I.P.R. F.T.T. Law Commission SG/2017/LC/M-V-en

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

Document V.

THE ITALIAN *CORPUS JURIS*
that ratifies and enforces the international legal obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste and the consequent obligations respect to other States and the United Nations

Edition for legal use, updated to 1 January 2021

1. Synthesis

Like previous analysis SG/2016/LC/M-IV.4(-it/-en) and the pertinent Addendum SG/2016/LC/M-IV-Add(-en/-it), the present analysis SG/2017/LC/M-V(-en/-it), in this edition for legal uses, updated to 1 January 2021, revolves on the legal status and on the administration of the present-day Free Territory of Trieste (2021), placed under the United Nations Security Council's direct protection, as well as on that of its international Free Port, established at service of the freights and of the enterprises of all States, without discriminations.

The Free Territory of Trieste and its international Free Port are established and regulated by the following provisions of the Treaty of Peace with Italy of 10 February 1947, in force since 15 September 1947: arts. 4, 21, 22, 48.5, 78.7, 79.6.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 borders of the present-day Free Territory of Trieste are those established by the Treaty of Peace with Italy, partially amended, as per art. 30.3 of the Vienna Convention on the Law of Treaties, by United Nations Resolutions S/RES/753(1992), A/RES/46/238, S/RES/754(1992), A/RES/46/236, S/RES 777(1992), A/RES/47/1, which, after plebiscites, recognize the independent Republics of Slovenia and of Croatia in their present-day borders.

Since 1992, the Free Territory of Trieste does therefore consist in its original main zone (1947) that includes the Capital city Trieste-Trst-Triest, the international Free Port, and

the nearby municipalities of Muggia-Milje, Dolina (S.Dorligo), Repentabor-Monrupino, Zgonik-Sgonico, Duino Aurisina-Devin Nabrežina, for a total 212 kmq; it borders with the Republic of Italy on the *canale del Lisert* and at the triborder north to Medja vas – Medeazza; from here to S. Bartolomeo - Sv. Jernej it borders with the Republic of Slovenia.

The present-day Free Territory of Trieste exists as a sovereign State since 15 September 1947, in the first phase of an expected special trusteeship mandate (Annex VII of the Treaty of Peace) entrusted to the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland (art. 1 of Annex VII), which in 1954 have sub-entrusted its temporary civil administration to the Italian Government under a Memorandum of Understanding, and its military defense to NATO, within the same defense sector as Italy.

By doing so, the Governments of the United States and of the United Kingdom have maintained their primary civil and military special trusteeship mandate, while the Italian Government is still (2021) exercising the sub-mandate they have entrusted to it. The present-day Free Territory of Trieste and the Italian Republic are therefore two States with different legal systems, and which are temporarily sharing the same Government, although with two different roles.

This is why the Italian Government is bound to comply with two different levels of international obligations respect to the Free Territory of Trieste, to all other States, and to the United Nations: the obligations of the Italian Republic established under the Treaty of Peace on one side, those established under the special trusteeship mandate sub-entrusted to it on the other side.

The legal orders of the two States appear alike, and they are likewise “parallel”, because the Free Territory of Trieste has maintained or adopted part of the Italian legislation, with and without adaptations, for practical reasons.

The fact that it is two States with “parallel” legal system and sharing the same Government has favored both interpretative mistakes and severe political-economic violations by bodies of the administering Italian Government, damaging also the management of the international Free Port of the Free Territory of Trieste.

The I.P.R. F.T.T. Law Commission has already documented and analyzed those violations with expertise SG/2016/LC/M-IV(en/it) - Falsification of the Treaties and simulation of sovereignty in Italian administrative and judicial acts *// Falsificazione dei Trattati e simulazione di sovranità in atti amministrativi e giudiziari italiani*, and its *Addendum* SG/2016/LC/M-IV-Add(-en/-it) about the falsification of the treaties and simulation of sovereignty in Italian administrative and judicial acts // *riguardante falsificazioni dei trattati e simulazione di sovranità in atti amministrativi e giudiziari italiani.*

The violations are committed by the bodies of the Italian Republic that take advantage of the special trusteeship mandate and temporary civil administration sub-entrusted to the responsibility of the Italian Government by the Governments of the United States

and of the United Kingdom as primary administering Governments on behalf of the United Nations Security Council.

The Italian administering bodies responsible of those violations refuse to comply with both the Italian laws in force that recognize the Free Territory of Trieste and the consequent international obligations, and, instead of the laws in force, they enforce judgments issued for this very purpose, in breach of art. 101 of the Italian Constitution, by politicized magistrates.

As already demonstrated in the aforementioned expertise, it is judgments that contain gross falsifications of the interpretation, and also of the letter, of the legal instruments of both international and domestic Italian law in force, in order to claim, against truth and fact, that the Free Territory of Trieste "*non esiste e non è mai esistito"* // "does not exist and never existed".

In addition, enforcing judgments instead of the legislation in force constitutes a breach of the fundamental principles of the Italian Republic's civil law system (*diritto codificato*), in which laws in force rank higher than any legal decision, which therefore (contrarily to precedent cases in the common law tradition) is not binding.

Also, it results that the violations are committed, jointly, by public officers who, by virtue of their roles, have the legal obligation to prevent them and to enforce the law.

For those reasons, judgments and other act with which certain bodies of the Italian administration would want to justify or commit those breaches of their legal obligations constitute the logical and legal contradiction to try enforcing the law by its very violation.

The violations verified and documented so far are paralyzing the rights and economic functions of the present-day Free Territory of Trieste as sovereign State, international Free Port, and independent financial center, as well as the consequent rights of the other States, their enterprises, and of their citizens.

The arising dispute is therefore the only of its kind, and it can be discussed and settled with negotiations, or with legal actions on three different levels of official engagement and political involvement of the Parties involved, precisely:

– on the international level, multilaterally, for violations of the norms of the Treaty of Peace with Italy of 10 February 1947 regarding the present-day Free Territory of Trieste, by activating the procedures established by the same Treaty of Peace to settle disputes arising from its interpretation and enforcement;

– on the international level trilaterally, for violations of the special trusteeship mandate of temporary civil administration over the present-day Free Territory of Trieste, which the Governments of the United States of America and of the United Kingdom have sub-entrusted to the responsibility of the Italian Government under the Memorandum of Understanding of London regarding the Free Territory of Trieste, in their role of primary administrators, on behalf of the United Nations.

– before Italian courts, for violations of the Italian laws in force that ratify and implement in the Italian Republic's legal system its obligations respect to the present-day Free Territory of Trieste, as well as the obligations of the administering Italian Government, and the related obligations respect to all other States and the United Nations, which have the highest rank in the hierarchy of Italian laws.

Since the three levels of legal dispute regard breaches of legal instruments with different ranks (1947 Treaty of Peace, 1954 Memorandum of Understanding of London, domestic law of the Italian Republic), activating one of those levels does not prevent or limit the activation of the others.

This edition of analysis SG/2017/LC/M-V(-en-it) was prepared to allow the activation of legal disputes before Italian courts, without involving the High Contracting Parties of the Treaties and international Conventions about the Free Territory of Trieste directly.

Indeed, Italian courts, in this role, have no competence to settle international disputed, which in this case revolve on the interpretation and enforcement of the Treaty of Peace, for those are reserved to procedures established in the Treaty itself, however, they have full competence to ascertain, within Italian domestic law, breaches of national laws, even when those violations were committed by the Italian Government, by its bodies, representatives, or employees.

This authority is assigned to Italian judges by the Constitution of the Italian Republic (*Costituzione della Repubblica italiana*) which, at art. 101, establishes the independence of the judiciary from the executive: «Justice is administered in the name of the people. Judges are subject only to the law.» («*La giustizia è amministrata in nome del popolo. I giudici sono soggetti soltanto alla legge.*»), and justice is to be strictly enforced in compliance with the principles of civil law (*diritto codificato*) in force within the legal system of both the Italian Republic and the Free Territory under administration.

In the Italian legal system, the legal instruments in force that recognize and enforce the international obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste, as well as their consequent obligations respect to all other States and the United Nations since 15 September 1947 constitute a coherent, unique *Corpus juris* (body of laws) with the highest rank in the existing (2021) hierarchy of sources of Italian law.

For this reason, the breach of international obligations ratified and enforced by those instruments of domestic Italian law does also constitute a breach of the primary, highest-ranking sources of the Italian Republic's legal order, and, therefore, can be ascertained and prevented also by Italian judicial authorities.

Delay or denial of justice by Italian judicial authorities would therefore constitute also a violation of the Italian Constitution and of the International Conventions on fair trail ratified and enforced by Italy.

This analysis documents the nature and the structure of the Italian *Corpus juris* regarding the obligations of the Italian Republic and of the Italian Government respect to the Free Territory of Trieste, and it classifies those legal instruments in the following categories:

A. Pre-constitutional Italian laws that ratify the 1947 Treaty of Peace **(p.6)**;

B. Italian legislative instruments for the immediate adjustment of the Italian legal system to the ceasing, since 15 September 1947, of Italian sovereignty over the newly established Free Territory of Trieste **(p.13)**;

C. Constitutional law of the Italian Republic **(p.19)**;

D. Italian laws ratifying and enforcing bilateral agreements of State between the Italian Republic and the United Kingdom or the United States that include norms regarding the Free Territory of Trieste **(p.22)**;

E. Decree of the President of the Italian Republic ratifying and implementing the bilateral agreement of State on financial measures between the Government of the Italian Republic and the British-United States Government of the Free Territory of Trieste **(p.23)**;

F. Italian law ratifying DlgsCPS (Legislative Decree of the Provisional Head of State) 1430/1947 for the enforcement of the 1947 Treaty of Peace **(p.23)**;

G. Italian domestic legislation that recognizes and enforces, in the Italian Republic's legal system, the special trusteeship mandate of temporary civil administration over the Free Territory of Trieste, sub-entrusted to the Italian Government by the British and United States Governments **(p.24)**;

H. Italian laws ratifying and enforcing in the Italian legal system international treaties that codify the generally recognized principles of international law **(p.40)**;

I. Instruments that extend to the legal order of the Italian Republic the acts that recognize, in international, European, and pre-European organizations acts that recognize the Free Territory of Trieste as member State and of the obligations of temporary civil administration and international representation, entrusted to the Italian Government **(p.41)**;

J. Agreements about the establishment of the International Monetary Fund - IMF and of the General Agreement on Tariffs and Trade - GATT (now World Trade Organization – WTO) **(p.46)**;

K. Provisions and instruments of ratification and enforcement, in the Italian legal system, of European Treaties that include in the European Union's own legal system (ranking higher than domestic law under arts, 10 and 117 Cost.) also relations with the Free Territory of Trieste **(p.47)**;

L. Consequent provisions of Italian domestic law regarding the separation of the customs system and tax system of the international Free Port of Trieste from the European Union's customs system and tax system **(p.52)**;

M. The “parallel legislation” of the Italian administration of the present-day Free Territory of Trieste **(p.56)**;

N. Normative and administrative acts enforcing to date the mandate of temporary civil administration over the present-day Free Territory of Trieste **(p.58)**;

O. Normative acts, legal acts, and circumstances that cannot discard or amend the normative *Corpus juris* examination **(p.65)**;

P. Liabilities for the violations **(p.72)**.

All legislative instruments, measures of different kind and importance, and the documents reviewed in the present analysis are published by the competent official bodies, and copies are kept in the archives of the I.P.R. F.T.T.

Note about acronyms
The most used acronyms in this analysis are:

AMG FTT Official Gazette = Allied Military Government British-United States Zone Free Territory of Trieste Official Gazette;
AMG VG Gazette = The Allied Military Gazette - Allied Military Government Venezia Giulia;
Boll.Uff. = *Bollettino Ufficiale del Commissariato Generale del Governo italiano per il Territorio di Trieste* (Official Bulletin of the Commissioner General of the Italian Government for the Territory of Trieste);
DCPS = *Decreto del Capo provvisorio dello Stato* (Decree of the Provisional Head of State)
DlgsCPS = *Decreto Legislativo del Capo provvisorio dello Stato* (Legislative Decree of the Provisional Head of State).
DPR = *Decreto del Presidente della Repubblica* (Decree of the President of the Italian Republic);
G.U. = *Gazzetta Ufficiale della Repubblica Italiana* (Official Gazette of the Italian Republic);
S.O. = *Supplemento Ordinario* (Ordinary Supplement to the Official Gazette of the Italian Republic);
UNTS = United Nations Treaty Series
[s.Arch.doc.] = see I.P.R. F.T.T. archive document

2. Use of the present analysis in legal disputes

Under written permission of the I.P.R. F.T.T. Secretary General, and with the arrangements and the conditions decided by it, this analysis can be used in disputed before Italian and international Courts of jurisdictional, administrative, judicial nature, as well as in procedures regarding taxation, trade etc. as evidence of the violations, regardless to the subject responsible, of the body of laws that ratifies and enforces in the Italian legal system the international obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste, also in reference to its international Free Port, and respect to the consequent obligations respect to other States and the United Nations, and also as instrument to evidence of the violations of the legal system of the Free Territory of Trieste itself, including the regime of its international Free Port, and of breaches of the connected instruments and principles of international law.

A. Pre-constitutional Italian laws that ratify the 1947 Treaty of Peace

1. **Legge 2 agosto 1947, n. 811** – *Autorizzazione al Governo della Repubblica a ratificare il Trattato di Pace fra le Potenze Alleate e Associate e l'Italia* // Law No.811 of 2 August 1947 – Authorization to the Government of the Republic to ratify the Treaty of Peace between the Allied and Associated Powers and Italy (G.U. 2 agosto 1947, n. 200).

Italian Law 811/1947 authorizing the ratification of the Treaty of Peace was adopted by the Italian Constituent assembly of the Italian Republic, acting as Parliament, while there was a provisional Constitution in force (***Decreto Legislativo luogotenenziale 16 marzo 1946*, n. 98** // Regent's Legislative Decree No. 98, issued on 16 March 1946) which, like the previous Statute of the Italian Republic, could be amended with ordinary laws.

With its Law 811/1947 the Italian Republic had undertaken the international obligations arising from the Treaty of Peace, which include:

a) international obligations respect to the Free Territory of Trieste, established by the Treaty in compliance with UN Security Council Resolution S/RES/16(1947) of 10 January 1947.

b) the reduction of the sovereign territory of the Italian State established under the Treaty through the cession or restitution of European and non-European territories as well as by establishing the Free Territory of Trieste [s.Arch.doc.].

The only article of Italian Law 811/1947 subjects Italy's ratification of the Treaty to the deposit with the Government of the French Republic of the instruments of ratification by the four Powers identified at art. 90 of the Treaty of Peace, the only condition for its coming into force: the United States of America, the United Kingdom of Great Britain and Northern Ireland, France, and the USSR.

The ratifications of the four Powers and of Italy were deposited with the Government of the French Republic on 15 September 1947 [s.Arch.doc.].

The coming into force of the Treaty has immediately redefined both the consequent international obligations of the Italian Republic and its new borders, which since 15 September 1947 do not include the territories ceded to other States or used to establish the Free Territory of Trieste. The new, present-day borders of the Italian State redefined as described above were consolidated by the Constitution of the Italian Republic (*Costituzione della Repubblica Italiana*) in force since 1 January 1948.

2. **DlgsCPS 10 settembre 1947, n. 890** – *Decorrenza dei termini, comunque riferiti, alla conclusione della pace* // Legislative Decree of the Provisional Head of State No. 890 of 10 September 1947 – Terms, although already set, for the conclusion of peace, (G.U. 20.9.1947, n. 216).

The Legislative Decree of the Provisional Head of State 890/1947 establishes that in the Italian legal order the date of the enforcement of the Treaty would apply to «*tutti i termini, previsti sia in norme giuridiche, sia in atti amministrativi e giudiziari, con qualunque formula, in relazione al Trattato di pace od alla conclusione della medesima*.» // «when it comes to the Treaty of Peace or to the conclusion of peace, all terms, envisioned by both laws and administrative of judicial acts, regardless to their legal formulation».

3. **DlgsCPS n. 1430 del 28 novembre 1947** – *Esecuzione del Trattato di Pace fra l'Italia e le Potenze Alleate ed Associate firmato a Parigi il 10 febbraio 1947* // Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947 – Enforcement of the Treaty of Peace between Italy and the Allied and Associated

Powers, signed in Paris on 10 February 1947, (G.U. 24 dicembre 1947, n. 295, S. O. and ratified with Italian Law // L. 3054/1952).

Art. 1 of Decree 1430/1947 fully implements in the legal system of the Italian Republic the Treaty of Peace ratified on 15 September 1947 (since 16 September 1947); therefore, it does also implement Italy's consequent territorial changes and international obligations, including these respect to the Free Territory of Trieste, all other States, and the United Nations.

Art. 2 establishes that, in the Italian legal system, measures necessary to enforce the Treaty of Peace are to be promulgated with decrees of the Head of State «*anche in deroga alle leggi vigenti*» // «also by way of derogation from domestic laws in force».

This provision does therefore establish that in the hierarchy of the sources of Italian law, the enforcement of the provisions of the Treaty of Peace ranks higher than any other Italian national law, including the Provisional Constitution in force at that time.

Also, the provision at art. 2 of DlgsCPS 1430/1947 does chronologically prevail over the *Costituzione della Repubblica Italiana,* therefore, being the current Italian Constitution in force since 1 January 1948, it confirms itself the binding nature and superior rank of Italy's international obligations within its own, domestic legal system (art. 10 first paragraph, art. 117 first paragraph, art. 120 second paragraph).

The provisions of the Treaty of Peace with Italy regarding the Free Territory of Trieste that, since 16 September 1947, are fully recognized and implemented by DlgsCPS 1430/1947 as highest-ranking laws of the Italian Republic are Articles 4, 21, 22, 48.5, 78.7, 79.6.g, 86, 87 of the Treaty 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).

These provisions of the Treaty of Peace with Italy regarding the Free Territory of Trieste enforced in the Italian legal system with DlgsCPS 1430/1947, thus ranking higher than any other Italian domestic law establish, in particular:

– **Art. 21.1**: that at the coming into force of the Treaty of Peace, the Free Territory of Trieste is established as independent sovereign State, recognized by the Allied and Associated Powers, as well as by Italy, and that it is placed under the United Nations Security Council's direct protection.

Note: by virtue of the provision, the Treaty of Peace has also confirmed the recognition *ab origine* of the Free Territory of Trieste by the Organization of the United Nations (of which Italy was not yet a member State).

Since the Free Territory of Trieste is established under a specific Provisional Regime of Government, its representation before the United Nations is exercised by the Permanent Missions of the Members States the Governments of which are entrusted with its special trusteeship (in this subject, see also UN Security Council Report S/2015/809 of 23.10.2015).

The first provisional Government of State of the Free Territory of Trieste has also concluded a bilateral agreement with the United Nations, the *Basic Agreement concerning technical assistance between the United Nations and the Allied Military Government of the British/United States Zone, Free Territory of Trieste. Signed at Trieste, on 30 September and 10 October 1952*. (UNTS, Vol. 140, No. 1881), which extends to the present-day Free Territory the functions of the EPTA - Expanded Programme of Technical Assistance, now UNDP - United Nations Development Programme.

– **Art. 21.2**: that at the coming into force of the Treaty of Peace, Italian sovereignty ceased over the area in which the Free Territory of Trieste is established.

Note: sovereignty over Trieste belonged to Austria for half a millennium, and Austria exercised it from 1382 to 1918, when Trieste was occupied by the Kingdom of Italy after World War I.

Italy obtained sovereignty over Trieste and its surroundings at the coming into force of the Treaties of Saint-Germain-en-Laye of 10 September 1919 and of Rapallo of 12 November 1920, but its effective exercise ceased on 8 September 1943 and was never restored.

Indeed, with the unconditional surrenders signed in Cassibile and Malta, the Kingdom of Italy had transferred to the Allied and Associated Forces also the exercise of sovereignty, interrupted by German occupation, followed from 1 May 1945 by the military occupation of the Allied and Associated Forces of the United Kingdom, of the United States, and of Yugoslavia.

The Allied military occupation was then regulated with the Belgrade Agreement of 6 June 1945 and lasted until 15 September 1947, date of the coming into force of the Treaty of Peace with Italy (UNTS, Vol. 49, No. 747), which at art. 21 establishes the Free Territory of Trieste with termination of the previous Italian title of sovereignty.

– **Art. 21.3**: that the Free Territory is established under the Provisional regime of Government established at Annex VII, from the coming into force of the Treaty of Peace until such date as the Security Council shall fix for the coming into force of Annex VI – the Permanent Statute.

– **Art. 21.4**: that the Free Territory of Trieste be not subject to the provisions of the Treaty regarding territories ceded to already existing States (art. 19; Annex XIV).

Note: it is provisions revolving on changes into sovereignty respect to citizenship, civil and political rights, State properties, heritages, cultural heritage, money, public debt, social security and pensions, properties or debts or citizens and enterprises in territories ceded to France, Yugoslavia, and Greece.

The Treaty of Peace placed the same kind of provisions in the Statute of the Free Territory of Trieste, because it did not a pre-existing State, instead, the same Treaty establishes it as a new State.

The Treaty itself contains identical provisions regarding Libya, Eritrea, and Somalia (art. 23), China (arts. 24-26), Albania (arts. 27-32), and Ethiopia (arts. 33-38).

