October 1954.

On 5 October 1954, at the exact time of the signature of the Memorandum of Understanding of London, the Governments of the United States and of the United Kingdom did, separately, issue a declaration in which each of them affirmed that «**it will give no support to claims of either Yugoslavia or Italy to territory under the sovereignty or administration of the other**». With this declaration, the two Governments, joined by that of France as depositary of the Treaty of Peace (art. 90), confirmed that the zones of the Free Territory sub-entrusted under civil administration were not subject to Italian or Yugoslav sovereignty.

In both judgments under examination, the Italian administrative judges did, instead, completely falsify the meaning of the declarations of the three Government, claiming in spite of all written and logical evidences that those *«provided the interpretation of the Memorandum as act establishing permanent and ultimate border, therefore extending the sovereignty of the two neighboring countries, as well as the by then undisputed partition of the never established Free Territory.»*

Refutation.

The untruthfulness of the claim of the Italian Court is self-evident by a simple comparison with the original text of the declarations, with that of the Memorandum of understanding (see previous point 5.4.3.1.d), and with the document of the US Department of State analyzed at following point 5.4.3.6.

5.4.3.3. falsification of the official communications of the four Signatory Governments of the 1954 Memorandum to the UN Security Council.

The four Signatory Governments of the Memorandum of Understanding of 5 October 1954 did officially inform the United Nations Security Council of it, first with a note of the same date and then with a letter of the same data, which included both the Memorandum and its annexes (UN doc. S/3301, 5 October 1954) and then with a second letter, dated 17 January 1955 (UN doc. S/3351, 19 January 1975) informing of the execution of all obligations regarding the temporary civil administration of the Free Territory of Trieste, entrusted to the Italian Government as for main Zone A, and declaring to exercise it with a specific *«civilian government»* under a Commissioner General (appointed with the Decree of the President of the Republic of Italy of 27 October 1954 with the name of “*Commissario Generale del Governo italiano per il Territorio di Trieste*” – Commissioner of the Italian Government for the Territory of Trieste) and, as for accessory Zone B, entrusted to the Yugoslav Government, that exercised it with a specific, analogous civil administration.

In both judgments under examination, the Italian administrative judges, instead, referring to those official communications, either skipped or completely falsify their real contents and the unfolding of events to falsely claim that *«after the Memorandum and giving prompter execution to it Italy and Yugoslavia did indisputably, promptly (the latest nearly immediately), and agreeably extended their sovereignty over zone A and zone B»* and that, as for Italy, *«the Commissioner of the Government was only a body, even if extraordinary, of the Italian Government itself.»*

Refutation.

The untruthfulness of the claim of the Italian Court is self-evident by a simple comparison with the original text of the document: **«On October 26, 1954, the United States-United Kingdom Military Government was terminated in Zone A, and the small remaining military contingents of both countries were withdrawn. On the same day administration of the area as newly demarcated was relinquished to the**

Government of Italy, which has instituted civilian government under a Commissioner General (“*Commissario Generale*”). The Federal People's Republic of Yugoslavia has similarly replaced military with civilian administration in the area which it administers.»

5.4.3.4. Falsification of the norms of the European Treaties.

In both judgments, Italian administrative judges falsely claim that the Treaties establishing the European Community would have recognized and confirmed their thesis that the demarcation line between the two Zones of the Free Territory of Trieste placed under temporary administration with the Memorandum of Understanding of London of 1954 would be since then the new border of State between Italy and Yugoslavia.

For this purpose, Italian administrative judges claim that «*The border between Italy and Yugoslavia results to have been confirmed also by the 1957 Treaty establishing the European Community, which recognize as territory of the Community the sum of the territories of its Member States, which means also the Italian territory within the 1954 boundary, which therefore became an external border of the Community*».

Refutation.

These claims are doubly false: the premise that the 1954 Memorandum has established a new border between Italy and Yugoslavia is untrue, as it is untrue that the European Community Treaties confirmed such a border, for instance:

a) it is proven (see in particular ECSC, Archive document CEAB01149, pages 006-007) that in the present-day Free Territory of Trieste entrusted to the temporary civil administration of the Italian Government, the European Treaties are implemented under a special clause concerning European territories of which a member State, in this case Italy, obtained the representation in foreign relations (see previous point 5.4.3.1.f), but not sovereignty: art. 79 ECSC Treaty, art. 198 TEEA, art. 227 n. 4 TEEC, art. 299 n.4 TEC, art. 355 n. 3 TFEU.

b) This enforcement regime is optional and provisional, because the administering Italian Government has never taken care to consolidate it by stipulating the needed agreements between the Free Territory of Trieste and the European Union.

c) The European Union does not recognize the Free Territory of Trieste and its international Free Port as parts of the national, customary or tax-free territory of the Republic of Italy or of the EU: see EEC regulations No. 1496/68, EC n. 2151/84, EU no. 450/2008; Special Report No 2/96 2/93 of the European Court of Auditors; EU Regulation 952/2013.

5.4.3.5. Falsification of Italian Constitutional Law No. 1/1963.

As recalled at point 4.6, the Italian Parliament, with Constitutional Law No.1/1963 approved the establishment of Autonomous Region Friuli Venezia Giulia with the Italian Provinces of Gorizia and Udine, and it did aggregate to them, for administrative reasons (art. 2) also the Municipalities of the Free Territory of Trieste, and for this purpose, it transferred (art. 70) the exercise of the jurisdictional powers of the General Commissioner of the Government for the Territory of Trieste to the Commissar of the Government in the Region, and a part to the Prefect and to the Region itself.