Any objection to the legal validity of the provisions referred to the Free Territory of Trieste does therefore imply questioning the validity of the same provisions regarding to territories that Italy has ceded, renounced, or returned to other States under the 1947 Treaty of Peace: France, Yugoslavia (since 1992, Slovenia and Croatia as its successor States), Albania, Greece, Libya, Eritrea, Somalia, Ethiopia, China.

– **Art. 21.5**: that Italy and Yugoslavia must give to the Free Territory of Trieste the guarantees set out in Annex IX regarding water and electric energy supplies, as well as the effort to facilitate Frontier Trade;

– **Annex VII, Art. 1**: that initially the Provisional Regime of Government be entrusted to the Allied military commands already within their respective zones.

Note: the Provisional Regime of Government of the Free Territory of Trieste established with the Treaty of Peace is a special UN trusteeship mandate, because it regards an independent State established at the coming into force of the Treaty of Peace, unlike ordinary trusteeships for territories that had not gained independence yet.

For this reason, the trusteeship mandate over the Free Territory of Trieste cannot be entrusted to another sovereign State, but only to the responsibility of Governments of international officers; also, this is why the protection of the Free Territory of Trieste is entrusted to the Security Council, not to the UN Trusteeship Council.

See and compare the various ordinary trusteeships established by the same Treaty of Peace over former Italian colonies, in particular the trusteeship mandate over Somaliland, which was entrusted to Italy as a State, not to its Government [s.Arch.doc.].

The Provisional Regime of the Free Territory of Trieste entrusts to the primary administering Governments full administration powers (legislative and administrative powers), international representation, the obligations to enforce all compatible norms of the Permanent Statute; also, the provisional regime of the new State consists in two phases:

The first phase of government is directly entrusted to the administered Allied military commands that were already within their respective zones by a norm of the Treaty, therefore, its enforcement does not depend on a political agreement between the permanent Member States of the UN Security

Council, and it does allow the immediate existence of the Free Territory of Trieste as sovereign State with its own territory, people, legal order, Government, and representation in foreign relations.

The second phase of government, however, must be enforced by a civil Governor appointed by the Security Council, in charge of establishing a provisional structure of Government in order to complete the enforcement of the Permanent Statute summoning elections to appoint a Parliament.

The choice of the person in charge of this position does therefore require a political agreement between the permanent Member States of the UN Security Council but does not influence the establishment of the Free Territory of Trieste as sovereign State.

For this reason, the Treaty of Peace does not establish a due date for the first phase of the Provisional Regime of Government, or for the appointment of the Governor, and simply calls for it to take place "at the earliest possible moment".

The Provisional Regime of Government was therefore enforced as soon as the Treaty of Peace came into force, thus since 15 September 1947, by entrusting to the Allied military commands of the British and of the US Government the administration of the main zone (Zone A, consisting in the capital city Trieste with the international Free Port, and five smaller municipalities), and entrusting to the military command of the Federal Yugoslav Government the administration of the accessory zone (Zone B), consisting in a southern coastal strip, added to grant the Free Port of Trieste direct access to international waters.

The British and the United States Government enforced their special trusteeship establishing the first Government of State and international representation authority of the Free Territory: the Allied Military Government Free Territory of Trieste – AMG FTT, subject to a Commander with role of Military Governor, and defended by specific contingents: the British Element Trieste Force – BETFOR and the Trieste United States Troops -TRUST.

The AMG FTT, as Government of the main zone, from September 1947 exercised also the international representation of State of the Free Territory of Trieste in relations with the United Nations Security Council (including with periodic written reports), in bilateral treaties with the United Nations, with the United States of America, with Italy, and also before the main European and international organizations in which the Free Territory was a member State like Italy: ERP (European Recovery Program), OEEC-OECE (Organisation for European Economic Cooperation, now OECD - OCSE), EPU-UEP (European Payments Union), ECMT-CEMT (European Conference of Ministers of Transport); ICEM (Intergovernmental Committee for European Migration, now IOM), ICPO-Interpol (International Criminal Police Commission), WHO (World Health Organization) etc.

In accessory "Zone B" the military Command of the Yugoslav Government established its own, similar military administration (VUJA STO), which worked close to the AMG FTT.

As first Government of State of the Free Territory of Trieste, in compliance with the Treaty of Peace, from 15 September 1947 the AMG FTT took the place of the previous Allied Military Government Venezia Giulia – AMG VG, which, instead, had been established in 1945 ad military occupation Government in a state of war (*occupatio bellica,* which only ends at the coming into force of proper Peace Treaties) and with authority over a much wider area, defined in the above-mentioned Agreement between the United States, United Kingdom, and Yugoslav Government signed in Belgrade on 6 June 1945.

The AMG VG had taken office to act in the areas of Gorizia (up to the Tarvisio border with Austria), of Trieste, and in the exclave of Pola the wait for the coming into force of the Treaty of Peace, complying with the causes of the armistice accords and acts of surrender of Italy (Cassibile, 3.9.1943; Malta 29.9.1943) and under the international legal regime of military occupation established by the Hague Conventions (1899, 1907).

Instead, the AMG FTT took office only to act in the main zone of the Free Territory of Trieste ("Zona A") enforcing the Treaty of Peace with Italy of 10 February 1947, with the rank and role of first provisional Government of State of the Free Territory (as for the dissolution of the AMG VG in territories that remained under Italian sovereignty, see the agreements between the Italian, British, and US Governments ratified and implemented in the Italian legal system with ***DlgsCPS*** // Legislative Decrees of the Provisional Head of State **nn. 1320/1947** and **1327/1947**).

This means that in Trieste only the material continuity of the (1954-1947) military occupation remained the same, because its territorial definition, title, government role, and legal system changed completely (see the respective Proclamations upon taking office, issued in the AMG VG Gazette on 15.9.1945, and in the Official Gazette of the AMG FTT on 16.9.1947).

This is why the AMG FTT exercised Government authority with Orders of legislative nature and with administrative measures, as well as through a structure [s.Arch.doc.] made of Departments serving as Ministries (Internal affairs, Labor, Commerce, Public Safety, Transportation, Finance, Legal Division, Public works, Industry) and administrative Offices (Public Health, Education, Welfare and D/P, Price Control division, Agriculture and Fisheries, Communications, Food Division, Supply Division, Department of Transportation, Office of Railways Directorate, Air Transport), also, it established new administrative bodies of the Free Territory naming them *"Provincia di Trieste"* and "*Presidenza di Zona*", which substituted the dissolved Italian Province and Prefect Office in Trieste.

The role of the AMG FTT as Military Government exercised through British-US troops included in the collective NATO defense system, but subject to the UN Security Council's directives was compatible with the provisions at point 2 of art. 3 of Annex VI of the Treaty of Peace regarding the demilitarization and the neutrality of the Free Territory of Trieste, as well as with the Charter of the United Nations, which recognizes the right of Member States to collective self-defense.

– **Annex VII, Art. 2 fourth paragraph**: that the Provisional Regime of Government must enforce also all compatible norms of the Permanent Statute (Annex VI).

Therefore, in the first phase of the Provisional Regime, the legal order of the Free Territory of Trieste consists in specific norms of the Treaty of Peace, including the compatible norms of the Treaty of Peace, as well as of legislative and administering measures with which the provisional Government enforces them by issuing its own laws and by confirming or extending, with or without adjustments, pre-existing or new Italian laws.

Compatible norms include all those in which the roles of the Permanent Government bodies of the Free Territory of Trieste envisioned in the Permanent Statute can and must be carried out by bodies of the provisional Government and by other States.

This means that the compatible norms of the Permanent Statute that the Provisional Regime of Government must enforce are those regarding: Democratic Rights, Human Rights and Fundamental Freedoms (art. 4); Civil and Political Rights (art. 5); Citizenship (art. 6); Official Languages (art. 7); State insignias (art. 8); Constitutional principles (art. 10); Elections (art. 12); Judiciary (arts. 14, 15, and 16); Direct dependency from the UN Security Council (arts. 17 and 25); Budget (art. 21); Power of Pardon and Reprieve (art. 22 and 23); Foreign relations (art. 24); Criteria for the Appointment and Removal of Administrative Officials (art. 26); Law, Order, and Police Forces (arts. 27 and 28); Railways (art. 31); Commercial Aviation Registers (art. 32); Naval Registers for the Free Territory and for other States (art. 33); International Free Port (art. 34); Freedom of Transit of goods to and from the Free Port (art. 35); Interpretations and amendments to the provisions of the Statute, and right to submit Petitions to the UN Security Council (arts. 37 and 36).

– Annex VI Art. 6: that, at the coming into force of the Treaty of Peace, Italian citizens who were domiciled on June 10, 1940, in the area comprised within the boundaries of the Free Territory, and their children born after that date, have lost their Italian citizenship, and became original citizens of the Free Territory, with all consequent civil and political rights, and they can re-acquire Italian citizenship only exercising their right of option.

As a result of this provision, acquiring citizenship of the Free Territory by losing Italian citizenship is immediate and automatic, because it occurs *ex legge* and *erga omnes* at the coming into force of the Treaty of Peace (and its implementation within the Italian legal order), without need for official requests, and regardless to transcription at the Register Office (*anagrafe*) [s.Arch.doc.], while in case of re-acquisition of former Italian citizenship, official requests and concessions are mandatory.

– **Annex VI, Art. 21 and Annex VII art. 9**: that the Free Territory of Trieste, even in the Provisional Regime of Government, must be administered with its own, independent State budget.

The British-US Government of the Free Territory of Trieste respected this measure. The sub-administering Italian Government, on the contrary, registered tax revenues and

State assets of the Free Territory of Trieste in the budgets of State of the Italian Republic, thus breaching the Treaty of Peace, specific Italian national laws, in force with a higher rank than domestic law within the Italian legal system (DlgsCPS // Legislative Decree of the Provisional Head of State n. 1430/1947, Italian Law // L. 3054/1952), and also the obligations deriving from the exercise of provisional administration.

– **Annex VI, Art. 24.3**: that the Free Territory of Trieste may be or become part of international Conventions, as well as become a member of international organizations provided the aim of such conventions or organizations is to settle economic, technical, cultural, social or health questions.

Consequently, the Treaty of Peace does not allow the Free Territory to give up some sovereignty to international organizations, nor to those of the European Union.

– **Annex VI, Art. 24.4**: that economic union or associations of an exclusive character with any State are incompatible with the status of the Free Territory.

This means all forms of economic union or exclusive ties of the Free Territory of Trieste its the Italian Republic give raise to violations of the Treaty of Peace as well as of the specific Italian national laws, in force with a higher rank than domestic law within the Italian legal system (DlgsCPS // Legislative Decree of the Provisional Head of State 1430/1947, Italian Law 3054/1952). This restriction applies to European organizations.

– **Annex VI, Art. 34 and Annex VIII, Arts. 1 - 24**, that:

the international Free Port is a special regime of tax exemptions in favor of the freights of all States, it extends on certain permanent, pre-existing areas, and it can be extended to new areas within the Free Territory;

the international Free Port is established and administered as a State corporation of the Free Territory, with its own budget;

the international Free Port receives all Italian state and para-statal property within its limits without payment;

other States cannot artificially divert traffic from the Free Port for the benefit of other seaports;

it is also forbidden establishing special zones under the exclusive jurisdiction of any State in the Free Port.

Note: for those reasons the international Free Port of the Free Territory of Trieste cannot have legal existence as free port of any other State (as is the Italian Republic), and the law does not allow the enforcement of the provisions of Annex VIII of the Treaty of Peace simulating that it is a different or a separate legal instrument respect to the provisions of the Treaty itself that establish the Free Territory of Trieste.

– **Annex X, Art. 1:** that at the coming into force of the Treaty of Peace the Free Territory of Trieste receives, without payment, Italian State and para-statal property within its boundaries (*Demanio dello Stato* // State Properties of the Free Territory of Trieste);

Art. 1, second paragraph details that this refers to movable and immovable property of the Italian State, of local authorities and of public institutions and publicly owned companies and associations, and of the Fascist Party or its auxiliary organizations.

The transfer of former Italian properties to the *Demanio di Stato* // State Properties of the Free Territory of Trieste and to its international Free Port is immediately enacted, *ex lege* and since 15 September 1947 also in derogation from other laws in force (art. 2 DlgsCPS // Legislative Decree of the Provisional Head of State 1430/1947) and therefore also regardless to the recording of the new ownership at Cadastral Offices or at Land Registry Offices [s.Arch.doc.].

– **Annex X, Art, 5**: – that the Free Territory of Trieste is exempted from the payment of the Italian public debt.

This exemption has legal efficacy since 15 September 1947 and it regards all forms of contribution to the payment of the Italian public debt, thus including its indirect payment through taxes established on consumption, services, revenues, or goods of citizens, enterprises and other legal subjects of the Free Territory of Trieste.

– **Annex X, Arts. 7 and 8**: that Italy must grant its obligations regarding social insurances, as well as to pay civil and military pensions accrued by inhabitants of the Free Territory of Trieste.

Note: the exercise of this obligations of the Italian Republic falls (2021) on its *Istituto della Previdenza Sociale* – INPS // Italian National Institute of Social Insurance (formerly INFPS-*Istituto Nazionale Fascista della Previdenza Sociale*, and previously *Cassa nazionale per le assicurazioni sociali*), a state body established under public law and with its own legal personality, placed under the supervision of the *Ministero del Lavoro e delle Politiche Sociali* // Italian Ministry of Labour and Social Policy and of the *Ministero dell'Economia e delle Finanze* // Italian Ministry of Economy and Finance.

The obligation established by the Treaty extends also to social insurances, civil and military pensions accrued to our days (2021) by inhabitants of the present-day Free Territory of Trieste during the administration of the AMG FTT and during the current mandate of temporary civil administration, sub-entrusted to the Italian Government by the Governments of the United States and of the United Kingdom.

– **Arts. 86 and 87; Annex VI Art. 36; Annex VIII Art. 24; Annex IX Art. 7; Annex X art. 19**: that all disputes regarding the interpretation or the enforcement of the Treaty must be settled with the procedures established in the Treaty itself.

Therefore, all competences on the matter are subtracted to other authorities or procedures of international law, and also from the competences of national Courts.

B. Italian legislative instruments for the immediate adjustment of the Italian legal system to the ceasing, since 15 September 1947, of Italian sovereignty over the newly established Free Territory of Trieste, adopted to regulate the questions of Diplomatic Missions, new terrestrial and maritime borders, citizenship, elections, professional recognition, judicial, administrative, customs districts, railway system, postal services, registration plates, losses or war damages, etc.

See*, pars pro toto,* the following acts immediately before and after DlgsCPS // Legislative Decree of the Provisional Head of State n. 1430 of 28 November 1947, which enforces the Treaty of Peace, with retroactive effects, since 16 September 1947:

1. **DlgsCPS 4 ottobre 1947, n. 1319** // Legislative Decree of the Provisional Head of State n. 1319 del 4 Ottobre 1947 – *Modificazioni alla circoscrizione giudiziaria del distretto della Corte d'appello di Trieste* // Modifications to the judicial district of the Court of Appel of Trieste (GU 3 febbraio 1947, n. 278), ratified with **Legge 10 febbraio 1953, n. 73** (GU 4 giugno 1958, n. 132): *«Articolo unico - Il Tribunale di Gorizia è*

aggregato alla Corte di appello di Venezia; la Pretura di Monfalcone è aggregata al Tribunale di Gorizia ed il comune di Grado è aggregato alla Pretura di Monfalcone, conservando la sede distaccata di pretura. Il presente decreto entra in vigore il giorno della sua pubblicazione nella Gazzetta Ufficiale e con effetto dal 16 settembre 1947.» // «Sole article - The Court of Gorizia is aggregated to the Court of appeal of Venice; the Prefect office of Monfalcone is aggregated to the Court of Gorizia and the municipality of Grado is aggregated to the Prefect Office of Monfalcone, but maintains its former Prefect Office as a detached sub-office. This decree comes into force the day it is published the day of its publication in the Italian Official Gazette and has legal efficacy since 16 September 1947.»

Notes: this decree aggregates to other judicial districts those judicial bodies that remained within the Italian sovereign territory and placed under the jurisdiction of the Court of Appeal of Trieste (*Corte d'Appello di Trieste*) before the coming into force of the Treaty, which terminated that Court; this is why the legal efficacy of the decree is retroactive.

The following **DlgsCPS** // Legislative Decree of the Provisional Head of State n. 1641 of 21 Dicembre 1947 – *«Definitiva istituzione della sede di Tribunale nei Comuni di Orvieto e Vasto» //* «Ultimate establishment of Court authorities in the Municipalities of Orvieto and Vasto» (in GU 13.02.1948, n. 37), art. 2 and *Tabelle* // Charts B, C, D, E, F, ratified with **Legge n. 73/1953** (in GU 4 giugno 1958, n. 132), amends the general organic plant of the Judiciary in the former Italian Courts (magistrates, chancellors, secretaries, judicial officers, and ushers) removing the personnel of former Italian Courts of Trieste and of Capodistria (which, at the time, was included in "Zone B" of the Free Territory of Trieste) as well as those of Pola, Fiume, and Zara (which were ceded to Yugoslavia).

For this reason, Italian magistrates, court personnel, and other Employees of the Italian State and of its public bodies serving in the present-day Free Territory of Trieste were granted (and should still receive) the specific mission allowances established in the final paragraph of art. 1 of Italian Law // **Legge 29 giugno 1951, n. 459**, later repealed with Italian Law // L. 980/1957, only three years after the temporary civil administration was entrusted to the Italian Government.

2. **DlgsCPS 25 settembre 1947, n. 1064** // Legislative Decree of the Provisional Head of State n. 1064 del 25 Settembre 1947 - *Disposizioni relative ai pubblici dipendenti che passano ad amministrazioni del Territorio libero di Trieste* // Provisions regarding State Employees passing to administrative bodies of the free Territory of Trieste, (G.U. 14 ottobre 1947, n. 236), art. 1: «*I dipendenti delle Amministrazioni dello Stato, addetti ad uffici esistenti nel Territorio libero di Trieste e che passino alle dipendenze di una amministrazione o di un ente del Territorio stesso sono collocati a riposo, se si tratti di dipendenti di ruolo, o licenziati, se si tratti di dipendenti non di ruolo. Le norme sulla valutazione dei servizi e sul trattamento che ne consegue, per il personale predetto, potranno essere emanate con successivo provvedimento, previ, occorrendo, gli accordi da stipulare con il Territorio libero di Trieste.*» // «The Employees of the State's Administering bodies, in charge of offices placed in the free Territory of Trieste and becoming employees of an administering body or Authority of the Territory itself are retired, is they were appointed officials, or removed, if they were not appointed officials yet. Provisions for the evaluation of the services, and consequent treatment, of the aforementioned personnel, shall be issued with successive acts, upon agreements, if needed, with the free Territory of Trieste.»

Note: The jurisdictional and administrative separation of the sovereignty of State of the Free Territory of Trieste and of that of the Italian Republic established under the Treaty of Peace was implemented simultaneously, in both States, by the Italian Government and by the AMG FTT.

As for the British-US Government, see, *pars pro toto:*

− AMG FTT No. 2 of 16 September 1947 - Change of title on official documents and abbreviations (O.G. No.1/1947): Art. 1 - «*Section I. All official documents, forms and stationery used aver the 15th day of September 1947 which bear the words "Italy" or "Italian Government" shall be amended as follows: a) For "Italy" substitute "British-United States Zone, Free Territory of Trieste". b) For "Italian Government" substitute "Allied Military Government, British-United States Zone, Free Territory of Trieste.* [...]»

− AMG FTT No. 76 of 1 December 1947 – Provisions relating to the administration of Justice (O.G. No.9/1947) Art. 1 – Jurisdictional authority of the Courts established in the Zone «*1.- The jurisdictional authority of the Courts established in the Zone shall extend as far as the Area of the Zone and not beyond its boundaries. 2.- All cases pending before the said Court and withdraw from the jurisdiction pursuant to this Order, shall be terminated by a decision stating the deficiency of jurisdictional authority, therefor ; the respective files shall be forwarded to the Allied Military Government, Legal Division, in order to be conveyed to the competent authority outside the Zone*.»

− AMG FTT No. 78 of 7 January 1948 - Adjustment of economic treatment in four of employees of State administrations, of local bodies, and of public bodies in general (O.G. n. 12/1948): «*[…]All references to the Italian State and to other bodies, Ministers, or officials acting under its authority […] shall be substituted by the words: "Allied Military Government, and officials or bodies operating in the Zone under the control of the Allied Military Government"; and nothing […] may vest any authority on the Italian State, person or body operating under its authority, either with regard to persons or matters existing in the Zone.*»

3. **Ministero dell'Interno, Circolare N. 5283/7542 del 4 ottobre 1947** // Circular Letter No. 5283/7542 of the Italian Ministry of the Interior, 4 October 1947 reports that «*con l'entrata in vigore del trattato di pace*» // «at the coming into force of the Treaty of Peace» all official correspondence for Trieste must be sent *«tramite il Ministero degli Affari Esteri*» // «through the Italian Ministry of Foreign Affairs» and no longer addressed to Italian authorities, but «*al Governo Provinciale Militare dello Stato Libero» //* «to the Province's Military Government of the Free State», therefore, to the AMG FTT.