In both administrative judgments under examination, the Italian judges misrepresented the effects of this administrative aggregation, falsely claiming that *« Italy confirmed the borders established in 1954 with many national and international acts, and especially with Constitutional Law No. 1/1963 that establishes Region Friuli Venezia Giulia, with a Special Statute and with Trieste as its capital city, obviously within the united, one and indivisible State, as expressly state in the premise of that law itself. »*, that for this reason, the inclusion of the territory in the Region includes “*implicitly yet unquestionably*” also those Municipalities within the State of Italy, therefore concluding that *« the establishment of Special Region of Friuli Venezia Giulia, with its Special Statute, did only confirm and strengthen by different means Italian sovereignty over zone A of the territory of Trieste, which was already established pursuant the Memorandum of London itself, repeating that the Free Territory was never established and recognizing, at the same time, Yugoslavian sovereignty over zone B. »*

Refutation:

The declarations of Italian administrative judges as for the contents and effects of Italian Constitutional Law No. 1/1963 are false and deceptive, because:

a) as already proven above, the premises that the Free Territory of Trieste was never established and that the 1954 Memorandum established the sovereignty of the State of Italy over the present-day Free Territory are false. The Italian Parliament, therefore, has no sovereign jurisdiction over the Free Territory, and it has no power to annex its Municipalities to the State of Italy with a unilateral amendment to the Treaty of Peace.

b) this lack of jurisdiction of the Italian Parliament is confirmed by the very fact that Italian Constitutional Law No. 1/1963, published on the Official Gazette of the Republic of Italy No. 29 of 1 February 1963 could not, as such, have legal efficacy if the Free Territory, therefore it was extended to it being published in the Official Bulletin of the General Commissioner of the Government No. 7 of 11 March 1963 (see also the following note to point c).

c) examining the drafts and the preliminary legislative proposals for the Regional Statute, it is confirmed that Italian Constitutional Law 1/1963 was written attenuating, in the final text, initial forms of official recognitions of the special trusteeship over the Free Territory of Trieste.

Note: the draft law prepared in 1955 by Diego De Castro (representative of the Italian Government who worked with the AMG FTT from 1952 to 1954) established the Region at art. 1

including in it the Italian provinces of Udine and Gorizia, adding that «The Zone of the Free Territory of Trieste administered by the Republic of Italy under a trusteeship mandate shall become part of Region Friuli-Venezia Giulia, provided that it is annexed to the Republic of Italy, from the date to be established with an appropriate law.» (see also arts. 3, 4, 85, 87, 103) and at article 143 he adds that: «In accordance with art. 2 of the Memorandum of Understanding between the Governments of Italy, the United Kingdom, the United States and Yugoslavia signed in London on 5 October 1954, the General Commissioner of the Government shall, with his own decree, extend to the Zone of the Free Territory of Trieste administered by the Republic of Italy under a trusteeship mandate this law and all other laws and measures that will be issued in order to implement it.».

Draft law No. 83/1958 (presented by the Italian Socialist Party) declared at art. 1 that «The territories of the present-day provinces of Udine and of Gorizia as well as the Territory of Trieste constitute autonomous Region Friuli-Venezia Giulia, provided with a special statute and having legal personality, within the political unity of the Republic of Italy, one and indivisible, on the bases of the principles of the Constitution and in accordance with this statute.» follows at art. 59 that «The Commissioner of the Government for the zone of the Free Territory of Trieste shall extend to that zone itself the legal efficacy of the is status and all laws and measures that will be issued in order to implement it.»

d) the declaration contained in art. 1 of Constitutional Law 1/1963, that the Region is established «*within the unity of the Republic of Italy, one and indivisible, on the bases of the principles of the Constitution*» refers to the Constitution of the Republic of Italy that came into force on 1 January 1948, within the new borders previously established with the Treaty of Peace in force since 15 September 1947, which do not include the Free Territory of Trieste (as they do not include former colonies, and the territories restituted or ceded to other States). The opposite interpretation provided by Italian administrative judges in both judgments does therefore violate also the Italian Constitution.

e) the exclusively administrative nature of the aggregation of the Municipalities of the Free Territory of Trieste to Region Friuli Venezia Giulia is confirmed also at art. 4 of the Regional Statute, which clarifies that the legislative powers delegated to the Region «*in accordance with the Constitution [...] and with the international obligations of the State*», and with art. 70, paragraph 1, which establishes for this reason that «*Until otherwise provided with a Law of the Republic, the powers of administration entrusted to the General-Commissioner of the Government for the Territory of Trieste – except those of which is entitled the Prefect and those entrusted to the Region – shall be exercised by the Commissar of the Government in the Region.*». The “powers of administration” so transferred are therefore the legislative and administrative powers of the temporary civil administration entrusted to the Italian Government.

5.4.3.6. Delegitimization of the position of the United States (1974)

In the administrative lawsuit concluded with judgment No. 530/2013, the appellant had lodged as evidence also classified diplomatic document P 091827Z APR 74 (declassified in 2005) with which the US Secretary of State informed the Embassies of Rome and of Belgrade, as well as the General Consulates in Trieste and in Zagreb about the positions to maintain in the dispute between Italy and Yugoslavia that was caused by Italian political claims also on Zone B of the Free Territory of Trieste entrusted to the Yugoslav Government under the special trusteeship mandate.

This is because with that document the diplomacy of the United States confirms, in April 1974, the legal existence of the Free Territory of Trieste established with the 1947 Treaty of Peace and entrusted, with the 1954 Memorandum of Understanding of London under the temporary civil administration of the Governments of Italy and of Yugoslavia.

The document therefore refutes all false claims if Italian administrative judges as for the non-existence of the Free Territory, its partition under the sovereignty of Italy and Yugoslavia pursuant the Memorandum of Understanding of London, its annexation to Italy with its own Constitutional Law No. 1/1963, as well as refuting the successive statements of the same judges about the Final Act of the Conference on Security and Co-operation in Europe held in Helsinki on 1 August 1975 and about the bilateral Italian-Yugoslav Treaty of Osimo of 10 November 1975 (see following points 5.4.3.7 and 5.4.3.8).