4. **Legge 7 ottobre 1947, n. 1058** – *Norme per la disciplina dell'elettorato attivo e per la tenuta e la revisione annuale delle liste elettorali* // Italian Law No. 1058 of 7 October 1947 – Rules regarding the right to vote and the keeping and annual review of voters rolls, (G.U. 13 ottobre 1947, n. 235 – S.O. // Ordinary Supplement).

Art. 1 recognizes the right to vote to all Italian citizens of age, and Art. 11, paragraph IV, allows *«cittadini italiani residenti all'estero, emigrati dalle zone che in dipendenza del Trattato di pace approvato con decreto legislativo 28 novembre 1947, n. 1430, non fanno più parte del territorio dello Stato»* // «Non-resident Italian citizens, or who emigrated abroad, or emigrated to zone which, under the Treaty of Peace approved with Legislative Decree No. 1430 of 28 November 1947, are no longer part of Italian national territory» to request being included in the voters rolls of a Municipality of the Italian Republic.

Note: both laws are in force (2021) and confirmed by later Italian norms on the same subject.

5. **DLCPS 4 novembre 1947, n. 1547** // Legislative Decree of the Provisional Head of State No. 1547 of 4 November 1947 – *Modificazioni degli articoli 144 e 318 del Codice della navigazione a favore di cittadini e società del Territorio libero di Trieste* // Amendment to articles 144 and 318 of the Italian Navigation Code in favor of citizens and enterprises of the free Territory of Trieste (G.U. 17 gennaio 1948, n. 13).

The decree is about «*le persone e le società che in conseguenza del Trattato di pace hanno acquistato rispettivamente la cittadinanza o conservato le loro sedi nel Territorio libero di Trieste*» // «persons or companies that, as a consequence of the Treaty of peace, acquired citizenship of, or maintained their registered office in, the free Territory of Trieste» as well as «*Gli appartenenti alla gente di mare i quali, alla data di entrata in vigore del Trattato di pace erano muniti di titoli professionali marittimi a termini delle leggi italiane, e che in conseguenza del Trattato di pace, hanno acquistato la cittadinanza del Territorio Libero di Trieste*» // «Seafarers who, on the date of the coming into force of the Treaty of peace, were entitled with qualifications of seafarers

under Italian laws, and under the Treaty of peace, acquired citizenship of the Free Territory of Trieste».

Note: This decree is one of the Italian legal instruments that confirm and recognize, in the Italian legal order, the immediate, automatic acquisition of the citizenship of the Free Territory of Trieste, and consequent loss of Italian citizenship, as a direct effect of the coming into force of the Treaty of Peace and since 15 September 1947. See also previous **DlgsCPS** // Legislative Decree of the Provisional Head of State 25 settembre 1947, n. 1063 (ratified with **Legge n. 73/1953**) - *Norme per l'esercizio delle libere professioni nel territorio della Repubblica da parte di coloro che acquistino la cittadinanza del Territorio libero di Trieste* // Rules to exercise liberal professions in the Republic's national territory for those who become citizens of the free Territory of Trieste.

6. **DLCPS 26 dicembre 1947, n. 1485** // Legislative Decree of the Provisional Head of State No. 1485 of 26 December 1947 – *Modificazione della circoscrizione territoriale della Provincia di Gorizia* // Modification of the territorial area of the Province of Gorizia (G.U. 7 gennaio 1948, n. 4).

The decree recognizes the State border of the Italian Republic with the Free Territory of Trieste and also the dissolution of the Italian Province of Trieste (1922-1947), and it includes its assets that remained within the Italian boundaries in the Italian Province of Gorizia, establishing, at art. 1, that «*Il territorio della provincia di Trieste compreso entro i confini dello Stato italiano è aggregato alla provincia di Gorizia*» and that «*I beni patrimoniali, già appartenenti alla provincia di Trieste e situati entro il territorio indicato nell'articolo precedente, sono attribuiti alla provincia di Gorizia*.» // «The territory of the province of Trieste included within the boundaries of the Italian State is assigned to the province of Gorizia» and that *«I beni patrimoniali, già appartenenti alla provincia di Trieste e situati entro il territorio indicato nell'articolo precedente, sono attribuiti alla provincia di Gorizia.»* // «All assets that formerly belonged to the province of Trieste and left within the territory described in the previous article, are assigned to the province of Gorizia.»

Note: Legally, the Province of Italy of the then Kingdom of Italy, as well as its *Prefettura* // Prefect Office, had already ceased on 8 September 1943. The body called "*Provincia di Trieste"* (Province of Trieste) since 1948 was therefore established *ex novo* by the AMG FTT with Order No. 259 of 25 June 1948, in force, as an «*autonomous body // ente autarchico*» of the Free Territory of Trieste, and was never re-established as a Province of the Italian Republic.

The consequent rearrangement of the Province of Gorizia established with Legislative Decree of the Provisional Head of State 1485/1947 is itself in force (2021).

7. **DCPS 27 dicembre 1947, n. 1703** // Legislative Decree of the Provisional Head of State No. 1703 of 27 December 1947 – *Determinazione della circoscrizione territoriale del Commissariato per il riordinamento degli usi civici della Venezia Giulia ed Alto Veneto, la cui sede è trasferita a Venezia* // Determination of the competence area of the Office of the Commissioner for the reorganization of civic uses of *Venezia Giulia* and of *Alto Veneto*, the office of which is transferred to Venice (G.U. 27 febbraio 1948, n. 49).

The decree transfers that office from the newly established Free Territory of Trieste to Italy:

«Visti gli articoli 4, 21 e 22 del Trattato di pace tra l'Italia e le Potenze Alleate ed Associate del 10 febbraio 1947, entrato in vigore il 16 settembre 1947, inerenti alla costituzione del "Territorio Libero di Trieste" e al riconoscimento della sua indipendenza, e gli articoli 3, 4 e 11 dello stesso Trattato di pace, che stabiliscono la linea di frontiera tra l'Italia, il Territorio Libero di Trieste e la Jugoslavia.;

Ritenuto che per effetto dell'entrata in vigore del Trattato di pace anzidetto si rende necessario trasferire da Trieste nel territorio nazionale la sede del Commissariato per il riordinamento degli usi civici della Venezia Giulia ed Alto Veneto; […]» // «In view of

articles 4, 21 and 22 of the Treaty of peace between Italy and the Allied and Associated Powers of 10 February 1947, in force since 16 September 1947, regarding the establishment of the "Free Territory of Trieste" and to the recognition of its independence, and in view of articles 3, 4 and 11 of the same Treaty of Peace, which establish the new frontier between Italy, the Free Territory of Trieste, and Yugoslavia;

Considering that after the coming into force of the aforementioned Treaty of peace it is necessary transferring the Office of the Commissioner for the reorganization of civic uses of Venezia Giulia and of Alto Veneto from Trieste to the Italian sovereign territory;
[...]»

Note: In the present-day Free Territory of Trieste entrusted to the temporary civil administration of the Italian Government, the Office of the Commissioner for the reorganization of civic uses was established *ex novo* with *Decreto* n. 215/1955 of the *Commissario Generale del Governo italiano per il Territorio di Trieste* // Commissioner General of the Italian Government for the Territory of Trieste (B.U. 21.7.1955, n. 21).

With the successive DPR (Decree of the President of the Italian Government) 536/1958 this office obtained competences also over the Italian provinces of Gorizia, Udine and Belluno.

8. **Since 1947, the qualification of service abroad for Italian public officers working in the Free Territory of Trieste** is confirmed by Italian **Legge n. 489/1951** – *Trattamento economico di missione e di trasferimento dei dipendenti statali* // Financial compensation and for the transfer of State employees (in G.U. 7 luglio 1951, n. 153), which at art. 1, last paragraph, includes employees «*in missione nel Territorio Libero di Trieste»* // «on mission in the Free Territory of Trieste», as by Italian **Legge n. 957/1953 –** *Sistemazione del personale degli enti locali non più facenti parte del Territorio dello Stato* // Accommodation of employees in local bodies that do no longer belong to the Italian sovereign Territory, regarding the «*Lo stato giuridico ed il trattamento economico di attività e di previdenza del personale degli enti locali delle zone di confine che, in dipendenza del Trattato di pace, approvato col decreto legislativo 28 novembre 1947, n. 1430, non fanno più parte del territorio dello Stato*» // «Legal status and financial compensation of activities and the social security of employees of public bodies in the border areas that, under the Treaty of peace, approved with legislative decree No.1430 of 28 November 1947, are no longer part of the State's sovereign territory», and also by Italian **Legge n. 961 del 28 agosto 1954 –** *Norme a favore del personale in servizio presso le pubbliche Amministrazioni del Territorio Libero di Trieste* // Provisions in favor of employees serving in Government Agencies of the Free Territory of Trieste (G.U. 21 ottobre 1954, n. 243), which distinguishes *«le Amministrazioni statali esistenti nel Territorio Libero di Trieste» //* «Government agencies of State existing in the Free Territory of Trieste» from *«Amministrazione statale italiana» //* «Administration of the Italian State».

9. **The immediate separation between the tax systems and budgets of State of the Italian Republic and of the Free Territory of Trieste** is confirmed by the annual budgets 1947-1954 of the Free Territory, established by the AMG FTT, and also by Italian laws on taxations and on budgets 1947-1954.

See, *pars pro toto*, Italian **Legge 28 gennaio 1955, n. 20** (G.U. 5 febbraio 1955, n. 29 – S.O.) – *Variazioni allo stato di previsione dell'entrata, a quelli della spesa di vari Ministeri ed ai bilanci di alcune Aziende autonome per l'esercizio finanziario 1953-54 (1° provvedimento), Tabella A, cap. 291/bis (di nuova istituzione)* // Variations to the status of the statement of estimates, of the expenditures of various Ministries, and to the

budgets of certain autonomous Companies for the 1953-54 budget year (1st measure), Chart A, cap. 291/bis (newly established): «*Rimborso da parte del Governo Militare Alleato di somme riscosse nella Zona di Trieste, per conto del Governo italiano, per imposte di fabbricazione e diritti doganali su merci fabbricate o importate nella Zona medesima e consumate in Italia*.» // «Refund of amounts for collected by the Allied Military Government, on behalf of the Italian Government, in the Zone of Trieste as levies on manufacturing and custom duties on goods produced or imported in the same Zone and consumed in Italy.» and *Tabella* // Chart B, cap. 731: *«Finanziamenti da effettuarsi al Territorio Libero di Trieste, ecc.»* // «Funds to assigned to the Free Territory of Trieste, etc.».

Note: the separation between the tax systems of the two States is also clear from Ministerial acts, like the ***Circolare n. 211/1948 del Ministero dei Trasporti – Ispettorato Generale della Motorizzazione civile e dei Trasporti in concessione, d'intesa con il Ministero delle Finanze – Direzione delle tasse e delle imposte indirette sugli affari*** // Circular letter n. 211/1948 of the Ministry of Transportation – General Inspectorate of the Vehicle Licensing Office and of transport services under concession, together with the Ministry of Finances – Directorate of taxes and indirect taxes on business – *Tasse automobilistiche – Agevolazioni per trasferimenti nel territorio italiano degli automezzi dello Stato Libero di Trieste* // Car taxes – Benefits for the transfer in the Italian national territory of vehicles of the Free State of Trieste (Bollettino Ufficiale del Ministero delle Finanze, 30 giugno 1948, n. 6, pag. 213 // Official Bulletin of the Italian Minister of Finances No. 6 of 10 June 1948, pag. 213).

10. **The Italian Diplomatic Mission in the Free Territory of Trieste** was organized establishing a *Rappresentanza* (Representative), also called *Missione* (Mission), acting as Embassy, as well as a Consulate General:

– **Ministero dell'Interno, Circolare N. 55467/7542 del 18 ottobre 1947** // Circular Letter No. 55467/7542 of the Italian Ministry of Domestic Affairs, 18 October 1947: «[...] *il Comitato Interministeriale per la Ricostruzione, presso il quale, come è noto, è stata istituita una Sezione Speciale per gli Affari concernenti il territorio dello Stato Libero, precisa ora che è stata istituita in Trieste la Rappresentanza Italiana, il cui titolare* […] *sta per raggiungere la Sede. Perciò ogni rapporto da intrattenere dalle Pubbliche Amministrazioni con lo Stato Libero di Trieste dovrà d'ora innanzi essere svolto, non più con il Governo Provvisorio Militare, ma attraverso la suddetta Rappresentanza Italiana, che ha assunto anche la Presidenza della Missione Economica. La suddetta Sezione Speciale presso il Comitato Interministeriale per la Ricostruzione sarà tramite con la Rappresentanza Italiana per tutto quanto afferisce, in qualsiasi campo, al Territorio Libero di Trieste.*»
«[...] The Interministerial Committee for Reconstruction, in which, as known, was established a Special Section for affairs regarding the Free State, now explains the establishment of an Italian Representative in Trieste, the head of which […] is about to take office. Therefore, from now on, all relations with Government Agencies of the Free State of Trieste shall primarily involve no longer the provisional Military Government, but through said Italian Representative, which did also take on the Presidency of the Economic Mission. The aforementioned Special Section of the Interministerial Committee for Reconstruction will be responsible of relations with the Italian Representative for all matters regarding the Free Territory of Trieste.»

The ***Rappresentanza italiana a Trieste***, also active as ***Missione italiana a Trieste*** (in use from 1948, but officialized in 1951) like the analogue Yugoslav Mission in Trieste, worked with the rank of an Embassy, and did also release Italian citizens the "*Lasciapassare*" (Border passes) ranking as passport that allowed «*ad attraversare il*

confine tra il Territorio Libero di Trieste e la Repubblica Italiana» // «to cross the border between the Free Territory of Trieste and the Italian Republic» [s.Arch.doc.], and it was part of the *Missione Economica Italiana* // Italian Economic Mission.

Note: From 1947 to 1954 the Yugoslav Diplomatic Mission in Trieste was likewise entrusted to a Yugoslav Mission, with the rank of Embassy, included within a Yugoslav Economic Delegation.

After the succession, in October 1954, of the Italian Government to the AMG FTT in the temporary civil administration of the present-day Free Territory of Trieste, the Italian Mission was substituted with an *Ufficio di Collegamento* // Liaison Office of the Italian Minister of Foreign Relations respect to the Commissioner General of the Italian Government for the Territory of Trieste, while the Yugoslav Mission was substituted with a Consulate General as part of an exchange of Diplomatic Missions, in Trieste and in Koper-Capodistria, between the two Government in the respective zones of temporary civil administration.

– **DCPS 30 dicembre 1947, n. 1619 //** Decree of the Provisional Head of State No. 1619 of 30 December 1947 – *Integrazione della tabella allegata al Decreto del Capo provvisorio dello Stato 18 aprile 1947, n. 266, concernente il riordinamento della rete delle Rappresentanze diplomatiche e degli Uffici consolari di 1ª categoria //* Complement to the chart attached to the Decree of the Provisional Head of State No.266 of 18 April 1947, regarding the reorder of the network of Diplomatic Missions and Consular Posts (G.U. 2 febbraio 1948, n. 26) and ***DPR 26 febbraio 1948, n. 226*** – *Circoscrizioni territoriali degli Uffici consolari* // Territorial area of Consular Posts (G.U. 9 aprile 1948, n. 84).

The first decree establishes, as Consular Post, the ***«Consolato Generale d'Italia nel Territorio Libero di Trieste»*** // «Consulate General of Italy in the Free Territory of Trieste» which the second decree describes as having full competence over all ***«il territorio dello Stato»*** // «the State's sovereign territory» of the Free Territory of Trieste.

The Consulate General of Italy in the Free Territory of Trieste was shout down only in 1956, nearly two years after the Italian Government took the place of the AMG FTT in the civil administration of the Free Territory and in its representation in foreign relations, which was entrusted to the offices of the Italian Minister of Foreign Relations; indeed, the Consulate results to be closed with ***DPR 1 giugno 1956, n. 94*** (in G.U.25 agosto 1956, n. 213), extended to the administered Free Territory with publication in B.U. 11.9.1956, n. 26.

C. Constitutional law of the Italian Republic

The **Costituzione della Repubblica Italiana** // Constitution of the Italian Republic was approved by the Italian Constituent Assembly on 22 December 1947, published on the Italian *Gazzetta Ufficiale* n. 298 of 27.12.1947, and came in force over the Italian sovereign territory on 1 January 1948, which is declared **(art. 5)** *«una ed indivisibile» //* «one and indivisible» in the legal and factual situation existing on that date.

This formula, repeated in successive norms, like Italian *Legge Costituzionale* - L.cost. 1/1963 (see following point G.3.4), does therefore refer to the sovereign territory of the Italian State within its 1 January 1948 boundaries, as redefined with the Treaty of Peace, ratified by Italy with L. 811/1947, which had come into force on 15 September 1947 and is implemented in the Italian legal order since 16 September 1947, under DlgsCPS n. 1430/1947, which assigns it the highest rank in Italian legislation at art. 2.

Violating obligations established by the Treaty of Peace, or other Italian international obligations, including those in respect to the Free Territory of Trieste, is also forbidden under **art. 10, first paragraph** of the Italian Constitution which as early as in its 1948 text places among the fundamental principles of the Republic's legal order the legal

prevalence of international obligations over domestic law: «*L'ordinamento giuridico italiano si conforma alle norme del diritto internazionale generalmente riconosciute*» // «The Italian legal system conforms to the generally recognised principles of international law».

DlgsCPS 1430/1947 enforcing the Treaty of Peace in the Italian legal system was ratified within the new Constitutional order with **Legge n. 3054/1952.**

The meaning of art. 10 first paragraph receives further explanation in ***Legge costituzionale* n. 3/2001** // Italian Constitutional Law No. 3/2001 - *Modifiche al titolo V della parte seconda della Costituzione* // Amendments to Title V of the second part of the Italian Constitution (G.U. 24 ottobre 2001, n. 248), which introduced in the Italian Constitutions the provisions at **art. 117, first paragraph** regarding the legislative power: «*La potestà legislativa è esercitata dallo Stato e dalle Regioni nel rispetto della Costituzione, nonché dei vincoli derivanti dall'ordinamento comunitario e dagli obblighi internazionali.*» // «Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations» and at **art. 120 second paragraph** regarding Government powers: «*Il Governo può sostituirsi a organi delle Regioni, delle Città metropolitane, delle Province e dei Comuni nel caso di mancato rispetto di norme e trattati internazionali* […], *prescindendo dai confini territoriali dei governi locali*.» // «The Government can act for bodies of the regions, metropolitan cities, provinces and municipalities if the latter fail to comply with international rules and treaties […] regardless of the geographic borders of local authorities.»

For those reasons, since 15 September 1947, the present-day united and indivisible Italian State does not, and cannot, include territories of the former Kingdom of Italy in Europe and worldwide, because under the pre-constitutional Treaty of Peace, the Italian Republic has ceded, returned, or renounced them in favor of other States (France, Yugoslavia, Albania, Greece, Ethiopia) or entrusted them to the United Nations (Libya, Eritrea, Somalia); the same applies to the territories in which the United Nations established the Free Territory of Trieste through the same Treaty of Peace.

Annexation of new territories to the Italian Republic has never taken place, because it would require a specific law issued by the Parliament (**art. 80 Const.**) following plebiscites that would grant the right to self-determination of the residents, as established also by international Conventions ratified and implemented in the Italian legal system itself with the rank of international obligations, thus bounding also under Constitutional Italian law.

This means that in the Italian legal system violations of the Treaty of Peace are therefore both violations of the pre-Constitutional DlgCPS 1430/1947 and of the chronologically successive Constitutional law.

Therefore, all legal acts (normative, administrative, judicial) of authorities of the Italian Republic that give raise to violations of the obligations to enforce the Treaty of Peace by claiming or implying the permanence or re-establishment of Italian sovereignty over the Free Territory of Trieste after 15 September 1947 are *ipso facto* anti-Constitutional.

In particular, when it comes to tax obligations, **art. 23** of the Italian Constitution rules that those may only be imposed by law. However, taxation is a sovereign prerogative of the State, and no law can extend the right to establish and collect taxes of

the Italian State outside the limits of its sovereign Territory, defined in compliance with the Treaty of Peace, which do not include the Free Territory of Trieste since 15 September 1947.

Notes: in the Italian legal system, the distinction between the sovereign territory of State of the Free Territory of Trieste and the Constitutional sovereign territory of State of the Italian Republic, defined by the 1947 Treaty of Peace, is also clear within the first electoral laws of years 1948 to 1951, which include only the Italian Provinces of Udine (Friuli) and of Gorizia (Venezia Giulia) within *Regione autonoma Friuli-Venezia Giulia* // Autonomous Region Friuli-Venezia Giulia (established on 1.1.1948 with art. 116 and art. X of *Disposizioni finali* // Transitional and Final Provisions of the Italian Constitution): **DPR n. 26/1948**, *Testo unico delle leggi per la elezione della Camera dei Deputati* // Consolidated Law of Italian provisions for the election of the Chamber of Deputies; **Legge 29/1948,** *Norme per la elezione del Senato della Repubblica* // Consolidated Law of Italian provisions for the election of the Senate of the Republic; ***DPR n. 30/1948**, Tabella delle circoscrizioni per la elezione del Senato della Repubblica* // Chart of the electoral districts for the election of the Senate of the Republic; **DPR n. 84/1948**, *Rettifiche alla tabella delle circoscrizioni per la elezione del Senato della Repubblica* // Rectification of the Chart of the electoral districts for the election of the Senate of the Republic; **DPR 172/1951,** *Tabella delle circoscrizioni dei collegi uninominali per la elezione dei Consigli provinciali del Piemonte, Lombardia, Veneto, Friuli-Venezia Giulia, Liguria, Emilia-Romagna, Umbria, Marche, Abruzzi e Molise* // Chart of the electoral districts for the election of the provincial Councils in Piemonte, Lombardia, Veneto, Friuli-Venezia Giulia, Liguria, Emilia-Romagna, Umbria, Marche, Abruzzi e Molise.