This is why in judgment No. 530/2013 the Italian administrative judges try to deny that the document of the Government of the United States has probatory value, claiming that *«has no legal value and certainly cannot constitute an authentic interpretation of the Treaty of Peace and even less when it comes to the Memorandum of Understanding of London»* being it *«an internal act produced by only one of the signatory States of an international treaty»*; going as far as attempting to delegitimize the statements of the Secretary of State by claiming that the document is made of *«diplomatic forcing and sophistications»* in order to persuade the parties to conclude *«the 1975 Treaty of Osimo which defines the border between Italy and Yugoslavia amending the Treaty of Peace.»*

Refutation.

The falsehood of the claims of Italian judges is confirmed by the reading of the full text of document P 091827Z of 9 April 1974:

SUBJECT: TRIESTE ZONE B DISPUTE – REF: ROME 4821, BELGRADE 1569.

1. IN DISCUSSING THE HIGHLY-COMPLEX, EMOTIONALLY CHARGED LEGAL ISSUE OF THE "FREE TERRITORY OF TRIESTE" WITH GOY AND GOI OFFICIALS AND DIPLOMATS FROM THIRD COUNTRIES, EMBASSIES SHOULD NOT RPT NOT GO BEYOND THE LANGUAGE OF THE OCTOBER 5, 1954 USG ANNOUNCEMENT REGARDING FOUR-PARTY MEMORANDUM OF UNDERSTANDING REGARDING THE FREE TERRITORY OF TRIESTE. US HERE STATED THAT US WILL "GIVE NO SUPPORT TO CLAIMS OF EITHER YUGOSLAVIA OR ITALY TO TERRITORY UNDER THE SOVEREIGNTY OR ADMINISTRATION OF THE OTHER". THIS CONTINUES TO BE OUR VIEW ON SUBSTANTIVE ISSUES INVOLVED.

2. THE CITY OF TRIESTE IS INCLUDED WITHIN THE BOUNDARIES OF THE "FREE TERRITORY OF TRIESTE" AS DEFINED IN THE 1947 ITALIAN PEACE TREATY. CONSEQUENTLY THE FORMULATION "THE DISPUTE REGARDING THE FORMER FREE TERRITORY OF TRIESTE, NOT THE CITY" (BELGRADE 1569) IS MISLEADING, AND SHOULD NOT BE USED. IF ASKED TO FURTHER EXPLAIN THIS FORMULATION, EMBASSY BELGRADE SHOULD INDICATE PRESS RELEASE REFERS TO CURRENT ITALY-YUGOSLAV DISPUTE REGARDING THE "AREA OF TRIESTE". THIS LANGUAGE IS SUFFICIENTLY IMPRECISE NOT RPT NOT TO COMMIT US TO A PUBLIC POSITION CONCERNING THE LEGAL STATUS OF THE FREE TERRITORY OF TRIESTE,

AND DOES NOT SUGGEST THAT WE RECOGNIZE THE EXISTENCE OF ANY QUESTION REGARDING THE STATUS OF THE CITY OF TRIESTE.

3. USE OF THE ADJECTIVE "FORMER" TO MODIFY THE PHRASE "FREE TERRITORY OF TRIESTE" SHOULD BE AVOIDED. BEGIN FYI PERMANENT LEGAL REGIME FOR GOVERNANCE OF FREE TERRITORY OF TRIESTE CONTEMPLATED BY 1947 TREATY OF PEACE WITH ITALY WAS NEVER FULLY IMPLEMENTED. HOWEVER, 1954 MEMORANDUM OF UNDERSTANDING BETWEEN US, UK, ITALY AND YUGOSLAVIA DID NOT TERMINATE JURIDICAL STATUS OF FREE TERRITORY. 1954 MEMORANDUM PROVIDED FOR TERMINATION OF US-UK MILITARY GOVERNMENT OF ZONE A AND SUBSTITUTION OF ITALIAN CIVIL ADMINISTRATION, AND SIMILAR TERMINATION OF YUGOSLAV MILITARY GOVERNMENT AND SUBSTITUTION OF YUGOSLAV CIVIL ADMINISTRATION IN ZONE B. CONTINUING LEGAL CHARACTER OF FREE TERRITORY OF TRIESTE WAS NOT RPT NOT AFFECTED. END FYI. RUSH

Reading notes: GOY = Government of Yugoslavia; GOI = Government of Italy; USG = United States Government; RUSH: David Kenneth Rush, Deputy Secretary of State; RPT = repeat; FYI = For Your Information.

5.4.3.7 Falsification of the legal effects of the Final Act of the 1975 Conference on Security and Co-operation in Europe held in Helsinki.

The Final Act of the Helsinki Conference of the Organization for Security and Co-operation in Europe – OSCE of 1 August 1975, which Italian administrative judges incorrectly defined in both judgments as “Treaty of Helsinki”, bounds the Signatory States to respect the principles of the Charter of the United Nations, of international law and treaties, the principles of sovereignty equality and territorial integrity, and the inviolability of one another’s frontiers and of those of all other States in Europe.

In both judgments under examination, the Italian administrative judges misrepresent the effects of those international commitments, claiming that *«Even the Treaty of Helsinki, like the previous Memorandum of Understanding of London, under a legal perspective, could amend the Treaty of Peace»* and this is how it *«ultimately confirmed»* the *«failure to establish the Free Territory»* and *«the sovereignty of Italy and of Yugoslavia on Zones A and B respectively»*.

Refutation.

The 1975 Final Act of the Helsinki Conference confirms exactly the opposite of what affirmed by the Italian administrative judges, so the obligation of all participating Countries, including Italy, and of their present-day successor States, to respect the sovereignty, territorial integrity, inviolability of the frontiers of the Free Territory of Trieste as well, because:

a) as already proved, the premise that the Free Territory of Trieste was never established, therefore being partitioned between Italy and Yugoslavia under their sovereignty is false.

b) the international Treaties that the Helsinki Conference and its 1975 Final Act intended to respect and grant do also include the 1947 Treaty of Peace with Italy, therefore the Conference had no power or intention to amend it.

c) the international obligations established with the Final Act of the Helsinki Conference regard the integrity of the signatory States and of all other States existing in Europe on 1 August 1975, and confirming the right to self-determination. This means they do also protect the present-day Free Territory of Trieste as European sovereign State established since 15 September 1947 and entrusted, since 1954, under a trusteeship mandate to the Italian Government, which committed to exercise its international representation of State with the diplomatic offices of Italy (see previous points 4.5; 5.4.3.1.f; 5.4.3.a).

d) also, it is impossible claiming that the Final Act of the Helsinki Conference, undersigned before the United Nations General Secretary, does not defend or proves the non-existence of the European States established but not mentioned by its Signatories (which include, along with the Free Territory, also Andorra and Albania), or the independent States established after its signature (reunited Germany, Czech Republic, Slovakia, the successor States of the USSR, the successor States of Yugoslavia).

e) the status of the Free Territory of Trieste as sovereign State, as well as its international representation exercised by Italy were notorious to all Signatory States of the Helsinki Final Act that were themselves parties of the international Treaties and agreements that have established and regulate the Free Territory, its Provisional Regime of Government and its international relations, to the International Organizations of which the Free Territory was a member State: ERP, ECA; MSA, OEEC (present-day OECD), EPU (then IMA) ECMT; ICPO (Interpol) and for free trade organizations and agreements (GATT – WTO).

f) the violation or denial of the legal status of the Free Territory of Trieste would have contradicted the very purposes, principles and international obligations established with the Final Act of the Helsinki Conference on Security and Co-operation in Europe.

g) this is why, to this day (2016) the States directly bound to respect the rights of the Free Territory of Trieste as European sovereign State by the Final Act of the Helsinki Conference on Security and Co-operation in Europe are: Austria, Belgium, Bulgaria, Canada, Czech Republic, Slovakia, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Iceland, Italy, Slovenia, Croatia and the other Successor States of Yugoslavia, Liechtenstein, Luxembourg, Malta, Monaco, Norway, the Netherlands, Poland, Portugal, the United Kingdom, Romania, San Marino, the Holy See, Spain, the United States of America, Sweden, Switzerland, Turkey, Hungary, Russia and the other Successor States of the Union of Soviet Socialist Republics.

5.4.3.8. Falsification of the norms of the Treaty of Osimo.

As recalled at previous point 4.5, the bilateral Italian-Yugoslav Treaty of Osimo of 10 November 1975, ratified in 1977, is an abnormal bilateral Cold-War era agreement,

created to end the political claims of Italy against Yugoslavia, because the Western bloc was concerned for its possible destabilization after the imminent death of elderly President Tito (which would happen in 1980).

This is why both States were encouraged to undersign a bilateral political treaty to mutually renounce to cross-border territorial claims, but written in terms that would not violate the multilateral Treaty of Peace, the consequent rights of the Free Territory of Trieste and of all other States, the obligations of the United Nations towards them, the Charter of the United Nations and the principles of the Final Act of the Helsinki Conference on Security and Co-operation in Europe.

This focused strategic need was met with a bilateral Treaty in which the two Countries decided to recognize a mutual border as «*delimitation de la frontière pour la partie non indiquée comme telle dans le Traité de paix du 10 février 1947*» but they omit to explain that this is also the demarcation line between the two Zones of the Free Territory, the sovereign State entrusted to the Governments of Italy and Yugoslavia under a mandate of temporary civil administration pursuant the 1954 Memorandum of Understanding executing the Treaty of Peace.

For instance, in their bilateral Treaty, the two signatory States do not mention the Free Territory of Trieste, also, their new recognition of mutual borders is not supported with a declaration of sovereignty.

It is for this reason that art. 7 of the bilateral Treaty, states that the Memorandum and its annexes shall cease to have effects in the relations between the States of Italy and Yugoslavia (which were not contracting parties *per se*) recognizing in this way that the Memorandum maintains its legal efficacy in international relations with all other States, including the Free Territory of Trieste itself.

Considering that the 1954 Memorandum of Understanding is an executive instrument of the 1947 Treaty of Peace with Italy, with article 7 of the bilateral Treaty, Italy and Yugoslavia do recognize the continuance of the international status of the Free Territory of Trieste, entrusted to their Governments under a special trusteeship mandate.

Essentially: being a bilateral agreement, the Treaty of Osimo could not amend the Treaty of Peace, therefore it confirms it at art. 7, and its validity is limited to the commitment of two States, Italy and Yugoslavia, to renounce to disputes over the territory of a third State, the Free Territory of Trieste, which is not formally involved in the bilateral Treaty, therefore it maintains all of its rights. At the same time, the rights of all States over the international Free Port of the Free Territory of Trieste remain unaffected.

After the ratification (1977) of this abnormal bilateral agreement, the international discussions that it could have triggered were delayed *sine die* by removing from the agenda of the urgent matters of discussion of the UN Security Council the two items concerning the appointment of the Governor and other questions relating to the Free

Territory, which are therefore suspended (see also: UN Security Council Document PO 210 PI of 20.5.1983; UN Security Council Document S/2015/809).

Instead, in both judgments, Italian administrative judges falsely claim that the Treaty of Peace was *«legitimately amended»* with the abrogation of the parts concerning the Free Territory of Trieste as *«ruled»* by the Memorandum of Understanding of London first and then by the bilateral Treaty of Osimo, which *«abrogating the Memorandum of Understanding of London, does consequently redefine the border between Italy and Yugoslavia»* confirming *«the dissolution of the Free Territory»* and its *«non existence»* “certified” by the “ultimate cancellation” of the appointment of the Governor from the agenda of the discussions of the UN Security Council, and the circumstances that other States did not protest after this decision.

Refutation.

The interpretations of the Treaty of Osimo brought forward by the Italian administrative judges in both judgments do completely falsify the limits and effects of the Treaty, because:

a) as already demonstrated, the premises that the Free Territory of Trieste was never established, and that the 1954 Memorandum of Understanding of London 1954 amended the Treaty of Peace cancelling its provisions regarding the Free Territory are false.

b) the Bilateral Treaty of Osimo did not abrogate the 1954 Memorandum of Understanding of London, instead, with its art. 7, it recognized its multilateral value and, consequently, the validity of the provisions of the Treaty of Peace regarding the Free Territory of Trieste, the Memorandum being their additional executive instrument.