See also laws 1953 to 1981 regarding the compensation of war damages suffered by Italian citizens: **Legge 27 dicembre 1953, n. 968** – *Concessione di indennizzi e contributi per danni di guerra* // Concession of compensations and contributions for war damages (G.U. 31.12.1953, n. 299, S. O. n. 1) suffered by Italian citizens; Art. 1 – *Limiti territoriali della legge* // Territorial limits of the law: *«[…] L'indennizzo ed il contributo vengono concessi per danni verificatisi nel territorio dello Stato e nel Territorio Libero di Trieste, nelle zone di confine non più facenti parte dello Stato, nei territori dell'Africa già sottoposti alla sovranità italiana, nel Dodecanneso e nell'Albania.» //* «[…] Compensations and contributions are granted for damages occurred within the sovereign territory of the Italian State and in the Free Territory of Trieste, in border areas that are no longer part of the State, in the African territories formerly under Italian sovereignty, in the Dodecanese, and in Albania.»*; Art. 51 – Disposizioni particolari relative ai danni subiti da cittadini italiani nel Territorio Libero di Trieste e nei territori già sottoposti a sovranità italiana e in Albania* // Particular provisions regarding war damages suffered by Italian citizens in the Free Territory of Trieste, in territories formerly under Italian sovereignty, and in Albania: *«per i danni ai beni previsti nell'art. 4 nel Territorio Libero di Trieste e nei territori sottoposti alla sovranità italiana e in Albania, l'indennizzo è corrisposto nella misura […]. Per i beni ubicati nel Territorio Libero di Trieste, in Libia, in Eritrea e nel territorio della Somalia sotto amministrazione fiduciaria italiana, il ripristino può essere consentito […].»* // «for damages to properties envisioned at art. 4, in the Free Territory of Trieste, in territories formerly under Italian sovereignty, and in Albania, the compensation granted amounts to […]. For properties within the Free Territory of Trieste, Libya, Eritrea and in the Trust Territory of Somaliland, under Italian trusteeship, compensation may be permitted […].»

Legge 29 settembre 1967, n. 955 – *Integrazioni e modifiche alle vigenti disposizioni concernenti concessioni di indennizzi e contributi per danni di guerra* // Supplements and amendments to the provisions in force regarding the concession of compensations and contributions for war damages (G.U. 28.10.1967, n. 270), Art. 16 – *Il primo comma dell'articolo 21 della legge 27 dicembre 1953, n. 968, è sostituito dal seguente* // The first paragraph of art. 21 of the Italian Law No. 968 of 27 December 1953 is substituted with the following: *«Per la liquidazione dei danni verificatisi nel Territorio Libero di Trieste, nelle zone di confine non più facenti parte dello Stato, nei territori dell'Africa già sottoposti alla sovranità italiana, nel Dodecanneso e nell'Albania e per quelli verificatisi in territorio estero […].»* // «For the compensation of damages occurred in the Free Territory of Trieste, in border areas that are no longer part of the State, in the African territories formerly under Italian sovereignty, in the Dodecanese, in Albania, and for damages occurred in foreign territories […].»; Art. 24 – *«[…] per i fabbricati di civile abitazione riparati direttamente dall'Ufficio del genio civile del Territorio Libero di Trieste a spese dello Stato o in precedenza del Governo militare alleato […]»* // «[…] for buildings inhabited by civilians that were repaired by *Genio Civile* of the Free Territory of Trieste at the expense of the State or, before that, by the Allied Military Government […]».

Legge 22 ottobre 1981, n. 593 – *Snellimento delle procedure di liquidazione relative ai danni di guerra, alle requisizioni ed ai danni alleati, ai debiti contratti dalle formazioni partigiane e soppressione del commissariato per la sistemazione e la liquidazione dei contratti di guerra* // Reduction of administrative burdens for the compensation of war damages, of requisitions, of damages caused by the Allied Forces, of debts of Partisan formations, and suppression of the Office of the Commissioner for the settlement and compensation of war damages (G.U. 26.10.1981, n. 294), Art. 9 – *Fabbricati di civile abitazione riparati direttamente dallo Stato - Conguaglio* // Civil

housing buildings directly repaired by the State: *«[…] tra i fabbricati suddetti, sono compresi quelli riparati direttamente dall'Ufficio del genio civile del Territorio Libero di Trieste a spese dello Stato o, in precedenza, del Governo militare alleato […].»* // «[…] the aforementioned buildings include those repaired by *Genio Civile* of the Free Territory of Trieste at the expense of the State or, before that, by the Allied Military Government […].»

D. Italian laws ratifying and enforcing bilateral agreements of State between the Italian Republic and the United Kingdom or the United States that include norms regarding the Free Territory of Trieste:

1. **Dlgs 6 marzo 1948, n. 466** – *Approvazione degli Accordi finanziari conclusi a Roma tra il Governo italiano ed il Governo del Regno Unito il 17 aprile 1947* // Approval of the Financial agreements concerning sterling payments and post-liberation debts and claims (G.U. 18.5.1948, n. 114 - S.O.) *Allegato I – Accordo italo-britannico di pagamenti in sterline, art. XIII* // Annex to Note I – Anglo-Italian Sterling payments agreement: «*Finché non sarà istituita nel Territorio Libero di Trieste una moneta separata, le disposizioni del presente Accordo si applicheranno ai residenti nel Territorio Libero nello stesso modo che ai residenti in Italia, subordinatamente, tuttavia, a qualsiasi accordo che potrà esser concluso tra l'Italia ed il Territorio Libero.*» // «The provisions of this Agreement shall, pending the establishment of a separate currency in the Free Territory of Trieste, apply to residents of the Free Territory in the same manner as to residents of Italy, subject, however, to any agreement which may be entered into by Italy and the Free Territory.»

Note: on this matter, see the bilateral economic agreement regarding currency signed between the Italian Government and the provisional Government of the present-day Free Territory of Trieste at following point E.

2. **Legge 4 agosto 1948, n. 1108** – *Ratifica ed esecutorietà dell'Accordo di cooperazione economica tra l'Italia e gli Stati Uniti d'America, concluso a Roma il 28 giugno 1948 //* Ratification and enforcement of the Economic Co-operation Agreement between the United States of America and Italy. Signed at Rome, on 28 June 1948 (G.U. 21.8.1948, n. 194, S.O) - Art. XI: *«As used in the Agreement, the term "participating country" means: 1. Any country which signed the report […]. 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 […].»*

3. **Legge 18 giugno 1949, n. 385** – *Ratifica ed esecuzione del Trattato di Amicizia, Commercio e Navigazione, del Protocollo di firma, del Protocollo addizionale e dello scambio di note conclusi a Roma, fra gli Stati Uniti d'America e la Repubblica Italiana, il 2 febbraio 1948* // Ratification and enforcement of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, Rome, 2 February 1948 (G.U. 12.7.1949 – S.O. n. 157) - Art. XXIV.3.d:

«The provisions of this Treaty shall not extend to prohibitions or restrictions: […] (d) advantages now accorded or which may hereafter be accorded by the Italian Republic to San Marino, to the Free Territory of Trieste or to the State of Vatican City, or by the United States of America or its territories or possessions to one another, to the Panama Canal Zone, to the Republic of Cuba, to the Republic of the Philippines or to the Trust Territory of the Pacific Islands».

E. Decree of the President of the Italian Republic ratifying and implementing the bilateral agreement of State on financial measures between the Government of the Italian Republic and the British-United States Government of the Free Territory of Trieste:

DPR 13 dicembre 1948 n. 1630 – *Approvazione dell'Accordo tra il Governo italiano ed il Comando Militare Britannico e degli Stati Uniti d'America relativo a Trieste, concluso a Roma il 9 marzo 1948* // Approval of the Agreement between the Italian Government and the British-United States Military Command regarding Trieste, concluded in Rome on 9 March 1948, (G.U. 26 febbraio 1949 n. 97).

Art. 1 fully implements in the Italian legal order the Agreement of State on finance «*tra il Governo della Repubblica Italiana ed il Comando Militare Britannico e degli Stati Uniti con funzioni di Governo della rispettiva zona del Territorio Libero di Trieste (nel testo indicato come "il Comando di Zona"*) *per regolare alcune questioni finanziarie sorgenti dalla esecuzione del Trattato di pace.*» // «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 financial questions arising from the execution of the Treaty of Peace.»

This bilateral agreement does therefore base the Agreements on the following formula, recognizing the establishment to the Free Territory of Trieste, its provisional Government with representation in foreign relations, and the deriving international obligations of Italy:

«The Command of the Zone and the Government of the Italian Republic, desiring to put into execution the clauses 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: […].»

Note: following said Agreements, the United States Secretary of the Treasury registered among foreign currencies used in foreign trade the currency of State of the Free Territory of Trieste as *Trieste lire*, separate from the *Italian lire* as currency of the Italian State (see: Annual Reports of the Secretary of the Treasury on the State of the Finances).

F. Italian law ratifying DlgsCPS (Legislative Decree of the Provisional Head of State) 1430/1947 for the enforcement of the 1947 Treaty of Peace:

Legge n. 3054 del 25 novembre 1952 – *Ratifica del decreto legislativo 28 novembre 1947, n. 1430, concernente esecuzione del Trattato di Pace fra l'Italia e le Potenze alleate ed associate, firmato a Parigi il 10 febbraio 1947* // Ratification of Legislative

Decree No. 1430 of 28 November 1947, regarding the enforcement of the Treaty of Peace between Italy and the Allied and Associated Powers, signed in Paris on 10 February 1947 (G.U. 14 gennaio 1953, n. 10).

With Ratification Law No. 3054/1952, even the first Parliament of the Italian Republic, in office from 8 May 1948 to 24 June 1953, recognized the international obligations and territorial changes deriving from the Treaty of Peace, in compliance with art. 10 first paragraph and with art. 80 of the Italian Constitution, in force since 1 January 1948.

This Ratification Law has therefore granted the perpetration of Constitutional and pre-Constitutional prevalence of laws that enforce the Treaty of Peace within the hierarchy of the sources of Italian law over all other Italian domestic laws.

Note: the timing of the ratification of DlgsCPS 1430/1947, which implements in the Italian legal system the obligations of the Treaty of Peace, did also depend on the implementation of the provisions of the *Memorandum of understanding between the Governments of Italy, the United Kingdom and the Unites States regarding administration in Zone A of the Free Territory of Trieste. Dated at London, 9 May 1952* (UNTS, Vol. 168, No. 2213).

With this agreement, the Governments of the United States and of the United Kingdom, exercising their primary special trusteeship mandate, had entrusted some sectors of the civil Government of the present-day Free Territory of Trieste to Italian officers suggested by the Italian Government, but appointed by the AMG FTT, the Commander of which, as military Governor, maintained full Government authority.

The sectors of the civil Government thus entrusted to Italian officers since 1952 are listed at points 6.a) and 6.b), of the Memorandum and involve: Local Government, Labour, Social Assistance, Public Health, Education, Census and Surveys, Fire Service, Commerce, Production, Finance (including Customs and Finance Guards), Transportation, Public Works and Utilities, Agriculture and Fisheries, Loans.

At art. 2 of the 1952 Memorandum the parties specify that measures taken with this co-operation agreement «should be of a nature so as not to prejudice the ultimate solution of the future of the Territory as a whole».

G. Italian domestic legislation that recognizes and enforces, in the Italian Republic's legal system, the special trusteeship mandate of temporary civil administration over the Free Territory of Trieste, sub-entrusted to the Italian Government by the British and United States Governments

1. The sub-mandate of temporary civil administration

The primary administering Governments of the present-day Free Territory of Trieste have sub-entrusted its temporary civil administration to the Italian Government under the ***Memorandum of understanding between the Governments of Italy, the United Kingdom of Great Britain and Northern Ireland, the Unites States of America and Yugoslavia regarding the Free Territory of Trieste. Signed at London, on 5 October 1954*** (UNTS Vol. 235, No. 3297), published on the *Bollettino del Ministero degli Esteri della Repubblica Italiana n. 1/1955* // Bulletin of the Italian Republic's Ministry of Foreign Affairs No. 1/1955.

The agreement and its enforcement have the following main characteristics:

a) Nature and contents of the Agreement. The 1954 Memorandum of Understanding is a quadrilateral, additional practical arrangement for the enforcement of the Treaty of Peace, signed by the four most concerned Governments as signatories of the Treaty of Peace and due to their involvement in the provisional administration of the Free Territory of Trieste: the British, United States, and the Yugoslav Governments as

primary administrators, and the Italian Government because it was already providing the AMG FTT with Italian public officers for certain sectors of the civil administration under the trilateral Memorandum of Understanding of 9 may 1952 with the Governments of the United States and of the United Kingdom.

The four Governments do therefore recognize the impossibility, for political reasons, to adhere to the provisions of the Treaty regarding the short lasting of the mandate of the provisional Military Governments in the two administration Zones of the Free Territory of Trieste and decide to agree on some «*practical arrangements*» to end this «*unsatisfactory situation*».

For this purpose: the British and the United States Governments withdraw their troops, terminating the AMG FTT, and maintain their primary administration mandate, sub-entrusting the temporary civil administration of main "Zone A" (the present-day Free Territory of Trieste) to the responsibility of the Italian Government (not to the Italian State); the Yugoslav Government maintained its primary administration mandate over accessory "Zone B" substituting its military administration with a civil administration.

b) Particular obligations. The agreement does also place as condition for the coming into force of Italian and Yugoslav civil administration that both Government undertake, each in the respective Zone, to enforce a provided Statute establishing fundamental guarantees for ethnic groups (art. 6), facilitate local border traffic (art. 7), and to allow the return or the transfer of residents in the areas coming under the civil administration either of Italy or of Yugoslavia (art. 8).

Art. 5 of the Memorandum bounds the Italian Government, during the exercise of its sub-mandate of temporary civil administration, to maintain the Free Port at Trieste in general accordance with the provisions of Articles 1 to 20 of Annex VIII of the Italian Peace Treaty.

Note: the following articles of Annex VIII, 21 to 26, regard the direct international administration of the Free Port, which, therefore, the sub-administering provisional Government had not power to implement.

The problem of the consequent, temporary impossibility to enforce the rights of the other States to directly exercise this control was thus dealt with at the same time as the Memorandum of Understanding regarding the Free Territory of Trieste was signed: with a letter of the Italian Ambassador in London, the Italian Government invited the Yugoslav Government and all other interested Governments to a consultative reunion about granting them the best accession possible to the Free Port for international trades.

This is why on 19.11.1955 Trieste hosted a Consultative Conference, to which the Italian Government had invited the Governments of Yugoslavia, of the Federal Republic of Germany, of Austria, of Hungary, of Czechoslovakia and of Switzerland, and they officially presented their requests and recommendations on the subject. In 1989, the Hungarian and the Italian Government have undersigned the specific bilateral agreement, recalled at following point N.1.

c) Exercise of the sovereignty of the Free Territory. The nature and purpose of the Memorandum as authorization to the Italian and to the Yugoslav Government to «*extend their civil administration on the area for which they will have responsibility*» excludes all forms of extension of Italian or Yugoslav sovereignty over the respective administration Zones.

Note: in order to prevent the agreement from being possibly ever interpreted as a transfer of the two Zones of the Free Territory of Trieste to Italian and under Yugoslav sovereignty respectively, or its use for mutual territorial claims between the two States, the Governments of the United States, of

the United Kingdom, and also the French Government (depositary for the Treaty of Peace) provided an immediate authentic interpretation of the Memorandum, accompanying it with separate, identical official declarations that none of the three Government «*will give no support to the claims of either Yugoslavia or Italy respecting territory under the sovereignty or administration of the other*» // «*n'accorderà pas son soutien aux revendications que l'un des deux parts pourrait faire valoir sur des territoires placés sous la souveranité ou l'administration de l'autre.*»

d) Official communication of the agreement to the United Nations. The text of the Memorandum of Understanding regarding the Free Territory of Trieste was forwarded to the UN Security Council on 5 October 1954 enclosed to a letter of the Italian Observer and of the British, United States, and Yugoslav Permanent Representatives to the United Nations (which had not yet admitted Italy as a Member State), specifying that the agreement did only regard «*practical arrangements for the Free Territory of Trieste.*». Answering to this letter, on 12 October the Soviet Permanent Representative addressed the UN Security Council with a brief taking note of the agreement.

e) Official communication of the agreement to NATO. The signature and the text of the Memorandum of Understanding regarding the Free Territory of Trieste were simultaneously communicated to NATO [NATO documents C-R(54)36 and C-M(54)104] pursuant to art. XX, nn. 1 and 3 of the "Agreement (with appendix) between the Parties of the North Atlantic Treaty regarding the status of their forces signed in London, on 19 June 1952" (UNTS, Vol. 199, No. 2678).

f) Approval and publication of the Agreement. A Memorandum of Understanding – MoU is a secondary form of international agreement, which does not require Ratification Laws to the signatory States, unless their legal order mandates them.

Consequently, the Italian and the Yugoslav Parliament voted for the approval, but not for the ratification, of the Memorandum of Understanding regarding the Free Territory of Trieste, later published on the Official Bulletins of the respective Ministries of Foreign Affairs.

Note: in Yugoslavia the Decree for the publications of the Memorandum of Understanding regarding the Free Territory of Trieste is included in the Official Gazette of the Federative People's Republic of Yugoslavia – international acts No. 6 of 27.10.1954).

As for the Italian Constitutional Order, the Memorandum of Understanding of 5 October 1954 (like the one of 9 May 1952) does not require a Ratification Law (see art. 80 of the Italian Constitution) because it does not change the sovereign Territory of the law of the State, is not political in nature, it does not regard international disputes, and it does not establish expenditures, since the administered Free Territory must have its own State budget, separated from that of the Italian Republic.

This is why the Memorandum was presented to the Italian Minister of Foreign Affairs to the Italian Parliament, which discussed and approved the Government's doing with a majority vote (the Italian Senate on 8.10.1954; the Italian Chamber 19.10.1954), and it was published in the *Bollettino del Ministero degli Esteri n. 1/1955* // Bulletin of the Ministry of Foreign Affairs, instead of in the *Gazzetta Ufficiale della Repubblica Italiana* // Official Gazette of the Italian Republic.

The Memorandum was likewise approved by the Yugoslav Federal Assembly during its 25 October 1954 seating, and it was published in the Bulletin of International agreements and other international arrangements (*Službeni List FNRJ – br. 5/1954*).

g) Establishment of the sub-administrations. Following those obligations, the recognition and enforcement of the Memorandum became legally effective in both the Legal Order of the Italian Republic and in that of the SFR of Yugoslavia by establishing the expected provisional administering authorities with Decrees of the respective President of the Republic, both published in the respective Official Gazettes.

In the Italian Legal Order, the Memorandum of Understanding regarding the Free Territory of Trieste is recognized and enforced by establishing the temporary civil administration of the present-day Free Territory of Trieste with *Decreto del Presidente della Repubblica 27 ottobre 1954* // Decree of the President of the Italian Republic (without number) issued on 27 October 1954.

Note: in the Yugoslav Legal Order, the provisional administration was established under a Federal Law promulgated with Presidential Decree (*Ukaz*) No. 351 of 25 October 1954, published on the *Uradni List FLRJ 27.10.1954, št. 45,* which extended to the administration zone of the Free Territory of Trieste ("Zone B") Federal Civil Law and entrusted its enforcement to the Authorities of the Federal Republics of Slovenia and of Croatia, in the districts (*okraji*) of Koper-Capodistria and Buje respectively.

h) Official Communication to the United Nations of the establishment of the new provisional sub-administrations. With a successive letter dated 17 January 1955, the Italian Observer and the British, United States, and Yugoslav Permanent Representatives to the United Nations informed the Security Council of the actual transition between the two administrations, which took place on 26 October 1954, and also of the fact that, on the same date, the Italian Government had established a specific «*civilian government under a Commissioner General (Commissario generale)*» while the Yugoslav party had «*similarly replaced military by civilian administration in the area which it administers*».

i) Transition. The transition between the AMG FTT and the Italian Government in the administration of the present-day Free Territory of Trieste took pace on 26 October 1954, with the respective Proclamations by the Commander and Head of the Allied Military Government, Major-general Sir John Winterton and Italian General De Renzi, followed, on 29 October, by the coming into function of the Italian temporary civil administration with the first Decree (*Decreto n. 1*) of the del newly established *Commissario Generale del Governo Italiano per il Territorio di Trieste* // Commissioner General of the Italian Government for the Territory of Trieste.

j) Takeover of representation in foreign relations. Accepting the special trusteeship mandate for the exercise of temporary civil sub-administration, the Italian Government took the previous role of the AMG FTT also in regard to the obligations to represent the present-day Free Territory also in foreign relations with other States and before the international organizations in which both the Free Territory of Trieste, and the Italian Republic were already members.

For this reason, the Italian Government did immediately send official declarations of its takeover, explaining that for practical reasons the duty of representing the administered Free Territory would be carried out by the same Offices in charge of the representing Italy in foreign relations.

Note: all acts and diplomatic documents of the Governments of the United States and of the United Kingdom, as well as those of the United Nations reading the present-day Free Territory of Trieste that are accessible to date (2021) confirm that the Italian Government's only authority over it was the sub-mandate of temporary civil administration it had received under the 1954 Memorandum of Understanding, in force (see: US Department of State, Treaties in Force, 2019; UK Foreign & Commonwealth Office, Treaty Record; UN Security Council, document S/2015/809 – Annex).

Indeed, the legal validity and existence of the 1954 Memorandum of Understanding as multilateral instrument enforcing the Treaty of Peace with Italy were never amended, but actually furthermore confirmed, by the bilateral declaration that it ceases to have effect in relations of State between Italy and Yugoslavia, included in the political Italian-Yugoslav Treaty of 10 November 1975 (see following point O.2.1).

k) Mutual Diplomatic Missions in the administered Zones of the Free Territory under special trusteeship: with an exchange of Notes between the Italian and the Yugoslav Ambassador in London [s.Arch.doc.] the two administering Governments agreed to establish, due to diplomatic questions arising from the 1954 Memorandum of Understanding, mutual Diplomatic Missions with the rank of Consular Offices in the respective administration Zones "A" and "B" of the Free Territory under special trusteeship, precisely:

- the sub-administering Italian Government by establishing «an office in Capodistria for the performance of consular functions in relation to the territory which will come under Yugoslav administration by the terms of the aforementioned Memorandum», appointing a «consul to be charge of such office»;
- the administering Yugoslav Government through the «conversion of the Yugoslav representation in Trieste into an office for the performance of consular functions in relation to the territory which will come under Italian administration by the terms of the Memorandum of understanding», and appointing a «Consul General as its chief representative in Trieste».

Note: the Yugoslav Diplomatic Mission (Yugoslav representation) in the Free Territory of Trieste from 1947 to 1954 consisted in a Yugoslav Mission, with the rank of Embassy, and in a Yugoslav Economic Delegations like the Italian Economic Delegation described above.

The Diplomatic Office of the Italian Government in Capodistria was established with **DPR 5 gennaio 1955, n. 363** – *Istituzione in Capodistria del Rappresentante del Governo italiano* // Decree of the President of the Italian Republic No. 363 of 5 January 1955 – Establishment of the Representative of the Italian Government in Capodistria.

This means it was not a *Consolato d'Italia* // Italian Consulate, but a Diplomatic Office of the Italian Government in its role of administering authority of the main Zone ("A") of the Free Territory of Trieste in the accessory zone ("B") administered by the Yugoslav Government. This is why its district is not included within those of Italian Diplomatic Missions (Embassies, Consular Chancelleries, Consulates General) established in Yugoslavia, in Slovenia and in Croatia from 1954 to 1993.

Note: the transformation of the Office of the Italian Government in Capodistria-Koper in an ordinary Italian Consulate can only be considerate legitimate starting in 1992, under the UN Resolutions that recognized, following plebiscites, the independent Republics Slovenia and of Croatia within their present boundaries, making it impossible enforcing (under the Vienna Convention on the Law of Treaties, art. 30.3) the provisions of the 1947 Treaty of Peace that included the then "Zone B" within the Free Territory of Trieste.

l) Accreditation of foreign Diplomats in the Free Territory since 1954. Even, since 1954, the acts for the accreditation (*exequatur* issued by the President of the Italian Republic) of foreign Diplomats in Italy distinguish the districts of the Italian Republic from the district of the administered Free Territory, which is either left out or added under the names of *"Territorio di Trieste"* // "Territory of Trieste", "*la città e il territorio di Trieste*" // "the city and the territory of Trieste" or simply "Trieste".

Note: as for the appointment of ordinary Consuls of Her Britannic Majesty's with office in the Free Territory of Trieste, or in Venice (*Console* // Consul) or in Milan (*Console generale* // Consul-General), until 1981 the appoints result to contain mentions, respectively: «*for the Region of Friuli-Venezia Giulia, and the City of Trieste», «Trieste and the surrounding territory under the administration of the Italian Government*», «*for the Regions of the Veneto and of Friuli-Venezia Giulia, and the City of Trieste and the surrounding territory und the administration of the Italian Government*» and «*for the Regions of Lombardy, Trentino, Alto Adige, and Friuli, Venezia Giulia (excluding the Province of Trieste) […]*».

2. Reconfiguration of military defense

After the sub-entrustment of the civil administration of the two Zones of the Free Territory of Trieste, its military defense was granted by including it within the NATO system on two different levels.

For instance, the defense of the present-day Free Territory of Trieste (main Zone A) was aggregated to the NATO defense area of Italy with the formula «*Italy, including the area of Trieste under Italian administration*» [NATO document C-M(55)16 – s.Arch.doc.].

In the Italian legal system, this role in the military defense of the present-day Free Territory of Trieste is regulated with **Legge 1 agosto 1949, n. 465** - *Ratifica ed esecuzione del Trattato del Nord-Atlantico firmato a Washington il 4 aprile 1949* // Ratification and enforcement of the North-Atlantic Treaty signed in Washington D.C. on 4 April 1949 (G.U. 4.8.1949, n. 177), which, at arts. 1, 7, 8, and 12 establishes NATO as a defensive alliance in compliance with the Charter of the United Nations and of other obligations under other, previous Treaties.

This is why Italian Armed Forces within the boundaries of the present-day Free Territory of Trieste do not (and cannot) exercise the territorial defense of the Italian sovereign territory, but the additional role of NATO in defense of the Free Territory, which remains subject to the direct intervention and included in the competence area of the British and of the United States Governments on behalf of the United Nations.

Instead, the military defense of the then Zone B remained entrusted to the Armed Forces of Yugoslavia, which had just recently been included in the NATO protection area with the Agreements of Friendship and Cooperation with Yugoslavia, Greece, and Turkey of 28 February 1953 and of 9 August 1954.

Note: for the reasons explained above, and relating to the AMG FTT, the direct or indirect entrustment of the military defense of the Free Territory of Trieste to NATO as collective defense system, recognized by Article 51 of the Charter of the United Nations, is compatible with the provisions at art. 3.2 of Annex VI of the Treaty of Peace regarding the demilitarization and neutrality of the Free Territory of Trieste.

For instance, the Free Territory can only be defended by armed forces under the direction of the United Nations Security Council, however, it cannot have its own army, allow para-military formations, exercises or activities, or make or discuss any military arrangements or undertakings with any State (Annex VI, art. 3). Instead, it can and it must have its own Police Force and security services of State (Annex VI, arts.27 and 28), placed under the authority of a Director of Public Security who – like the Director of the Free Port – shall not be a citizen of Italy or Yugoslavia.

For those reasons, the administering Italian Government has no right to force military service on citizens of the present-day Free Territory of Trieste, and citizens of the Free Territory of Trieste can only join Italian Armed Forces or any other Armed Forces as volunteers.

In addition, the administering Italian Government can and must maintain police and public security forces in the administered Free Territory; however, their command must be entrusted to a Director who is not a citizen of Italy or of any successor State of Yugoslavia.

3. Legal instruments implementing the temporary civil administration

The 1954 Memorandum of Understanding regarding the Free Territory of Trieste, being an additional executive instrument to the 1947 Treaty of Peace, sub-entrusted the temporary civil administration of the present-day Free Territory of Trieste to the Italian Government.

Since the Italian Government is not an independent body, but it is a Constitutional body of the Italian Republic and, therefore, it acts with structures provided to it by that State, the enforcement of the obligations of temporary civil administration entrusted to

its responsibility under the 1954 Memorandum of Understanding is included in the international obligations arising from the Treaty of Peace, which are enforced in the Italian Republic's Legal Order primarily under DlgsCPS // Legislative Decree of the Provisional Head of State 1430/1947 and Italian L. 3054/1952, and constitute a temporary extension of those international obligations.

The obligations regarding the temporary civil administration of the present-day Free Territory are therefore recognized and implemented in the Italian legal order under art. 2 of DlgsCPS 1430/1947, thus under a decree of the Head of State and successive laws, even by derogation from other Italian laws in force:

3.1. ***Decreto del Presidente della Repubblica 27 ottobre 1954*** (senza numero**) –** *Nomina di un Commissario generale del Governo per il territorio di Trieste* // Decree of the President of the Italian Republic without number, issued on 27 October – Appointment of a Commissioner General of the Government for the territory of Trieste (G. U. 28 ottobre 1954, n. 249).

The Decree recognizes and implements in the Italian legal system the international, special trusteeship mandate sub-entrusted to the Italian Government under the Memorandum of Understanding regarding the Free Territory of Trieste, in compliance with the Treaty of Peace, declaring «*la necessità di affidare a un Commissario Generale l'amministrazione del territorio di Trieste posto, con la cessazione del Governo Militare Alleato, sotto la responsabilità del Governo italiano*» // «the necessity to entrust to a Commissioner General the administration of the territory of Trieste placed under the responsibility of the Italian Government after the withdrawal of the Allied Military Government».

For this purpose, the Decree appoints a «*Commissario Generale del Governo alla diretta dipendenza del Presidente del Consiglio dei Ministri, per il Territorio di Trieste posto sotto la responsabilità del Governo italiano, con i poteri spettanti al Governo medesimo per l'amministrazione del territorio, nonché con i poteri già esercitati nel territorio predetto dal cessato Governo Militare Alleato*» // «Commissioner General of the Government for the territory of Trieste, under the direct authority of the President of the Council of Italian Ministers, entrusted with the same powers assigned to the Government for the purposes of the administration of the same territory, and also with the powers previously exercised by the former Allied Military Government».

Note: the expression "*posto sotto la responsabilità*" // "placed under the responsibility" is used for United Nations Trusteeship mandates. The expression "Territory of Trieste" is an abbreviation already used in documents of the AMG FTT written in Italian, in English, and in Slovenian, however, it does not identify changes in the legal status of the administered Free Territory of Trieste.

The *Commissario Generale* // Commissioner General is therefore an Italian civil officer entrusted with exercising Government authority - both legislative and executive powers - adding to the powers previously exercised by the AMG FTT the new roles undertaken by the Italian Government under the 1954 Memorandum of Understanding.

The *Commissario Generale* does therefore depend on the President of the Italian Council of Ministers in office, for they are the head of the Italian Government, which is the body entrusted with the special trusteeship mandate for temporary civil administration, and therefore is directly responsible for its correct conduction to both the people and authorities of the administered Free Territory, as well as to the British and United States Governments for their role of primary administrators.

The "*poteri già esercitati dal cessato Governo Militare Alleato"* // "powers previously exercised by the former Allied Military Government*"* are those declared by the Commander of the British-United States troops in the official act released then the AMG FTT took office as first Government of State of the Free Territory, Proclamation No. 1 of 15 September 1947, published on 16 September on the AMG FTT Official Gazette and sent to the United Nations through the British and the United States Government [s.Arch.doc.]: «*all powers of Government and administration* […] *as well as jurisdiction over its inhabitants»,* in order to «*implement the provisions of the Treaty of Peace»* described in the same Proclamation, *«and to ensure the welfare and safety of the population by preserving law and order*».

The provisions of the Treaty of Peace detailed in the Proclamation fully confirm the international and legal status of the Free Territory of Trieste, and they are:

– art. 21 of the Treaty of Peace, which established the Free Territory of Trieste ending Italian sovereignty;

– art. 2 of Annex VI – Permanent Statute, which entrusts the protection of the integrity and independence of Free Territory of Trieste to the United Nations Security Council;

– art. 1 of Annex VII – Provisional Regime, which establishes that, until the coming into office of the Government, the administration of the Free Territory is entrusted to Allied Military Commands, each in the respective Zone, and all consequent rights and obligations. Those obligations include (art. 2, paragraph 4) enforcing all compatible norms of the Permanent Statute during the exercise of the Provisional Regime.

This is why the special Trusteeship mandate for the provisional administration of the Free Territory of Trieste includes also the exercise of legislative powers, including those at Annex VIII of the Treaty of Peace entrusted to Government authorities over the international Free Port of the Free Territory itself, including the exclusive power to appoint the Director of the Free Port and to decide, upon their proposal, the extension of the free port regime to new areas, and the authorization to manufacture goods and to establish new companies within the port's boundaries (Annex VIII, arts. 3.4, 7 and 18).

Therefore, the "*poteri di amministrazione*" // "administration powers" of the Free Territory of Trieste which DPR 27 ottobre 1954 recognizes and enforces in the Italian legal order by entrusting them to the Commissioner General of the Italian Government in the Territory of Trieste consist in:

a) administration powers needed, in the Italian legal system, to exercise the obligation of temporary civil administration of the present-day Free Territory in name and on behalf of the Italian Government, as well as with employees and offices of the Italian Republic;

b) normative powers of legislative, administrative, and jurisdiction nature which the Commissioner General exercises as successor of the Commander of British-United States Forces of the AMG FTT in compliance with the takeover of the Italian Government (represented by the Italian President of the Council of Ministers) as administering authority sub-entrusted by the primary administrators, the Governments of the United States and of the United Kingdom.

To exercise those powers, the Commissioner General of the Italian Government in the Territory of Trieste was provided with a Government structure and with a legal system of State that mirror those of the Government of the Italian Republic, consisting in employees and bodies provided by the Italian Republic, and also with a "*Bollettino Ufficiale*" (Official Bulletin) to publish law and administrative decisions regarding the administered State, which took the place of the previous, identical structure of the AMG FTT and of its Official Gazette – *Gazzetta Ufficiale – Uradni list*.

Indeed, the structure of the *Commissariato Generale* // Office of the Commissioner General, established by the first Commissioner himself with Decree No. 36 of 24 November 1954 draws upon that of the AMG FTT, and it is itself divided into *Direzioni* // Directorates corresponding to Ministries, and in *Uffici amministrativi* // Administrative Offices: *Ufficio di Gabinetto, Direzione del Bilancio e delle Finanze, Direzione del Tesoro, Ufficio del controllo spese, Direzione della pubblica istruzione, Direzione dei lavori pubblici, Direzione dell'agricoltura e delle foreste, Direzione dei trasporti, Direzione dell'industria e del commercio, Direzione del lavoro e della previdenza sociale, Direzione del commercio con l'estero, Direzione della marina mercantile, Ufficio dell'assistenza sociale, Ufficio statistiche, censimenti e studi, Ufficio personale* // Cabinet Office, Directorate to Budget and Finances, Directorate of the Treasury, Expenditure Office, Directorate of Public Education, Directorate of Public works, Directorate of Agriculture and Forests, Directorate of Transportation, Directorate of Manufacture and Commerce, Directorate of Labor and Social Insurance, Directorate of Foreign Commerce, Directorate of Merchant navy, Office for Welfare, Office of Statistics, Surveys, and Studies, Personnel Department.

With art. 6 of the same *Decreto* n. 36/1954 the "*Presidenza di Zona*" // "Zone President" established by the AMG FTT with Order No. 36/1948 changed name to *"Prefettura - Servizi amministrativi"* // "Prefect Office - Administration Services," held by a *Viceprefetto* // Deputy Prefect. This means the Office is not a *Prefettura* of the Italian Republic, but a special body for the temporary civil administration of the Free Territory of Trieste.

Being a civil officer, the Commissioner General does not exercise his normative powers with Military Orders, but with Decrees having the rank of legislative measures, either by issuing own legislation of by extending to the Free Territory Italian laws - with or without adjustments - through their publication on the *Bollettino Ufficiale*.

This is how the Free Territory came to have a "parallel legislation" respect to that of the Italian Republic, shares part of its legal instruments and structures, which therefore are in force *utraque lege*, however, this "parallel legislation" embodies the jurisdiction of another State entrusted to the temporary civil administration of the Italian Government itself, therefore it is enforced by publication in its own *Bollettino Ufficiale* // Official Bulletin, not on the *Gazzetta Ufficiale della Repubblica Italiana* // Official Gazette of the Italian Republic (see following point M).

Although for this reason the norms of the two legislation may largely coincide, they remain different by State sources of law, fundamental laws, and purposes.

For the same reason, the formal extension of an Italian law to the legal system of the administered Free Territory is not enough to make it enforceable. For instances, the parts that conflict with fundamental norms of the legal order of the administered Free Territory remain unenforceable.

The Commissioner General was therefore provided (like the AMG FTT before) also with an *Ufficio Affari Legali* // Legal Affairs Office, supported with a *Commissione Legislativa* // Legislative Commission.

As for implications of the acts of the Commissioner General regarding relations of the Free Territory of Trieste with the Italian Republic and with other States on foreign affairs, the previous Italian Diplomatic Mission in the Free Territory, once working as an Embassy, was substituted with an *Ufficio di Collegamento del Ministero degli Affari Esteri italiano con il Commissario Generale del Governo italiano per il Territorio di Trieste* // Liaison Office of the Italian Minister of Foreign Relations respect to the Commissioner General of the Italian Government for the Territory of Trieste.

This Office was therefore in charge of acting as Diplomatic Mission of the Italian Republic in the administered Free Territory, while the representation of the Free Territory in foreign relations remained entrusted to the offices of the Italian Government's Ministry of Foreign Affairs by virtue of its role of temporary, administering civil Government of the Free Territory of Trieste as well.

3.2. Presidenza del Consiglio dei Ministri, Circolare 29 ottobre 1954 // Circular Letter of the Italian Presidency of the Council of Ministers of 29 October 1954 (*Bollettino Ufficiale del Ministero dell'Interno n. 12 – Dicembre 1954, p. 639* // Official Bulletin of the Italian Minister of the Interior No. 12 – December 1954, page 639) establishes the official relations between bodies of the temporary civil administration entrusted to the responsibility of the Italian Government.

The circular letter explains to the bodies of the Italian Republic that the structure for the exercise of the special trusteeship sub-mandate over the Free Territory is separate from that of the Italian State, it is placed under the direct authority of the Italian *Presidente del Consiglio* // President of the Council of Ministers (*Premier*) as Head of the administering Italian Government, as well as being managed by the Commissioner of the Government and consisting in State employees provided by the Italian Republic to take care of those responsibilities:

«*Con Decreto del Presidente della Repubblica in data 27 ottobre 1954, il Prefetto dott. Giovani Palamara è stato nominato Commissario generale del Governo, alla diretta dipendenza del Presidente del Consiglio dei Ministri, per il territorio di Trieste posto sotto la responsabilità del Governo Italiano, con i poteri spettanti al Governo medesimo per l'amministrazione del territorio, nonché con i poteri già in esso esercitati dal cessato Governo Militare Alleato.*

Spetta, tra l'altro, al Commissario generale l'alta direzione dei servizi statali e la vigilanza sui servizi locali, nonché il mantenimento dell'ordine pubblico nel territorio amministrato.

È pertanto posto a sua disposizione il personale statale occorrente nel territorio medesimo.

I Ministri e le altre Autorità della Repubblica possono corrispondere direttamente con il Commissario Generale per gli affari di amministrazione ordinaria riguardanti il territorio. Quando invece si tratti di affari di straordinaria amministrazione o di problemi concernenti l'estensione dell'ordinamento giuridico, i Ministri competenti sottoporranno le loro proposte al Presidente del Consiglio, che si riserva di dare le opportune istruzioni e comunicazioni al Commissario generale del Governo, sentito ove occorre il Consiglio dei Ministri.

In ogni caso le iniziative dei singoli Ministri saranno tempestivamente comunicate a questa Presidenza, ai fini del necessario coordinamento.»

«On 27 October 1954, with a Decree of the President of the Italian Republic, Prefect Dr. Giovanni Palamara was appointed Commissioner General of the Government, who reports directly to the President of the Council of Italian Ministers, for the territory of Trieste placed under the responsibility of the Italian Government, receiving the powers entrusted to the same Government to administer the territory, as well as entrusted with the powers already exercised by the former Allied Military Government.

Also, the Commissioner General is invested with the high direction of State services and on surveillance over local services, as well as with granting law and order in the administered territory.

Therefore, he is provided with the State employees needed in said territory.

Ministries, and other Authorities of the Republic, can correspond with the Commissioner General directly in regard to all matters of ordinary administration that involve the territory. However, then the matter regards extraordinary administration, or problems regarding the extension of legislation, the competent Ministers shall submit their proposals to the President of the Council of Ministers, who reserves to provide proper instructions or communications to the Commissioner General of the Government, upon hearing the Council of the Ministers, when appropriate.

Anyways, the initiative of individual Ministers shall be promptly submit to this Presidency, to ensure the necessary coordination.»

3.3. Legge 27 giugno 1955, n. 514 - *Attribuzioni del Commissario generale dei Governo per il Territorio di Trieste per la gestione dei fondi di bilancio destinati alle esigenze del Territorio medesimo* // Powers of the Commissioner General of the Government for the Territory of Trieste for the management of the budgetary funds destined to the needs of the same Territory (G.U. 30.6.1955, n. 148).