Note: as for the fact that the bilateral Italian-Yugoslav Treaty of Osimo was formulated to put an end to the dispute of the two Countries over Zone “B” only on a bilateral level, but it could not amend the Treaty of Peace, see confidential information R 011429Z OCT 75 (declassified in 2006) of date 1.10.1975 with which Deputy Secretary of State Robert S. Ingersoll updated the embassies of Rome, Belgrade and London as for the implications of the imminent «ITALIAN-YUGOSLAV AGREEMENT ON TRIESTE ZONE B» and noted the comment of Italian ambassador Gaja that «THERE WILL PROBABLY BE A NEED FOR SOME JURIDICAL ARRANGEMENT TO BRING THE AGREEMENT INTO FORCE WITHOUT REOPENING THE 1947 PEACE TREATY».

c) the decision of the United Nations Security Council to remove from the agenda of its urgent matters of discussion the items regarding the appointment of the Governor and other measures for the Free Territory of Trieste did suspend such decisions, but does not “cancel” the question of international law, which can be resumed at any time, as confirmed by the UN Security Council itself with letter PO 210 PI of 20.5.1983 remaining an open question (see: UN Document S/2015/809, Annex, Chapter V., Free Territory of Trieste).

d) the bilateral Italian-Yugoslav Treaty of Osimo did not trigger the protests of other States since, as proved above, it did not amend the provisions of the Treaty of Peace regarding the Free Territory of Trieste or its international Free Port.

5.4.3.9. Falsification of the provisions regarding the international Free Port of Trieste.

The international Free Port of Trieste is established with the Treaty of Peace with Italy of 10 February 1947, Annex VI, art. 34, and it is governed by the provisions of Annex VIII as a state corporation of the Free Territory of Trieste, therefore it is placed under the international protection of the UN Security Council (S/RES/16, 1947), and *ex lege* it owns all public assets within the port areas (Annex VIII, art. 2.1; Annex X, art. 1).

The surfaces and the facilities of the international Free Port of Trieste are granted by the existence of certain original free zones, which can be extended but not eliminated or transferred. Also, it is possible establishing new free zones in the Free Territory, as needed.

The Treaty of Peace destines the international Free Port of the Free Territory of Trieste to free international trade, allowing to load and unload freights, free transit and storing, manufacturing activities of the goods of all States, without discriminations, and without customs duties or charges other than those levied for services rendered.

The administration of the international Free Port di Trieste shall be carried on by the Director of the Port, who shall not be a citizen of Italy or former Yugoslavia, under the control an International Commission (arts. 18, 21, 22 and 23 of Annex VIII of the Treaty of Peace), consisting in the delegates of the following, present-day States: Free Territory of Trieste (permanent Chairman), United Kingdom, United States of America, Austria, Hungary, Czech Republic, Slovakia, Switzerland, France, Poland, Slovenia, Croatia and other successor States of Yugoslavia, Russia and other successor States of the USSR, Italy.

In order to grant free trade, the Treaty of Peace does also bound all other States to grant the free transit of goods in transit and goods destined for and proceeding from the Free Territory without delays, discriminations, and it does prohibit them to artificially divert traffic from the Free Port (Annex VIII, art. 16). In addition, the Port of Trieste has the right to establish a special maritime register for vessel flying the flags of Switzerland, Austria, Hungary, Czech Republic, or Slovakia (Annex VI, art. 33).

The role of the Free Territory of Trieste and of its International Free Port for international free trade was consolidated by the General Agreement on Tariffs and Trades – GATT 1947, and it is maintained in the GATT 1994 – WTO, of which 168 States are members: Article XXIV: «Territorial Application – Frontier Traffic – Customs Unions and Free-trade Areas. 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. »

The European Union has no power or role to change the prerogatives or functioning of the international Free Port of the present-day Free Territory of Trieste, because the Free Territory has not concluded agreements with the European Union as a State, also, it is established and governed with a multilateral Treaty previous (1947) to European Treaties, which therefore can be enforced only provisionally and optionally to the Free Territory (see previous point 5.4.3.4), but not to its international Free Port.

With the Memorandum of understanding of London of 1954 (see previous point 5.4.3.1.) the Italian Government accepted from the Governments of the United States and of the United Kingdom the mandate to exercise temporary civil administration of the Free Territory of Trieste on behalf of the United Nations and committing, as provided with art. 5 of the Memorandum, to maintain the international Free Port in general accordance with articles 1-20 of Annex VIII of the Treaty of Peace.

This provisional administrative limit only sets a minimum guarantee level, which as such does not abrogate all remaining norms of Annex VIII regarding the International Commission and the settlement of disputes (arts. 21 to 26), as well not affecting the general provisions of Treaty of Peace on the settlement of disputes (arts. 86 and 87).

With judgment TAR FVG 400/2013 (recalled in judgment No. 530/2013) Italian administrative judges did, instead, extended the false premise of Italian sovereignty over the Free Territory of Trieste also to the international Free Port, resulting in false arguments, which are summarized at point 50 with the claim that *«the free port of Trieste constitutes a binding international obligation of Italy, it is a delimited Zone, to serve the port, under Italian sovereignty, and it is a territory of the European community considered customs-free, offering the benefit of free allowance and other related benefits, including deferred customs payment.[...]»*. This is the premise that allows the judgment does falsely claim that the State of Italy has sovereign jurisdiction over the Free Port also on the matters of customs, taxation, and the power to move and remove the original Free Zones, even to transfer them from the to ports and interports included in the Italian national territory (Monfalcone, Cervignano, and even further).

Refutation.

With the theses supported in judgment TAR FVG No. 400/2013, Italian judges do completely misrepresent the provisions, international obligations and free trade rights connected with the Free Port of the Free Territory of Trieste, therefore they do also contradict the very possible legal existence of the Free Port under alleged Italian sovereignty, since:

a) as verified in previous points of this analysis, all premises of the lack of legal existence of the Free Territory of Trieste and Italian sovereignty over it and over its international Free Port are false.

b) consequently, since 15 September 1947, the State of Italy has no sovereign jurisdiction over the international Free Port of the Free Territory of Trieste, and the Italian Government, as its temporary civil administrator, can only exercise the

sovereignty jurisdiction of the Free Territory over it, in compliance with the norms, purposes and obligations established with the special trusteeship mandate (see previous points 4.4, 4.6, 4.10).

c) the International Free Port of the Free Territory of Trieste and its privileges are established by the Treaty of Peace with Italy, as state corporation of the Free Territory: its legal existence depends exclusively on this title. The complete denial of this status does therefore imply also the complete denial of the legal existence of the international Free Port di Trieste and of all of its privileges. Such privileges, therefore, could not even be transferred, not even a reduced form of them, to a third State, as the State of Italy is, and no other State would have the right to exercise them.

5.4.3.10. Falsification of Italian criminal and Constitutional laws.

Judgment TAR FVG No. 530/2013 did completely misrepresent the international instruments regarding the Free Territory of Trieste, falsifying Italian criminal and Constitutional laws in order to threaten with political-judicial prosecution and repressions the appellants and all other citizens who defend the Free Territory and their rights.

For instance, at point 23 of the judgment, the Italian administrative judges claim that denying Italian sovereignty over the Free Territory of Trieste is not a legitimate opinion in a democracy, rather, it is a subversive action that threatens the territorial integrity of the State of Italy and international stability, claiming that it equals to inciting the citizen to breach the law and, therefore, must be punished and repressed under the Italian code of Criminal Law.

By this statement, Italian judges did knowingly formulate an extremely serious threaten (those who violate the territorial integrity of the “democratic” State of Italy are punished with no less than 12 years imprisonment) and it is twice as much illegal, because it goes as far as breaching Italian legislation in order to favor the violation of the integrity and sovereignty of the present-day Free Territory of Trieste.

Those criminal laws, in facts, do only apply to whoever undermines the integrity of the State of Italy, which is that defined by the Constitution in force since 1 January 1948, which therefore does no longer include the Free Territory of Trieste, already independent since 15 September 1947, at the coming into force of the Treaty of Peace with Italy of 10 February 1947.

5.4.3.11. Analogous falsifications contained in previous judgments issued by Italian courts.

Judgment No. 530/2013, at point 19, supports the falsifications listed above stating that *«case law has nearly unanimously confirmed the legal opinions presented in this judgment»*, and then lists several judgments on the matter, issued by civil, criminal and administrative Italian Courts on the question, all of which, for their own nature, can influence the national politics of that State.

In reality, those judgments have no relevance in international law, which subtracts to Italian Courts (*nemo iudex in causa propria*) the disputes over the Free Territory of Trieste and over its international Free Port, being the settlement of those disputes exclusively subject to the procedures established at arts. 87 and 86 of the Treaty of Peace and of art. 24 of its Annex VIII.

Additionally, even in Italian case law there are judgments that confirm the legal status of the Free Territory of Trieste as sovereign State under a special trusteeship mandate (see Italian Court of Cassation, I Civil Section, judgment No. 353 of 16.2.1965).

6. Genesis, purposes, judicial and political effects of the two judgments.

The investigations conducted so far make it possible stating that both administrative Italian judgments analyzed here are not autonomous legal decisions, rather, they are instruments of a political operation that was organized between July and October 2013 in order to provide a false legal cover to the simulation of Italian sovereignty over the Free Territory of Trieste and over its International Free Port, but also to the repression of the legitimate dissent of the citizens of the Free Territory.

In addition to that, the simulation of Italian sovereignty over the Free Territory of Trieste was used to be often justified with patriotic-nationalistic emotional reasons, but practically, it is used to allow enormous, illegal Italian economic operations at the expenses of the Free Territory of Trieste, of its international Free Port, of its properties of State, of its citizens, of its residents, of its national and international enterprises, but also of the rights of all other States and of their enterprise over the International Free Port.

Since 2012, the dissent of the citizens is expressed especially through the political and legal actions of the Free Trieste Movement, which on 18.6.2013 notified to the provisional Italian Government and to its main bodies an «*Urgent complaint and formal notice of default*» in which it formalized, in legal terms, the protests and requests of a relevant part of the sovereign population of the Free Territory, as well as recognizing its present-day borders with Slovenia and with Italy.

In the past three years (2013-2016), the administering Italian Government has not officially answered to this first, official formal notice, or to the following ones. Instead, it tries to strengthen the simulation of Italian sovereignty over the Free Territory with a local political-judicial operation of disinformation, of repression, and supporting a massive fraud in being at the expenses of the International Free Port and of the rights of all other States over it, supported by the silence of Italian national media.

The official silences and the operations of disinformation and repression regarding the Free Territory of Trieste and of its international Free Port do confirm that administering Italian authorities are fully aware that their actions constitute violations of international and Italian laws.

For the purposes of our analysis, we compared the two judgments with a sequence of documents on the same subject and issued in the same period of time, from July to October, 2013, by different bodies of the Italian administration.

All documents contain, with identical arguments, the same, false main premise: that the Free Territory of Trieste “never existed” since, in order to establish it under the expected Provisional Regime it would have been necessary appointing its Governor.

The documents examined under this perspective are, in chronological order:

- 03.07.2013: Civil Court of Trieste, proceeding No. 1888/2013, ordinance lodged on 9.7.2013;
- 10.07.2013: TAR FVG, judgment No. 400/2013, lodged on 15.7.2013;
- 06.08.2013: Civil Court of Trieste, proceeding No. 282/2013, filing of appearance of the Legal Service of the State, lodged on 11.9.2013;
- 02.10.2013: Italian Parliament, Chamber of Deputies, written answer of the Minister of Foreign Affairs to interrogation No. 4-0211;
- 09.10.2013: TAR FVG, judgment No. 530/2013 lodged on 28.10, advocating also the judicial repression of the citizens who dissent.