Italian Law 514/1955 enforces art. 2 of DlgsCPS 1430/1947 ruling that the Commissioner General, appointed by decree of the Head of State, can dispose of their own budgetary administration funds by derogation from the limitations established by Italian laws in force:

Art. 1 «[...] *il Commissario generale del Governo per il Territorio di Trieste è autorizzato a disporre con propri decreti, nei limiti dei fondi appositamente stanziati nei bilanci delle Amministrazioni interessate, spese per il funzionamento dei servizi statali e commissariali sulla base dell'ordinamento già in atto, nonché per lavori pubblici, per interventi di carattere economico, sociale ed assistenziale e per erogazioni di contributi ad Enti ed Istituzioni del Territorio stesso anche in deroga alle vigenti leggi italiane. In deroga all'art. 56 del regio decreto 18 novembre 1923, n. 2440, e successive modificazioni, le somministrazioni dei fondi di cui al precedente comma verranno effettuate mediante aperture di credito senza alcun limite di somma. Tali aperture di*

credito, se rimaste in tutto od in parte inestinte alla fine dell'esercizio, potranno essere trasportate integralmente, o per la parte inestinta, al successivo esercizio finanziario. […] ». // «[...] the Commissioner General of the Government for the Territory of Trieste is authorized to ruse, with own Decrees and within the existing budgets of the concerned Administrations, expenditures for the operation of services of the State and of the Commissarial Office on the base of the legal order already in force, as well as for public works, for economic and social measures, including welfare, and also to provide contributions to Bodies and Authorities of the same Territory, by derogation from Italian Law. Also, by derogation from art. 56 of Italian Royal Decree No. 2440 of 18 November 1923, and amendments, the funds referred in the previous paragraphs shall be granted through credit facilities and no limit on the amount of money that can be taken out. Those credit facilities, if partially or completely unassigned, may be completely - or for the unassigned part - transferred in the budget for the next financial year. […] ».

Note: This is the so-called "*Fondo Trieste*" // "Fund for Trieste Zone", which masked the elimination of the administered Free Territory's own separate budget, transforming it into the granting of special funds. The truth is, the majority of the loans were actually U.S. funds for the Free Territory of Trieste. The Italian Royal Decree No. 2440 of 18 November 1923 mentioned in the law regards provisions for the administration of the assets and general accounting of the Italian State.

3.4. Legge costituzionale (L. cost) 31 gennaio 1963, n. 1 // Italian Constitutional Law No. 1 of 31 January 1963 – *Statuto speciale della Regione Friuli Venezia Giulia* // Special Statute of Region Friuli Venezia Giulia (G.U. 1 febbraio 1963, n. 29), **art. 1, art. 2 first paragraph, art. 4 and art. 70**, which confirms, on the Constitutional level, the powers of the Commissioner General as for the temporary civil administration of the Free Territory of Trieste, splitting their exercise between three new bodies established by the same Italian Law: a *Commissario del Governo nella Regione Friuli Venezia Giulia* // Commissioner General of the Government in Region Friuli Venezia Giulia, a *Prefetto di Trieste* // Prefect of Trieste, and Region Friuli Venezia Giulia itself.

Art. 1 of L.cost. 1/1963 establishes *Regione autonoma a statuto speciale Friuli Venezia Giulia* // Autonomous Region Friuli Venezia Giulia, governed by a special Statute «*entro l'unità della Repubblica italiana, una e indivisibile, sulla base dei principi della Costituzione*» // «within the unity of the Italian Republic, one and indivisible, on the bases of the principles of the Italian Constitution» which, for the reasons analyzed above, do not include the Free Territory of Trieste within the sovereign territory of the Italian State, in which the name "*Venezia Giulia*" only refers to the Italian Province of Gorizia.

The exclusion of the Free Territory of Trieste from the sovereign territory of the Italian State by virtue of the Italian Constitution is confirmed by the very legal fact that Italian Constitutional Law 1/1963 came into force in the Italian provinces of Udine and of Gorizia by virtue of its publication in the *Gazzetta Ufficiale della Repubblica Italiana* n. 29 dei 1 febbraio 1963 // Official Gazette of the Italian Republic No.29 of 1 February 1963, while in the administered Free Territory it came into force the following month, by virtue of its publication in the *Bollettino Ufficiale del Commissariato Generale del Governo italiano per il Territorio di Trieste dell'11 marzo 1963, n. 7* // Official Bulletin of the Commissioner General of the Italian Government for the Territory of Trieste No.7 of 11 March 1963, in the category of "*provvedimenti aventi direttamente vigore*" //

"*regulatory measures enforced directly*" in the Free Territory, which means, they did not need further adjustments or amendments [s.Arch.doc.].

Therefore, Italian *Legge Costituzionale* 1/1963 is itself one of the regulatory measures that are enforced, with different legal titles and effects, in both jurisdictions of State, since and as long as it regards any of them, as provided by specific norms.

Art. 2. first paragraph of the same Constitutional Law includes in the area administered by the newly established Region Friuli Venezia Giulia, together with the Italian Provinces of Gorizia and of Udine (and, since 1968, also with the Province of Pordenone), also "*i Comuni di Trieste Duino-Aurisina, Monrupino, Muggia, San Dorligo della Valle e Sgonico*" // "the Municipalities of Trieste, Duino-Aurisina, Monrupino, Muggia, San Dorligo della Valle and Sgonico" which, instead, belong to the Free Territory of Trieste, entrusted to the responsibility of the administering Italian Government.

Consequently, their inclusion is of administrative nature alone, and this is possible just because Italian Regions are territorial bodies with no sovereignty.

The legal nature of this administrative inclusion did not change with the amendment, under **Legge cost. 28 luglio 2016 n. 1** // Italian Constitutional Law No. 1 of 28 July 2016 of the names of the Municipalities of the Free Territory with the name of the *"Provincia di Trieste"* // "Province of Trieste".

For instance, this name refers to the *"Provincia di Trieste"* established by the AMG FTT as «autonomous body» (*ente autarchico*) of the Free Territory of Trieste with Order No. 259 of 25 June 1948 - Local Government [s.Arch.doc.] and cannot be transformed into a Province of the Italian Republic, because its sovereignty over that territory ended on 15 September 1947.

Art. 4 establishes the matters in to fall under the Region's legislative authority «*In armonia con la Costituzione, con i principi generali dell'ordinamento giuridico dello Stato»* (now amended to: "*della Repubblica*") *«e con gli obblighi internazionali dello Stato» //* «In harmony with the Constitution, with the general principles of the State's legal order» (now amended to: "of the Italian Republic") «and with the international obligations of the State», and therefore also with the obligation to comply with the high-ranking, bounding provisions of the Italian legal order that recognize the obligations of both the Italian Government and of the Italian Republic respect to Free Territory of Trieste.

Art. 70 of Italian Constitutional Law 1/1963 confirms and enforces with a law of Constitutional level the international obligations regarding the special trusteeship mandate over the Free Territory of Trieste, which the Government has undertaken and are enforced under *DPR 27 ottobre 1954* // Decree of the President of the Italian Republic of 27 October 1954, additionally, their exercise is split between three new bodies established under the same law: «*Fino a quando non sarà diversamente disposto con legge della Repubblica, i poteri di amministrazione del Commissario generale del Governo per il territorio di Trieste - esclusi quelli spettanti al Prefetto e quelli trasferiti alla Regione - saranno esercitati dal Commissario del Governo nella Regione.» //* «Until otherwise provided with a Law of the Republic, the administrative powers entrusted to the Commissioner General 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 Commissioner of the Government in the Region» who does also

receive «*le attribuzioni della legge 27 giugno 1955, n. 514, e successive proroghe, per la gestione dei fondi di bilancio destinati alle esigenze del predetto territorio*» // «the powers listed in Italian Law No. 514 of 27 June 1955, and in its amendments, regarding the management of budgetary funds destined to that territory».

This means that legal act does not repeal, reduce, of amend the administrative powers entrusted to the Commissioner of the Government under DPR 27.10.1954, which do only depend on the source of law that has established them, rather, it confirms them on a Constitutional level, and splits their exercise among three new bodies.

As explained within DPR 27.10.1954 itself, those *"poteri di amministrazione"* // "the administrative powers" include all normative, legislative, administrative, and judicial powers previously exercised by the AMG FTT.

All three bodies – Commissioner of the Government, Prefect, Region Friuli Venezia Giulia – are therefore entrusted, under Constitutional constrain, to exercise only the Commissarial powers precisely identified and regulated by international obligations, which prevail over Italian national laws, without possibility or discretionally to modify, interpret, or discard them.

The partition of those powers under art. 70 of Italian Constitutional Law 1/1963 entrusts the Region (thus to Regional authorities) only the exercise of the normative and administrative powers already under its competence, established at art. 4 of the same law and of its successive amendments, which, yet, in the administered Free Territory are ultimately subject to the prevailing obligations established by the 1947 Treaty of Peace and by the 1954 Memorandum of Understanding.

In particular, the ordinary powers of Italian Region Friuli Venezia Giulia over the ports and over the maritime State Property in the Italian Provinces of Gorizia and of Udine can only be exercised in the administers Free Territory of Trieste with the limitations established by the prevailing provisions at Annex VI (art. 34), at Annex VIII (Arts. 2 and 3.1), and at Annex X (Art. 1) of the Treaty of Peace, enforced under Italian DlgsCPS 1430/1947 and under art. 5 of the Memorandum of Understanding regarding the Free Territory of Trieste, enforced with DPR 27.10.1954.

On the contrary, the newly established *Prefetto* of Trieste has both the ordinary competences and powers of Prefects within the Italian Government system: supervising local authorities, ensuring public safety, public order, and civil security, which were previously exercised by the Commissioner of the Government as well.

The Commissioner of the Government in the Region does therefore maintain the exercise of all other normative and administrative special powers of the Commissioner General, including also the exclusive authority to appoint the *Direttore del porto franco* // Director of the Free Port, to expand the international Free Port, and to allow the settlement of new industrial plants within its boundaries.

At this time (2021) the main instrument enforcing the regime of the international Free Port of Trieste within the exercise of the Italian special trusteeship mandate is itself **Decreto n. 29/1955** // Decree No. 29/1955 of the Commissioner General of the Government, in compliance with the obligations at art. 5 of the 1954 Memorandum of Understanding, not Port Legislation of the Italian Republic, which do therefore limit themselves to acknowledge the inviolability of the legal status of the Free Port of Trieste and the competences of the administering Italian Government as for the organization of its management (in particular, see art. 5 of Italian *Legge 28 gennaio*

1994, n. 84 and the consequent *Decreto interministeriale 13 luglio 2017 sulla gestione amministrativa dei punti franchi* // Interministerial decree about the administrative management of the free zones).

This means the Commissioner of the Government in Region Friuli Venezia Giulia and the Region itself exercise two different legal functions: ordinary ones over the Italian Provinces of Gorizia, Udine and Pordenone, but special functions of temporary civil administration over the Free Territory of Trieste, on behalf of the Italian Government which was entrusted with them under the 1954 Memorandum of Understanding.

For those reasons, all acts and legislative or administrative measures of the Commissioner of the Government in the Region, and those of the Region itself, as well as parts of the same acts, regarding the Free Territory of Trieste or enforced in it, like those of the Commissioner General they have substituted, constitute forms of exercise of the sovereignty of the Free Territory under special trusteeship mandate, not forms of exercise of the sovereignty of the Italian Republic.

On the contrary, the newly established *Prefetto di Trieste* exercises their powers only within the Free Territory of Trieste (its *"Provincia di Trieste"* being a body established in 1948: see previous point B.6 - note), with the authority of the temporary civil administration entrusted to the Italian Government. This means that also the acts of the existing Prefect of Trieste are acts that do exclusively exercise, in matters under their competences, the sovereignty of the Free Territory entrusted to the responsibility of the Italian Government.

Also, this is the reason why the office of Prefect of Trieste is different from that of Prefects acting within the sovereign territory of the Italian Republic, and it has no legal continuity with the Prefects of the Italian Kingdom, which existed in Trieste from 26.10.1922 to 8 September 1943. Indeed, the *Prefetto di Trieste* // Prefect of Trieste has legal continuity with the "*Presidenza di Zona*" // "Zone President" of the Free Territory of Trieste established by the AMG FTT with Order No. 259/1948 and renamed *"Prefettura-Servizi amministrativi"* // "Prefect office - administrative services" of the Commissioner General of the Government with Decree No. 36/1954 [s.Arch.doc.].

The Offices of the Commissioner of the Government in the Region and the Prefect became effective on 23 May 1964, when they were entrusted to the same Officer under **DPR 23 maggio 1964 (s.n.)** // Decree of the President of the Italian Republic of 23 May 1964 (without number) - *Nomina del Commissario del Governo nella Regione Friuli – Venezia Giulia con incarico delle funzioni di Prefetto di Trieste* // Appointment of the Commissioner of the Government in Region Friuli – Venezia Giulia with the authority and functions of Prefect of Trieste. The Regional administration took office on 26 May 1964, following the first regional elections.

As for the hierarchy of the responsibilities arising from the exercise of the temporary civil administration of the Free Territory of Trieste through the authority of the Commissioner General, both the new Commissioner of the Government - Prefect and the Region itself are responsible for it to the President of the Council of Ministers of the Italian Government, which is entrusted with both the special trusteeship mandate for the sub-administration of the Free Territory and of the coercive powers on its Commissioner and on the Prefect in the Region in this regard.

Indeed, both the Commissioner and on the Prefect are appointed by the administering Italian Government, which under the Italian Constitution has the authority (art. 120 of the Italian Constitution) to act for bodies of the Region if it fails to comply with international obligations.

When it comes to the exercise of that special trusteeship mandate, the Italian Government, represented by the President of its Council of Ministers, does therefore remain the direct responsible authority respect to the people, the enterprises, and the administered State, the Free Territory itself, but also respect to the Governments of the United States and of the United Kingdom for their role of primary administrators, as well as respect to all other States, entitles with general or special rights over the international Free Port of the Free Territory of Trieste, and respect to their enterprises.

4. D.P.R. 23 gennaio 1965, n. 99 - *Norme di attuazione dello Statuto speciale della Regione Friuli - Venezia Giulia relative al Commissario del Governo nella Regione* // Provisions for the enforcement of the Special Statute of Region Friuli - Venezia Giulia regarding the Commissioner of the Government in the Region (G.U. 9.3.1965, n. 60), which establish the functions, compensations, personnel, and cover expenses of the Commissioner and of their Offices, including in relation to the special provisions of art. 70 of the Italian Constitutional Law 1/1963. Also, art. 6 of DPR 99/1975 rules that the measures taken by the Commissioner of the Government are final.

Contrarily to the Offices of the Commissioner of the Italian Government in other border Regions with a Special Statute (Trentino-Südtirol, Vallée d'Aoste), the Office of the Commissioner of the Italian Government in Region Friuli Venezia Giulia, who does also exercise the administration of the Free Territory of Trieste, receives indemnities and reimbursement of expenses for missions abroad, which are registered in the budgets.

5. Decreto del Presidente del Consiglio dei Ministri 29 ottobre 1965 // Decree of the President of the Italian Council of Ministers of 29 October 1965 – *Composizione dell'ufficio del Commissario del Governo nella Regione Friuli-Venezia Giulia e contingente del personale per il funzionamento dell'ufficio stesso* // Composition of the Office of the Commissioner of the Italian Government in Region Friuli-Venezia Giulia and review of the personnel needed for the functioning of the same office (G.U. 4 dicembre 1965, n. 303).

This decree is issued by the President of the Italian Council of Ministers in the roles of head of the Italian Government, entrusted with the temporary civil administration of the Free Territory of Trieste, and of head of the Government of the Italian Republic, which provides the personnel needed for the exercise of this administration (see previous *Circolare 29 ottobre 1954* // Circular Letter of 29 October 1954, a transcript is included hereafter).

The provisions of the decree distinguish the ordinary powers exercised by the Commissioner over the Italian sovereign territory of the Region (Provinces of Gorizia, Udine, and later also Pordenone), from the special powers for the administration of the Free Territory, exercised with the authority of the Commissioner General, which prevails on the others, as visible also from the number of employees destined to it: 540, the ordinary powers employing just 35 people.

Art. 1 of the decree, for instance, defines the ordinary structure of the Office of the Commissioner in the Region, providing it with: *Ufficio di Gabinetto, Divisione affari generali e legali, Divisione affari civili, Divisione affari economico-sociali* // Cabinet Office, Legal and General Affairs Division, Civil Affairs Division, Socio-Economic Affairs employing a total 35 people as both executives and accountants;

Arts. 3 and 4 redefine the previous structure of local Government under the Commissioner General establishing, «*per l'esercizio dei particolari poteri di amministrazione attribuiti dall'art. 70 dello Statuto speciale della Regione, approvato con legge costituzionale 31 gennaio 1963, n. 1*» // «for the purpose of exercising the special administration powers entrusted under art. 70 of the Special Statute of the Region, approved with Italian Constitutional Law No.1 of 21 January 1963» a «*Divisione per le attribuzioni amministrative, relative al Territorio di Trieste*» // «Division for administrative structures of the Territory of Trieste», which includes the functions of the previous bodies of the Commissioner General, except for public works, now entrusted to a new, specific «*Divisione lavori, relativi al Territorio di Trieste*» // «Public works division, regarding the Territory of Trieste».

To fulfill these functions, the two Divisions were given a total of 540 employees with a special role, established with **Legge 22 dicembre 1960, n. 600** // Italian Law No. 600 of 22 December 1960 - *Norme per la sistemazione del personale assunto dal Governo militare alleato nel Territorio di Trieste* // Provisions for the accommodation of the staff hired by the Allied Military Government in the Territory of Trieste.

6. Decreto del Presidente del Consiglio dei Ministri 29 ottobre 1965 // Decree of the President of the Council of Ministers of 29 October 1965 – *Composizione dell'ufficio del Commissario del Governo nella Regione Friuli-Venezia Giulia e contingente del personale per il funzionamento dell'ufficio stesso* // Composition of the Office of the Commissioner of the Government in Region Friuli-Venezia Giulia and review of the personnel for the well-administration of the Office itself (G.U. 4 dicembre 1965, n. 303).

7. Decreto del Presidente del Consiglio dei Ministri 29 dicembre 1974 // Decree of the President of the Council of Ministers of 29 December 1974 – *Determinazione del contingente del personale da utilizzare nell'ufficio del Commissario del Governo nella Regione Friuli-Venezia Giulia* // Review of the personnel to be assigned to the Office of the Commissioner of the Government in Region Friuli-Venezia Giulia, which changes the number of employees assigned to the Commissioner of the Government: from 35 to 30 when it comes to ordinary functions and from 540 to 350 for the exercise of the functions related to the administered Territory of Trieste.

Note: for all the reasons documented and presented on this matter, and as confirmed by the normative measures listed below, the opinion that the "administration" powers of the Free Territory, the exercise of which is entrusted to the Commissioner in the Region and to the Region itself under Italian Constitutional Law are merely administrative and not also legislative is unfounded, in law and in fact.

H. Italian laws ratifying and enforcing in the Italian legal system international treaties that codify the generally recognized principles of international law (art. 10 primo comma Cost.) and of the consequent international obligations (art. 117 first paragraph, and art. 120 second paragraph of the Italian Constitution).

In particular, this refers to the Charter of the United Nations, the Vienna Convention on the Law of Treaties and international Covenants regarding human rights, including self-determination, adopted by the United Nations General Assembly on 16 December 1966 and in force since 3 January and 28 March 1976 respectively.

1. **Legge 17 agosto 1957 n. 848** - *Esecuzione dello Statuto delle Nazioni Unite, firmato a San Francisco il 26 giugno 1945* // Enforcement of the Charter of the United Nations, signed at San Francisco on 26 June 1945, (G.U. 25.91957, n. 238 – S.O., n. 2380), this includes the Statute of the International Court of Justice.

The Charter of the United Nations is a multilateral Treaty and its provisions rank higher and are bounding in both international law and national law of its signatory States by virtue of its art. 103: «*In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.*»

Note: Italy had applied to become a UN Member States on 7 May 1947. Its application was repeatedly rejected, and ultimately accepted only on 14 December 1955. The consequent obligations of the Italian Republic do therefore start from that date, and its undertaking of said obligations was confirmed by the Italian Republic with a *Dichiarazione formale* // Official Declaration of its Ministry of Foreign Affairs on 22 February 1956 (UNTS Vol. 231, No. 3217).

2. **Legge 12 febbraio 1974, n. 112** - *Ratifica ed esecuzione della Convenzione sul diritto dei trattati, con annesso, adottata a Vienna il 23 maggio 1969* // Ratification and enforcement of the Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969. (G.U. 30 aprile 1974, n. 111- S.O.), which came into force on 27 January 1980.

The 1969 Vienna Convention is a multilateral Treaty that codified general customary rules of international law regarding the formation, validity, and legal efficacy of international Treaties.

I. Instruments that extend to the legal order of the Italian Republic the acts that recognize, in international, European, and pre-European organizations acts that recognize the Free Territory of Trieste as member State and of the obligations of temporary civil administration and international representation, entrusted to the Italian Government

From 1948, the present-day Free Territory of Trieste became a Member State of many international and pre-European Union organizations, like the ERP, the OEEC-OECE (now OECD - OCSE), the EPU-UEP, the ECMT-CEMT, the ICEM, and the ICPO (Interpol), WHO (World Health Organization) in which it was represented by its provisional British-United States Government (AMG FTT).

Note: in acts of these and other international organizations, the Free Territory of Trieste is directly listed among sovereign States, unlike Germany, that initially was included under the names of its 1945-1949 occupation zones, the “Anglo-American Bizone (Germany)” and the “French Zone (Germany)”.

The obligations deriving from agreements that established or modified those international or European organizations were implemented in the Italian legal system by the respective laws that ratified and enforced them.