The comparative review of those acts make it possible confirming that they all appear to be drafted on the bases of an identical, original unofficial act, provided by unidentified sources, which therefore have influenced Italian judicial, administrative and executive bodies (in the Italian legal system, such activities are forbidden and punished under Law No. 17/1982).

Also, it results that this first set of documents was used immediately and factually against citizens and enterprises of the present-day Free Territory of Trieste and against the International Free Port, in particular:

– **by Italian magistrates**, in order to reject the exceptions on jurisdiction in civil, criminal, administrative, and fiscal proceedings at the expenses of citizens and enterprises of the Free Territory, and to charge with crimes and commit for trial the citizens who organize peaceful demonstrations to defend the International Free Port.

Note: as for civil lawsuits, see judgment No. 905/2013 of 11.11.2013 dissuade by the Court of Trieste and lodged on 19.11.2013, which at point 10 simulates Italian sovereignty on the bases of judgments TAR FVG 400/2013 and 530/2013; as for criminal proceedings, see processing No. 876/13 NCR (now No. 840/14 Rgnr) of the Court of Trieste; letter of date 17.12.2013 with which the Public Prosecutor uses judgement TAR FVG No. 530/2013 to request Italian political police DIGOS to charge with “rebellion” and “subversion” the citizen who deny the sovereignty of the Italian State over the Free Territory of Trieste and over its International Free Port.

– **by the Commissar of the Government and Prefect** to officially deny and repress the right of the citizens of the Free Territory of Trieste to oppose to the payment of the taxes of the State of Italy (circular letter of the Prefect dated. 22.9.2104; official statement of the Commissar of the Government dated 6 July 2016).

Note: Prefect Office of Trieste, circular letter registered with protocol No. 0039024 of 29.09.2014 and lettere registered with protocol No. 0043536 of 24.10.2014 and No. 0014787 of 7.4.2015; Office of the Commissar of the Government, letters registered with protocol No. 0029786 of 23.07 2015 and No. 0000824 of 11.01.2016, Communication of 6 July 2016 on the official website of the Prefect Office.

– **by the Fiscal Agencies of the State of Italy and by local administrations under its control:** Tax Revenue Office, Equitalia, State Property Office, Municipalities, Region Friuli Venezia Giulia, in order to levy Italian taxes, to summon Italian elections and to

force Italian political parties to the electors in the Free Territory of Trieste, and in order to take over ownership of its properties of States.

– **by Italian deputies and senators** in order to deceive the Italian Parliament and forcing it to pass, without jurisdiction, unconstitutional and illegal norms at the expenses of the international Free Port of Trieste and of the rights of all other States over it (Law No. 190/2014, art. 1, paragraphs 618, 619 and 620);

– **by Italian political circles** to justify the execution of those illegitimate norms by exercising political pressing on magistrates and on other public officers and to scare the population of the Free Territory.

7. Two levels of political abuses of the law.

The case of judgments TAR FVG 400 and 530/2013 constitutes two different levels of political abuses of the law, committed by taking advantage of the credibility of the institutional roles of administrative magistrates and of the objective difficulty, for the citizens of the Free Territory, to ascertain legal or historical truths concealed or falsified by the provisional Italian authorities.

7.1. The abuse committed by Italian administrative judges.

The first level of abuse is that committed by the administrative judges who falsified for political purposes the presentation of laws and facts – as analyzed at previous point 5.4. – in order to provide a pseudo-legal cover to the political simulation of the sovereignty of the State of Italy over the present-day Free Territory of Trieste and over its International Free Port.

Italian administrative judges are not honorary judges or jurors chosen randomly, they are magistrates with the rank of professionals who, as such, are subject only to the law (art. 101.2 of the Italian Constitution), to know and to enforce it correctly, equally and without other purposes.

The same obligations apply to Italian civil, criminal and fiscal judges serving their duties in the Free Territory of Trieste and those serving their duties in the Republic of Italy.

All those Italian magistrates, therefore, cannot be unaware that when in Trieste, they do not exercise the sovereignty of the State of Italy, but the sub-mandate of temporary civil administration over the Free Territory of Trieste, which entrusted to the responsibility of the Italian Government.

But, if they are unaware of it, when this situation is brought before them, they have the duty to make accurate, appropriate, and neutral researches, with which they can easily verify that their duties as Italian magistrates in Trieste happens in compliance with the jurisdictional acts of the Free Territory of Trieste, and not with acts of the State of Italy, even when using the same formulas to issue a judgment (see Decree of the General Commissioner of the Government for the Territory of Trieste No. 184 of 7 June 1955).

Italian magistrates in Trieste who omit or refuse to take care of those researches cannot, for instance, subtract themselves to public critiques for this behavior, as they cannot avoid the consequent moral, civil and criminal responsibility, also for the reparation of the consequent, extremely relevant damages.

7.2. The abuse committed by politicians, public administrators and public officers.

The second level of abuse is that committed by politicians, public administrators, and public officers of the Italian administration who, taking advantage of the unawareness of the citizens, simulate the sovereignty of Italy over the present-day Free Territory of Trieste and over its International Free Port and, for this purpose, they misrepresent as sources of law on the question some national judgments, especially the two administrative judgments under analysis.

Italian national judgements, including administrative judgments, cannot be considered as sources of law, for the following reasons:

a) disputes concerning the interpretation and execution of international treaties are subtract to the competence of national judges, as competence over them is assigned to special courts and procedures which, in the case of the Free Territory of Trieste and of its International Free Port are established with the Treaty of Peace with Italy of 10 February 1947 (artt. 87 and 86 of the Treaty of Peace and art. 24 of its Annex VIII; see also article 27 of the Vienna Convention on the Law of Treaties).

b) The legal system of the Republic of Italy does not follow the *common law* tradition, in which previous judgments serve as precedent cases. Italy's legal system consists in the *civil law* system, in which each judgment has legal effects exclusively between the parties involved.

c) in the Italian legal system – the general principles of which were extended to the Free Territory of Trieste with Decree No. 100/1955 of the General Commissioner of the administering Government – Administrative judgments have the legal effects of *res iudicata* only when it comes to the legitimacy or not of the administrative acts that are the subject of the appeal to the Court;

d) follows that the Italian administrative judgments of first (TAR) or second instance (Council of State) do not have a declaratory value on the themes considered by the judges – in this specific case, the existence or not of the Free Territory of Trieste and the management of its International Free Port – in order to ascertain the legitimacy of the contested act;

e) the Administrative judgment, being it of first or of second instance, that rejects an appeal about the legitimacy of an act is not final, because it does not prevent the same act, or others on the same matter, be impugned again before other Courts in other appeals, which can result in different judgments.

Note: as for the Free Territory of Trieste, for example, see the parts of judgment No. 24/1961 in which the Italian Council of State recognizes that the special administrative jurisdiction of the

General Commissioner of the Government does not belong to the Republic of Italy, rather, it results from the 1954 Memorandum of Understanding, in execution of the 1947 Treaty of Peace, an that «If [...] the Memorandum would have had the purpose of re-establishing the full, ordinary, and final exercise of Italian sovereignty over Zone A, and, consequently, to recognize the ultimate and perfect sovereignty rights over Zone B to Yugoslavia, it would have amended the Treaty of Peace without being a technical instrument appropriate for that purpose, if for no other reason but the non-participation of the other Signatory States of that Treaty».

In the Italian legal system, the responsibility of Italian politicians who falsely claim the sovereignty of Italy over the Free Territory of Trieste, referring for this purpose to deceptive and unsuitable legal decisions to falsify the sources of law, is only of moral nature. The responsibility, however, of public officers and administrator for the same behaviors is not only moral, because they do also take all criminal and civil liabilities, including actions for the reparation of the consequent, extremely relevant damages.

7.3. Moral, civil, and criminal liabilities.

The violations committed in those terms regard both the legal order of the Italian State, and that of the Free Territory of Trieste, which shares both its general principles and part of the legislation.

Officers, civil servants, and Italian public administrators who forge or use deceptive acts bear all criminal and civil liabilities when it comes to the compensation of damages, which extends also to the State and to the public bodies for which they serve their duties.

Producing deceptive public acts is a crime prosecuted under article 479 of the Italian Code of Criminal Law as “ideological falsehood” committed by the public officer who, producing a public act in the exercise of their duties *«falsely states facts of which said act shall proof the truthfulness»*.

The principle of individual liability is established at article 28 of the Italian Constitution: *«Officials of the State or public agencies shall be directly responsible under criminal, civil, and administrative law for acts committed in violation of rights. In such cases, civil liability shall extend to the State and to such public agency.»*

This norm is extended to the legal system of the present-day Free Territory of Trieste by virtue of Decree No. 100/1955 of the General Commissioner of the administering Italian Government.

7.4. Violation of the Oath of Loyalty to the Italian Republic.

The Italian Government exercises the international mandate of temporary civil administration of the present-day Free Territory of Trieste by delegating officers and civil servants of the Italian State to carry that out, and by virtue of their office, they all pronounced and Oath of Loyalty to the Italian Republic, to its Constitution, to its laws, and to the duties of their office (arts. 54 and 98, Italian Constitution).

In the Free Territory of Trieste, their duty consists in exercising the administration of a foreign State which, of course, is not included in the territory of the Italian State. In facts and law, the present-day borders of the Italian State are those set forth at the

coming into force of its Constitution, on January 1st, 1948, after the territorial changes established with the Treaty of Peace with Italy of 10 February 1947, which came into force on 15 September 1947.

The duty of these officers and civil servants of the Italian State does therefore consists in a special mission to a foreign State, undertaking the international obligations of the Republic of Italy with respect to the Free Territory of Trieste and to the United Nations, with the following international and Italian legal instruments:

- Treaty of Peace of 10 February 1947, undersigned with Law 811/1947 and executed with Decree of the Provisional Head of State 1430/1947, ratified with Law 3054/1952, and extended to the present-day Free Territory of Trieste with the publication on volume 17/1956 of the Official Bulletin of the General Commissioner for the Territory of Trieste;
- Memorandum of Understanding regarding the Free Territory of Trieste, signed in London on 5 October 1954, and executed with Decree of the President of the Republic of Italy of 27 October 1954 and with Italian Constitutional Law No. 1/1963, extended to the present-day Free Territory of Trieste with the publication on volume 7/1963 of the Official Bulletin of the General Commissioner for the Territory of Trieste;

Also, the Italian Republic provides the military personnel needed for the *La Repubblica Italiana* fornisce inoltre il personale militare necessario alla defensive cover of the present-day Free Territory of Trieste exercised by the NATO after the withdrawal of the special United States and British forces (NATO Doc. PO/55/341 and others).

Therefore, this military personnel serving its duties in the Free Territory of Trieste belongs to the Italian Armed Forces, under the command of the President of the Italian Republic, and it has sworn an Oath of Loyalty to the to the Italian Republic, to its Constitution, to its laws, and to the duties of their office and to democracy.

For those reasons, the civil and military personnel of the Italian State serving their duties in the present-day Free Territory of Trieste are true to their Oath of Loyalty to the to the Italian Republic when they do correctly exercise their functions of temporary civil administration and military defense entrusted to them by the Italian Government and by the NATO respectively, under an international mandate.

For the same reasons, the officers and civil or military servants of the Italian State who abuse of their functions in the Free Territory of Trieste, or related to it, in order to simulate the sovereignty of the Italian State do violate their Oath of Loyalty to the to the Italian Republic, to its Constitution, to its laws, and to the duties of their office.

The same obligations and liabilities apply also to all other subjects to whom the administering Italian Government requires an identical Oath of Loyalty to the to the Italian Republic or to its legal order (public administrators, public services personnel, lawyers and other professional groups).

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