Since 1955, the same organizations did also take notice of the different forms of the succession, since 1954, of the Italian Government to the AMG FTT in the exercise of the temporary civil administration and in the international representation of the present-day Free Territory of Trieste:

– including joint declarations in general agreements ratified and enforced also by Italy;
– by taking more of the specific, official communications of the Italian Government itself.

Both formulas declare the succession of the administering Italian Government to the AMG FTT, as well ad the consequent commitment of the Italian State's Diplomatic Representatives to exercise also the representation of State of the administered Free Territory. See, *partes pro toto*, the cases of the ERP, of the OEEC, of the EPU, and of the ECMT:

1. **European Recovery Program – ERP**

The European Recovery Program - ERP ("Marshall Plan"), undersigned by the first Member States on 16 April 1948, is the United States plan for European reconstruction after World War II, and the Free Territory of Trieste governed by the AMG FTT was one of its 18 Member States, with the same rank as Italy.

Note: As part of ERP membership, on 29.7.1953 the Free Territory of Trieste undersigned also a Memorandum of Understanding with the M.S.A. - Mutual Security Agency, which in 1951 had absorbed the E.C.A. - Economic Cooperation Administration.

All ERP Member States received aid from the United States: 14% was a loan, 86% was free, also, the revenues from the sale of goods comprised in the free aid were to be deposited in a counterpart fund ("*fondo di contropartita*" in Italian) destined to the economic development of the Country.

For this reason, the first bilateral agreement signed by the Italian Government acting also as representative of the administered Free Territory in foreign relations is the **Exchange of letters constituting an Agreement between the United States of America and Italy regarding to the use of the Counterpart Funds in Trieste. Signed at Rome, 11 February 1955** (UNTS Vol. 241, No. 3426).

The agreement regards the management of ERP funds for the Free Territory, it is stipulated with «the appropriate authority for Trieste, since October 26, 1954, the Government of Italy as successor to the Allied Military Government» and it declares the right of the United States Government to control the continuation of the management of funds for the development of the Free Territory directly, also requiring their approval for their eventual use for other purposes.

The management of ERP funds for Trieste in complicate with the aforementioned 1955 agreement between the administering Italian Government and the United States was implemented in the Italian legal order with **Legge 18 ottobre 1955, n. 908** – *Costituzione del Fondo di rotazione per iniziative economiche nel Territorio di Trieste e nella Provincia di Gorizia* // Establishment of the Revolving fund for economic initiatives in the Territory of Trieste and in the Province of Gorizia (G.U. 22.10.1955) continued until its liquidation with ***Decreto 22 ottobre 1993 del Ministero del Tesoro***

italiano // Decree of the Italian Ministry of Treasure without number of 22 October 1993 (G.U. 18.11.1993, n. 271).

2. **OEEC – OECE, now OECD – OSCE**

The Organisation for European Economic Cooperation (OEEC-OECE, now OECD-OCSE) was established on 16 April 1948 between Austria, Belgium, Denmark, France, Ireland, Iceland, Italy, Luxembourg, Norway, The Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, French and British-United States Occupation Zones of Germany, and Turkey, with the successive adhesions, of the present-day Free Territory of Trieste and the Federal Republic of Germany on 19 October 1948, and that of Spain on 20 July 1959.

The Italian legal order has fully implemented the obligations of OEEC-OECE membership with **LEGGE 4 agosto 1948, n. 1107 -** *Ratifica ed esecutorietà degli Accordi internazionali firmati a Parigi il 16 aprile 1948 (Cooperazione economica europea)* // Ratification and enforcement of the International Agreements signed in Paris on 16 April 1948 (European Economic Cooperation) (G.U. 21.8.1948, n. 194 – S.O.).

The main acts of the OEEC-OECE regarding the Free Territory of Trieste as Member State [s.Arch.doc.] are collected under the titles «*Delegation Trieste»* and *«OEEC 319»,* because, after obtaining the inclusion of the del Free Territory in the OEEC-OECE, the AMG FTT had established the "*Delegation of the Free Territory of Trieste to the Convention for European Economic Co-Operation"* in Paris*,* which had its own office and residing personnel until 1952, when representatives of the Free Territory started attending the meetings of OEEC-OECE Ministers and other meetings of the organization from time to time, without permanently residing in Paris to save on expenditures. It results from the documents that:

– on 26 October 1954, the AMG FTT informs the OEEC-OECE of the sub-entrustment of temporary civil administration of the Free Territory of Trieste to the Italian Government, and therefore of the duty to represent it before the Organization;

– with protocol note C(55) of 22 November 1954, the Italian Government declares that, by making over the administration of the «*British-United States Zone of the Free Territory of Trieste*» it would also take over «*the responsibility for that area vis-a-vis the Organisation*» however «*within the framework of Italy's representation*»;

– with confidential protocol note CES/354 of 22 January 1955 the OEEC-OECE Secretary-General informs the Council of the Organization that, consequently, «*Pour toutes les questions d'ordre pratique intéressant cette Organisation, l'Italie se substituera à la Zone Anglo-Américaine*» // «for all practical questions regarding this Organization, Italy shall substitute the British-United States Zone» and «*la Zone n'apparaitra plus comme telle dans les documents de l'Organization ni dans la liste des ses Membres*.» // «the Zone won't appear as such in the documents of the Organization, nor in the list of its Member States.»;

– with protocol note 55/3340 of 10 February 1955, the Legal Service of the OEEC-OECE confirms not only what states above, but also that from the communications of the Commander of the «*Zone Anglo-Américaine du Territoire Libre de Trieste*» // «British-United States Zone of the Free Territory of Trieste» and of the Italian Government, it results that «*l'Italie assumera désormais les droits et obligations de la Zone Anglo-Américaine du Territoire Libre de Trieste envers l'Organization*» // «From

this moment, Italy undertakes the rights and obligations of the British-United States Zone of the Free Territory of Trieste respect to the Organization» including paying the contributions to the same Organization and the distrubution of the remaining assets of the EPU-UEP (European Payments Union) «*au titre de cette Zone*» // «on behalf of this Zone».

Those international relations and obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste remained unchanged when the OEEC-OECE became the present-day OECD-OCSE, which does also include Canada and the United States of America, as implemented in the Italian Legal system with **LEGGE 28 marzo 1962, n. 232** - *Accordi istitutivi l'Organizzazione per la cooperazione e lo sviluppo economici, firmati a Parigi il 14 dicembre 1960* // Ratification and enforcement of the Convention on the Organisation for Economic Co-operation and Development, signed in Paris on 14 December 1960 (G.U. 18 maggio 1962, n. 126).

3. **European Payments Union - EPU - UEP**

The European Payments Union (EPU-UEP) is the first European Monetary Fund established on 19 September 1950 with an Agreement between the 18 Member States of the OEEC-OECE, including the present-day Free Territory of Trieste represented by its first Provisional Government, the AMG FTT.

The agreement, and all consequent acts of the Organization, including those that recognize the present-day Free Territory as a Member State, were implemented in the legal order of the Italian Republic with **Legge 8 luglio 1950, n. 934** - *Ratifica ed esecuzione dell'Accordo internazionale di pagamenti e di compensazioni tra i Paesi europei e del Protocollo per l'applicazione provvisoria dell'Accordo suddetto, firmati a Parigi il 16 ottobre 1948, nonché del Protocollo addizionale n. 2 firmato a Parigi il 31 marzo 1949* // Ratification and enforcement of the Agreement for Intra-European Payments and Compensation, and of the Protocol for the provisional enforcement of the same Agreement , concluded at Paris on 16 October 1948, as well as of Additional Protocol No. 2 concluded at Paris on 31 March 1949 (G.U. 4 dicembre 1950, n. 278 – S.O.).

Following the succession, since 1954, of the Italian Government to the AMG FTT in the exercise of the temporary civil administration of the present-day Free Territory of Trieste, the Governments of the other 17 Member States, including Italy, have included always in the premises of the Additional Protocol that amends the Agreement (1956, 1957, 1958) an identical formula taking note of this succession and of the consequent international obligations of the Italian Government:

«*Recalling that by virtue of a Memorandum of Understanding between the Governments of Italy, the United Kingdom, the United States and Yugoslavia regarding the Free Territory of Trieste, initialled in London on 5th October, 1954, the Allied Military Government of the British-United States Zone of the Free Territory of Trieste was terminated as from 26th October, 1954, and that by virtue of that Memorandum of Understanding the Italian Government took over, as from the same date, the administration of the territory the responsibility for which is entrusted to it by that Memorandum of understanding*.»

«*Rappelant qu'en vertu d'un Mémorandum d'Accord entre les Gouvernements d'Italie, du Royaume Uni, des Etats Unis et de Yougoslavie concernant le Territoire Libre de Trieste, paraphé a Londres le 5 octobre 1954, le Gouvenement Militaire Allié de la Zone anglo-americaine du Territoire Libre de Trieste a eté supprimé à dater du 26 octobre 1954, et qu'en vertu du dit Mémorandum d'Accord, le Gouvernement italien a pris en charge, a compter de la même date, l'administration du territoire dont la responsabilité lui est confiée par le Mémorandum d'Accord.*»

The Italian Republic has therefore implemented in its own legal system those obligations of the Italian Government also with effects for the representation of the Free Territory of Trieste in foreign relations with the following laws ratifying and implementing Protocols to the Treaty:

– Legge 2 dicembre 1960, n. 1620 - *Ratifica ed esecuzione del Protocollo addizionale n. 8 che apporta emendamenti all'Accordo per l'istituzione di una Unione europea di pagamenti del 19 settembre 1950, firmato a Parigi il 29 giugno 1956* // Ratification and enforcement of Additional Protocol No. 8 holding an amendment to the "Agreement on the establishment of a European Payments Union is signed in Paris on 19 September 1950", signed at Paris on 29 June 1957 (G.U. 7.1.1961, n. 5).
– Legge 2 dicembre 1960, n. 1636 - *Ratifica ed esecuzione del Protocollo addizionale n. 9 che apporta emendamenti all'Accordo per l'istituzione di una Unione Europea di pagamenti del 19 settembre 1950, firmato a Parigi il 28 giugno 1957* // Ratification and enforcement of Additional Protocol No. 9 holding an amendment to the "Agreement on the establishment of a European Payments Union is signed in Paris on 19 September 1950", signed at Paris on 29 June 1957 (G.U. 10.1.1961, n. 8).
– Legge 9 marzo 1961, n. 362 - *Ratifica ed esecuzione del Protocollo addizionale n. 10, firmato a Parigi il 27 giugno 1958, che apporta emendamenti all'Accordo del 19 settembre 1950 per la istituzione di una Unione europea di pagamenti* // Ratification and enforcement of Additional Protocol No. 10 holding an amendment to the "Agreement on the establishment of a European Payments Union, signed in Paris on 19 September 1950", signed at Paris on 27 June 1958 (G.U. 22.3.1961, n. 125).

4. **European Conference of Ministers of Transport - ECMT**

The European Conference of Ministers of Transport (ECMT-CEMT) was established on 17 October 1953 by the Federal German Republic, Austria, Belgium, Denmark, Spain, France, United Kingdom, Greece, Italy, Luxembourg, Norway, The Netherlands, Portugal, Sweden, Switzerland, Turkey, and the Free Territory of Trieste.

The consequent international obligations, including those in respect to the Free Territory of Trieste, are recognized and implemented in the Italian legal order with **Legge 9 marzo 1955, n. 224** - *Approvazione ed esecuzione del Protocollo relativo alla Conferenza europea dei Ministri dei trasporti, firmato a Bruxelles il 17 ottobre 1953* // Approval and enforcement of the Protocol regarding the European Conference of Ministers of Transport, signed in Brussels on 17 October 1953 (GU 14 aprile 1955, n. 86).

Among the main 1955-1991 acts of the ECMT-CEMT regarding the succession of the Italian Government and consequently in the exercise of international representation of the present-day Free Territory of Trieste there are:
– the First Report on the activities of the European Conference of Ministers of Transports of 15 June 1955 (Council of Europe *Conseil de l'Europe* – Parliamentary Assembly, Doc. 363, 15 June 1955) recording the succession of the administering Italian Government to the AMG FTT: «Since October, 1954, the section of the Free Territory of Trieste administered by Italy under the terms of the Memorandum of Understanding signed in London on 5th October, 1954 is represented by the Italian Delegation» [s.Arch.doc.];
− the consequent, successive, official mentioning, until 1991, of the Free Territory among Member States, but with its name in parentheses due to it being represented by the Delegation of another State (the Italian Delegation).

5. The present state of the international representation of the Free Territory of Trieste

After officially undertaking this responsibility, the Italian Government avoided to exercise the international representation of the present-day Free Territory of Trieste, however, it did not officially renounce it, because in that event the representation of the Free Territory in foreign relations would have automatically returned to its primary administrators, the Governments of the United States and of the United Kingdom.

To overcome the *impasse* caused by the administering Italian Government, on 16 September 2015 was established and activated the International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. as a provisional State organization, in the form of representation agency that acts upon direct delegation of the legal entities entitled, namely «*citizens, residents, enterprises and organizations of the Free Territory of Trieste and of other States, each of whom, as subject of private, public or international law empowers the I.P.R. F.T.T. to represent and defend in all institutional, diplomatic and legal instances their rights and legitimate interests*» [s.Arch.doc.].

J. Agreements about the establishment of the International Monetary Fund - IMF and of the General Agreement on Tariffs and Trade - GATT (now World Trade Organization – WTO)

The Italian Republic has also ratified and implemented in its legal order the Agreement that established the International Monetary Fund – IMF, signed on 27 December 1945, thus undertaking the deriving international obligations, with **Legge 23 marzo 1947, n. 132** - *Partecipazione dell'Italia agli Accordi sulla costituzione del Fondo monetario internazionale e della Banca internazionale per la ricostruzione e lo sviluppo* // Participation of Italy to the Agreements that establish the International Monetary Fund and the International Bank for Reconstruction and Development (G.U. 27.3.1947, n. 71 - S.O.).

The 1945 Agreement, at art. XI – Final Provisions, Section 2 – Signature, point (g): regards also cases of provisional or delegated exercise of sovereignty, which had arisen

or were to begin at the end of World War II: protectorate, military occupation, trusteeship mandates - both regular ones or special ones like that of the Free Territory of Trieste: «*By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, sovereignty, or authority, and all territories in respect of which they exercise a mandate.*»

When it comes to the Italian Republic, the provision became active in 1954, when the State received the trusteeship mandate over Somaliland by the United Nations, and later again in 1954, when the Italian Government was sub-entrusted with the special trusteeship mandate of temporary civil administration over the Free Territory of Trieste under the Memorandum of Understanding of London of 5 October 1954.

With **Legge 5 aprile 1950, n. 295** (G.U. 9.6.1950, n. 130 – S.O.) the Italian Republic accepted and enforced in its own legal system the provisions regarding customs duties and international trades established with the 1947 General Agreement on Tariffs and Trade – GATT, now substituted by the World Trade Organization – WTO, which do also include the obligations respect to the Free Territory of Trieste established at paragraph 3 of art. XXIV of the same Treaty, as amended with the Special Protocol signed at Havana on 24.3.1948: «*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.»*

K. Provisions and instruments of ratification and enforcement, in the Italian legal system, of European Treaties that include in the European Union's own legal system (ranking higher than domestic law under arts, 10 and 117 Cost.) also relations with the Free Territory of Trieste

The European Treaties ratified and implemented in the legal order of the Italian Republic, which under the Italian Constitution prevail over Italian national and regional law, comply with the generally recognized principles of international law, including the principle of inalterability of previous agreements undersigned by Member States, and the enforcement of Treaties and international Conventions, directly of upon request, also in territories that are represented in foreign relations by a Member State.

This means European Treaties cannot amend the international rights and obligations established under the Treaty of Peace with Italy of 10 February 1947 and of the instruments that enforce it, like the Memorandum of Understanding of 5 October 1954, nor can amend the consequent obligations respect to the Free Territory of Trieste and its international Free Port that were undertaken by its Member States, including the Italian Republic, which did therefore ratify and enforce those obligations in its own legal order under both pre and post Community Law (DlgsCPS 1430/1947 ratified with L. 3054/1952, DPR 27.10.1954, L. Cost. 1/1963, etc.).

Since under the Memorandum of Understanding of 5 October 1954 the Italian Government was sub-entrusted with the special trusteeship mandate of temporary civil administration over the present-day Free Territory of Trieste, which includes its representation in international relations, European Treaties can only be enforced in the administered Free Territory temporarily, and as long as they do not conflict with the

provisions of the Treaty of Peace with Italy of 10 February 1947 that establish the Free Territory and its international Free Port.

In particular, it is therefore legitimately enforcing in the present-day Free Territory of Trieste entrusted to the temporary civil administration of the Government of the Italian Republic the European Treaties or provisions that result in cessions of national sovereignty (territorial, legislative, monetary, fiscal, customs…) of the Free Territory, for the is expressly prohibited under att. 24.3 of Annex VI of the 1947 Treaty of Peace, or in violations of the regime of its international Free Port, established in the same Treaty.

In addition, to date (2021) the administering Italian Government has not yet taken care to stipulate Community agreements of Association and of Accession for the present-day Free Territory of Trieste, which therefore remain a non-member, not associated State, thus the treaties of the European Union can only be enforced there temporarily and with the above-mentioned limitations.

Those aspects of the legal status of the administered Free Territory of Trieste are recognized and enforced in the Italian legal order by the following Italian Ratification Laws of European Treaties:

1) Legge 25 giugno 1952, n. 766 - *Ratifica ed esecuzione dei seguenti Accordi internazionali firmati a Parigi il 18 aprile 1951: a) Trattato che istituisce la Comunità europea del carbone e dell'acciaio e relativi annessi; b) Protocollo sui privilegi e le immunità della Comunità; c) Protocollo sullo Statuto della Corte di giustizia; d) Protocollo sulle relazioni con il Consiglio d'Europa; e) Convenzione relativa alle disposizioni transitorie* // Ratification and enforcement of the following international agreements signed in Paris on 18 April 1951: a) Treaty establishing the European Coal and Steel Community with annexes; b) Protocol on the privileges and immunities of the European Union; c) Protocol on the Statute of the Court of Justice of the European Union; d) Protocol on relations with the Council of Europe; e) Convention on the transitional Provisions (G.U. 12 luglio 1952, n. 160, S.O.)

The Ratification Law of the Treaty establishing the European Coal and Steel Community (ECSC), expired on 23.7.2002, introduced in the Italian legal order also the European principle (article 10, first paragraph of the Italian Constitution), repeated in the Ratification Laws of successive European Treaties, that makes it possible enforcing a Treaty not only to the sovereign territory of the High Contracting Parties, but also to European territories whose foreign relations are assumed by a member State:

Art. 79: ***«Le present Traité est applicable aux Territoires européens des Hautes Parties Contractantes. Il s'applique également aux Territoires européens dont un État signataire assume les relations extérieurs […].»*** // **«The present Treaty is applicable to the European territories of the member States. It is also applicable to those European territories whose foreign relations are assumed by a member State […].»**

The enforcement of this provision under European and Italian law, starting with the ECSC Treaty on 21 December 1954, to the present-day Free Territory of Trieste as sovereign State under provisional administration of the Italian Government is proved by

acts 001 to 009 and the pertinent archive dossier *COMMISSION EUROPÉENNE - Secrétariat général - Haute Autorité CECA: inventaire des dossiers 1952-1967 Volume 2 - 7456 Application du Traité CECA au Territoire de Trieste (Traité CECA, article 79). Vol. 2 (-FR, IT-) CEAB 1, no. 149 [s.Arch.doc.]*, in order:

a) CEAB 1-149, acts 001 to 004: the enforcement of the ECSC Treaty to the Free Territory of Trieste under art. 79 had already been confidentially proposed to the High ECSC Authority by the *Legazione dell'Italia* // Italian Delegation between June and August 1953 to favor an Italian-owned steelworks plant (*Ferriera di Servola, Gruppo ILVA*), by falsely declaring the Free Territory to be under military occupation, deprived of international trade representation, and "*de facto*" included in the customs territory of the Italian Republic. The request was therefore rejected.

b) CEAB 1-149, acts 005 to 007: with a note of 9 October 1954, the ECSC *Division du Marché* informs the High Authority that the Memorandum of Understanding signed in London on 5 October assigned the city of Trieste and Zone A of the Territory of Trieste to the temporary administration (*administration temporaire*) to Italy. Also, the note explains that «*Administration non signifie certainement souveraineté*», administration does certainly not mean sovereignty, and then concludes declaring that the city of Trieste and then "Zone A" would be included in the Community under art. 79, already applied to the Saar, since «*en droit international, la notion d' "administration" comprend le droit e l'obligation de répresentation*»: in international law, the concept of "administration" includes the right and duty of representation.

c) CEAB 1-149, document 009: with a note of 14 January 1955 the *Legazione italiana* // Italian Delegation informs the High ECSC Authority that Italian Law No. 766/1952 that ratified the ECSC Treaty, etc., has been extended to the Free Territory of Trieste on 21 December 1954 *«ainsi que le précise le Bulletin Officiel n. 6»*: as explained at Official Bulletin No.6.

This is the *Bollettino Ufficiale del Commissariato Generale del Governo per il Territorio di Trieste, n. 6 del 21 dicembre 1954* // Official Bulletin of the Commissioner General of the Government for the Territory of Trieste No.6 of 21 December 1954 [s.Arch.doc.] which contains *Decreto n. 91* with which the Commissioner General of the Government for the Territory of Trieste, through the powers of temporary provisional administration that are delegated to him, extends Italian Law No. 766/1952 that ratified the ECSC Treaty to the Free Territory of Trieste.

Note: the following European Treaties are extended by the Italian Government to the legal order of the present-day Free Territory of Trieste with the same title and identical procedure, by publishing the Italian Ratification Laws that enforce them in the Official Bulletin of the provisional administration.

2) LEGGE 4 agosto 1955, n. 848 - *Ratifica ed esecuzione della Convenzione per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, firmata a Roma il 4 novembre 1950 e del Protocollo addizionale alla Convenzione stessa, firmato a Parigi il 20 marzo 1952* // Ratification and enforcement of the European Convention for the protection of Human Rights and fundamental freedoms, signed in Rome on 4 November 1950 and of the First Protocol to the Convention, signed at Paris on 20th March 1952 (G.U. 24 settembre 1955, n. 221).

The European Convention for the protection of Human Rights and fundamental freedoms (ECHR), undersigned by the 12 Member States of the Council of Europe in 1950 (Belgium, Denmark, France, Greece, Ireland, Iceland, Italy, Luxembourg, Norway, United Kingdom Sweden, The Netherlands, and Turkey) and later amended with Additional Protocols, does also establish the European Court of Human Rights and at points 1 and 4 of art. 63, now article 56 - territorial application, mirrors art. 79 ECSC regarding its provisional enforcement to European territories of which a member State has representation in foreign relations (but not sovereignty). Authentic texts, in English and French:

Article 56 – Territorial application:

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 56 – Application territoriale:

1. Tout Etat peut, au moment de la ratification ou à tout autre moment par la suite, déclarer, par notification adressée au Secrétaire Général du Conseil de l'Europe, que la présente Convention s'appliquera, sous réserve du paragraphe 4 du présent article, à tous les territoires ou à l'un quelconque des territoires dont il assure les relations internationales.

4. Tout Etat qui a fait une déclaration conformément au premier paragraphe de cet article, peut, à tout moment par la suite, déclarer relativement à un ou plusieurs des territoires visés dans cette déclaration qu'il accepte la compétence de la Cour pour connaître des requêtes de personnes physiques, d'organisations non gouvernementales ou de groupes de particuliers, comme le prévoit l'article 34 de la Convention.

This norm is repeated in other European conventions ratified and enforced in the legal system of the Italian Republic. See, *pars pro toto*, **Legge 21 marzo 1983, n. 149 -** *Ratifica ed esecuzione delle convenzioni europee sulla notifica e l'ottenimento all'estero di documenti, informazioni e prove in materia amministrativa, adottate a Strasburgo, rispettivamente, il 24 novembre 1977 ed il 15 marzo 1978* // Ratification and enforcement of the European Conventions on the Service Abroad of Documents relating to administrative matters and on the Obtaining Abroad of Information and Evidence in Administrative Matters Strasbourg, adopted 24 November 1977 and on 15 March 1978 respectively (G.U. 5 maggio 1983, n. 122, S.O.).

Note: to date (2021) it does not result that the administering Italian Government took care of the necessary declaration and notification that would extend to the administered Free Territory the Convention for the Protection of Human Rights and Fundamental Freedoms and the connected competence of the European Court of Justice. Therefore, the provisional enforcement of European Treaties to the present-day Free Territory of Trieste does not include the EU Guarantees for the Protection of Human Rights and Fundamental Freedoms. The same applies to the impossibility to enforce in the present-day Free Territory of Trieste any other Treaty that requires the same kind of declarations or notifications that were omitted by the administering Italian Government.

3) Legge 14 ottobre 1957, n. 1203 - *Ratifica ed esecuzione dei seguenti Accordi internazionali, firmati a Roma il 25 marzo 1957: a) Trattato che istituisce la Comunità europea dell'energia atomica ed Atti allegati; b) Trattato che istituisce la Comunità economica europea ed Atti Allegati; […].* // Ratification and enforcement of the following International agreement, signed in Roma on 25 March 1957: a) Treaty establishing the European Atomic Energy Community and Annexed Acts; b) Treaty Establishing the European Economic Community and Annexed Acts; […]. (G.U. 23 dicembre 1957, n. 317 S.O. n. 3170.).

With the ratification and enforcement of the Treaty Establishing the European Economic Community (EEC), Italian Law 1203/1957:

a) includes in the Italian Legal system European norm at art. 79 of the Treaty establishing the *Communauté européenne du charbon et de l'acier* // European Coal and Steel Community (CECA - ECSC) regarding the application of European Treaties also to the Free Territory of Trieste, since, in the meantime, the Government of the Italian Republic had been entrusted with its temporary civil administration and international representation:

Art. 227.4: «The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible» // *«Les dispositions des traités s'appliquent aux territoires européens dont un État membre assume les relations extérieures»*.

This provision is repeated at art. 198, second paragraph of the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community (CEEA-EURATOM), ratified and enforced in the Italian legal system under the same Law 1203/1957:

b) implemented in the Italian legal order also the provision, repeated in successive European Treaties, that confirms that in European Law international obligations arising from agreements concluded before the coming into force of Community Law itself rank higher than its provisions:

art. 234 first paragraph: «The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.»

This provision does therefore confirm also the primacy of the obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste established under the 1947 Treaty of Peace and the 1954 Memorandum of Understanding of London, enforced in the Italian legal system with DlgsCPS 1430/1947, L. 3054 1952, DPR 27.10.1954, and recognized *ab origine* in the legal order of European organizations with the 1952 ECSC Treaty.

Note: the same provision of European Treaties does also regard the rights and international obligations arising from both the Treaty of Peace with Italy, including those regarding the Free Territory of Trieste, of other EU Member States which are either Signatories of the same 1947 Treaty of Peace (France, Belgium, The Netherlands, Greece, Poland) or their successors (Czechia, Slovakia, Slovenia, Croatia), and from the Treaties that bound their Signatories to respect it (1947: Hungary, Roumania, Bulgaria, Finland; 1955: Austria), finally, those provisions regard also the agreements that

established the earliest international and European organizations, in which the Free Territory of Trieste was already recognized as Member State (ERP, OEEC, *EPU*, *ECMT, ICEM, ICPO,* WHO etc.).

4) Both European norms, and therefore their enforcement to the Free Territory of Trieste due to its provisional administration being entrusted to the Italian Government, were later confirmed in the Italian legal order with the Ratification Laws regarding following European Treaties, as a result of which arts. 227.4 and 234, first paragraph TEC came into force as arts. 229 and 307 of the Treaty establishing the European Community (TEC) respectively, and later again as arts. 351 and 355 of the Treaty on the Functioning of the European Union (TFEU):

a) with **Legge 3 novembre 1992, n. 454** - *Ratifica ed esecuzione del Trattato sull'Unione europea con 17 protocolli allegati e con atto finale che contiene 33 dichiarazioni, fatto a Maastricht il 7 febbraio 1992* // Ratification and enforcement of the Treaty on European Union, with 17 protocols annexes and a final act that includes 33 statements, signed in Maastricht on 7 February 1992 (GU n. 277 del 24.11.1992 – S.O. n. 126).

b) with **Legge 2 agosto 2008, n. 130** - *Ratifica ed esecuzione del Trattato di Lisbona che modifica il Trattato sull'Unione europea e il Trattato che istituisce la Comunità europea e alcuni atti connessi, con atto finale, protocolli e dichiarazioni, fatto a Lisbona il 13 dicembre 2007* // Ratification and enforcement of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, with some annexes, a final act, protocols, and statements, signed at Lisbon, 13 December 2007 (GU n. 185 dell'8.8.2008 – S.O. n. 188).

The provision regarding the enforcement of European Treaties also to Territories of which a Member State exercises representation in international relations appears also in the Italian Legal Order under Italian Law L. 7.4.2005, n. 57- *Ratifica ed esecuzione del Trattato che adotta una Costituzione per l'Europa e alcuni atti connessi, con atto finale, protocolli e dichiarazioni, fatto a Roma il 29 ottobre 2004* // Ratification and enforcement of the Treaty establishing a Constitution for Europe, with some annexes, a final act, protocols, and statements, signed in Rome on 29 October 2004 (in G.U. 21 aprile 2005, n. 92), under art. IV-446, paragraph 4 of the Treaty.

L. Consequent provisions of Italian domestic law regarding the separation of the customs system and tax system of the international Free Port of Trieste from the European Union's customs system and tax system

1. DPR 30 dicembre 1969, n. 1133 – *Attuazione delle Direttive adottate dal Consiglio delle Comunità Europee 69/73/CEE, 69/74/CEE e 69/75/CEE, relative all'armonizzazione delle disposizioni legislative, regolamentari e amministrative riguardanti il regime del perfezionamento attivo, il regime dei depositi doganali ed il regime delle zone franche* // Enforcement of Directives 69/73/EEC, 69/74/EEC and 69/75/EEC adopted by the Council of the European Communities, regarding the harmonization of provisions laid down by law, regulation or administrative action relating to inward processing arrangements, customs warehousing procedure, and free zones (in G.U. 11 febbraio 1969, n. 36).

DPR 1133/1969 enforces Italian Law 1203/1957, and it clearly confirms that, when it comes to Free Zones, the legal force as well as the legal prevalence of the international obligations of the Italian Republic and of the Italian Government respect to the Free Territory of Trieste and of its international Free Port, as established by the 1947 Treaty of Peace and the 1954 Memorandum of Understanding:

«*Il Presidente della Repubblica - Visto il Trattato che istituisce la Comunità Economica Europea, ratificato con Legge 14 ottobre 1957, n. 1203;* […]; *Visto il Decreto Legislativo del Capo provvisorio dello Stato 28 novembre 1947, n. 1430, che ha reso esecutivo il Trattato di Pace fra l'Italia e le Potenze Alleate e Associate, firmato a Parigi il 10 febbraio 1947* […]; *Vista le necessità di adottare norme per adeguare la legislazione vigente alle citate direttive numeri 69/73/CEE, 69/74/CEE e 69/75/CEE;*

Decreta: […] *Articolo 32: per i punti franchi compresi nella zona del porto franco di Trieste di cui all'Allegato VIII al Trattato di Pace fra l'Italia e le Potenze Alleate e Associate, firmato a Parigi il 10 febbraio 1947, e reso esecutivo con Decreto Legislativo del Capo provvisorio dello Stato 28 novembre 1947, n. 1430, restano ferme, in deroga a quanto stabilito nei precedenti articoli, le vigenti disposizioni più favorevoli.*»

«The President of the Italian Republic - In view of the Treaty establishing the European Economic Community, ratified with Law No.1957 of 14 October 1203; […]; In view of Legislative Decree of the Provisional Head of State No.1430 of 28 November 1947, which enforced the Treaty of Peace with Italy between Italy and the Allied and Associated Powers, signed in Paris on 10 February 1947 […]; In view of necessity to adjust legislation in force to European Directives 69/73/EEC, 69/74/EEC, and 69/75/EEC;

Rules: […] Article 32: as for the free zones included within the Free Port of Trieste referred at Annex VIII of the Treaty of Peace with Italy between Italy and the Allied and Associated Powers, signed in Paris on 10 February 1947 and enforced in the Italian legal system with Legislative Decree of the Provisional Head of State No.1430 of 28 November 1947, the more favourable provisions in force shall remain unchanged by derogation from the preceding clauses».

Out of the three European Directives implemented and enforced in the Italian legal order under DPR 1133/1969, the third one is Council Directive 69/75/EEC of 4 March 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to free zones, and the minutes of its approval, recognize, at point 1, with a declaration of the European Council and of the European Commission, that «*su comunicazione della delegazione italiana e in relazione con l'art. 234 del Trattato che: 1. il porto franco di Trieste è stato istituito dallo Allegato VIII del Trattato di pace fra l'Italia e le Potenze alleate e associate firmato a Parigi il 10 febbraio 1947, ed ha formato oggetto del Memorandum di Londra del 5 ottobre 1954*» // «Following communication from the Italian delegation and in regard to Art. 234 of this Treaty, that: 1. the Free Port of Trieste has been established under Annex VIII of the Treaty of Peace between Italy and the Allied and Associated Powers signed in Paris on 10 February 1947, and it has been among the subjects of the Memorandum of Understanding of London of 5 October, 1954».

With this Statement for minutes, the European Council, the European Commission, and the Italian Delegation to the European Union recognized together that, due to the

primacy of international agreements and obligations established before the European Community by the 1947 Treaty of Peace and the 1954 Memorandum of Understanding that establish the Free Territory of Trieste as independent State and sub-entrusted its temporary civil administration to the Italian Government, the regime of the international Free Port of Trieste cannot be amended by Community law, therefore it must be enforced in adherence with the Treaty of Peace, which establishes the Free Port as State corporation of the Free Territory of Trieste (Annex VIII, art. 2).

This declaration to the European Council and by the European Commission, dated 4 March 1969, is also recalled in **Nota 11 gennaio 1991, n. 3722/3522, del Ministero delle Finanze italiano** // Note No. 3722/3522 issued by the Italian Ministry of Finances on 11 January 1991, to confirm that Italy's international obligations regarding the special status of Trieste are in legal force.

2. Instruments of European Law with direct and predominant legal efficacy in the Italian legal system

The aforementioned Statement of 4 March 1969 by the European Council and by the European Commission is preceded (1968) and followed to our days (2021) by instruments of European Law that define the European Union customs territory, **Commission Regulations EC 2151/84, EU 450/2008, and EU 952/2013**, which are directly in force and prevail in and on Italian domestic law, and also in Special report No 2/93 to the European Court of Auditors.

Those instruments define the European Union's customs territory, including territorial waters and airspace, and thus the sovereign territories of all Member States, excluding their own free zones, and do not include the Free Territory of Trieste or its international Free Port, neither as autonomous entities, nor as parts of the Italian sovereign territory, identified simply as *«the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio»*.

3. DPR 23 gennaio 1973, n. 43 – *Approvazione del testo unico delle disposizioni legislative in materia doganale* // Approval of the consolidate law on customs (G.U. 28 marzo 1973, n. 80) art. 169 – Punti franchi nel porto di Trieste // Free zones in the Port of Trieste: «*Per i punti franchi compresi nella zona del porto franco di Trieste di cui all'Allegato VIII al Trattato di pace fra l'Italia e le Potenze Alleate e Associate, firmato a Parigi il 10 febbraio 1947 e reso esecutivo con Decreto Legislativo del Capo provvisorio dello Stato 28 novembre 1947, n. 1430, restano ferme, in deroga a quanto stabilito nei precedenti articoli, le vigenti disposizioni più favorevoli*» //«As for free zones included in the area of the free port of Trieste referred to in Annex VIII of the Treaty of peace between Italy and the Allied and Associated Powers, signed at Paris on 10 February 1947 and enforced with Legislative Decree of the Provisional Head of Government No.1430 of 28 November 1947, the more favorable provisions in force shall remain unchanged by derogation from the preceding clauses».

4. Decreto-legge 13 marzo 1988, n. 69, convertito in Legge 13 maggio 1988, n. 153 // Decree Law No.69 of 13 March 1988, converted into Law No.153 of 13 May 1988 – *Norme in materia previdenziale, per il miglioramento delle gestioni degli enti portuali ed altre disposizioni urgenti* // Rules in matters of social security, to improve the management of port authorities, and other urgent measures (GU 14 marzo 1988, n. 61; GU 14 maggio 1988, n. 122).

With art. 3.2 of this decree, the Italian lawmaker recognizes the legal force of the Italian Ratification Law of the Treaty of Peace, and the consequent special legislative authority of the administering Italian Government, through two of its Ministries, on the tax treatment of ships, goods, and passengers of the Free Port of Trieste:

art. 3.2: «*Al fine di tener conto del ruolo internazionale del porto franco di Trieste, in armonia con la funzione statutaria fissata dall'Allegato VIII del Trattato di Pace di Parigi del 10 febbraio 1947, reso esecutivo con Decreto Legislativo del Capo provvisorio dello Stato 28 novembre 1947, n. 1430, ratificato con legge 25 novembre 1952, n. 3054, l'aumento di cui al comma 1 non si applica altresì in detto scalo. Le modalità di applicazione di tutte le tasse e diritti marittimi vigenti per navi, merci e passeggeri nel porto di Trieste saranno definite con decreto del Ministro della Marina mercantile, di concerto con il Ministro delle Finanze, in esecuzione dei principi stabiliti dal suddetto Allegato.*» // «In order to keep into account the role of the international Free Port of Trieste, in harmony with the statutory function established with Annex VIII of the Treaty of Peace of Paris 10 February 1947, enforced with the Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947, ratified with Law No.3054 of 25 November 1952, the increase established at paragraph 1 shall not be enforced to that port. The means of enforcement of all other taxes and maritime duties on ships, goods, and passengers of the port of Trieste shall be defined by a decree of the Minister for the Merchant navy, together with the Ministry of Finances, in compliance with the principles established in said Annex.» therefore, not under Italian port laws.

This recognition is confirmed and enforced with:

– **Legge 28 gennaio 1994, n. 84** – *Riordino della legislazione in materia portuale* // Reorganization of the Italian legislation on ports (GU 4 febbraio 1994, n. 28), art. 6.12: «*È fatta salva la disciplina vigente per i punti franchi compresi nella zona del porto franco di Trieste. Il Ministro dei trasporti e della navigazione, sentita l'autorità portuale di Trieste, con proprio decreto stabilisce l'organizzazione amministrativa per la gestione di detti punti franchi*» // «The discipline in force regarding the free zones included within the area of the free port of Trieste is guaranteed. The Minister of Transportation and Navigation, upon consultation with the Trieste Port Authority shall, with its own decree, establish the administrative organization for the management of said free zones»*;*

This "*disciplina vigente*" // "discipline in force" (2021) is establish under:

a) art. 34 of Annex VI and of Annex VIII of the Treaty of Peace with Italy of 10 February 1947, enforced in the Italian legal system with DlgsCPS n. 1430/1947 ratified with L. 3054/1952;

b) art. 5 of the Memorandum of Understanding regarding the Free Territory of Trieste, signed in London on 5 October 1954, enforced in the Italian legal system with DPR 27 ottobre 1954, L.cost. 1/1963;

c) the consequent, main *Decreti esecutivi* // Implementation Decrees of the *Commissario Generale del Governo italiano per il Territorio di Trieste* // Commissioner General of the Italian Government for the Territory of Trieste (for other Commissarial Decrees on the matter, see point N. 4.);

- *n. 3 del 1 novembre 1954 – Nomina del Direttore del Porto* // Appointment of the Director of the Port (B.U. n. 1 dell'1.11.1954);

- *n. 29 del 19 gennaio 1955, n. 29 – Porto franco di Trieste* // Free Port of Trieste (B.U. n. 3 del 21.1.1955);

- *n. 53 del 23 dicembre 1959 – Istituzione di un Punto Franco nel comprensorio del Porto Industriale di Trieste* // Establishment of a Free Zone in the complex of the Industrial Port of Trieste (S.O. del 24.12.1959 al B.U. n. 36 del 21.12.1959);

d) by other legal measures, including Interministerial decree 13 July 2017 about the administrative management of the free zones.

In facts, the administering Italian Government omitted for 23 years (1994-2017) to issue a decree on the administrative management of the free zones, and by doing so it caused serious damages to the management of the international Free Port, and to the whole economic system of the administered Free Territory.

– **DPR 28 maggio 2009, n. 107** - *Regolamento concernente la revisione della disciplina delle tasse e dei diritti marittimi, a norma dell'art. 1, comma 989, della legge 27 dicembre 2006, n. 296* // Rules regarding the revision of tax law regarding taxes and maritime subject to art. 1, paragraph 989, of Italian Law No.296 of 27 December 2006 (G.U. 5 agosto 2009, n. 180), art. 3.2: «*Ad eccezione di quanto previsto all'articolo 4, comma 3, è fatta salva la vigente normativa speciale concernente le tasse ed i diritti marittimi relativa al porto franco di Trieste, di cui all'articolo 3, comma 2, del decreto-legge 13 marzo 1988, n. 69, convertito, con modificazioni, dalla legge 13 maggio 1988, n. 153, ed al decreto del Ministro della Marina mercantile 5 settembre 1989, n. 339, modificato dal decreto del Ministro dei trasporti e della navigazione 11 aprile 1996, n. 372.*» // «Despite the provisions at art. 4, paragraph 3, there is no prejudice for the special regulation regarding taxes and maritime legislation regarding the free port of Trieste, referred to at article 3, paragraph 2, of Decree-Law No 69 of 13 March 1988, converted and amended by Law No. 153 of 13 May 1988, and in Decree of the Ministry of Merchant Navy No.339 of 5 September 1989, No. 339, as amended by the Decree of the Minister of Transportation and Navigation No.372 of 11 April 1996».

M. The “parallel legislation” of the Italian administration of the present-day Free Territory of Trieste

The main sources of law of the legal order of the present-day Free Territory of Trieste consist in UNSC Resolution S/RES/16 of 10 January 1947, the Treaty of Peace with Italy of 10 February 1947, the international Treaties, Agreements, and Conventions signed by the AMG FTT as provisional Government of State of the Free Territory.

Additionally, there also legislative and administrative measures issued by the AMG from 1947 to 1954, including those maintaining the legal force of Italian legislative measures, or confirmed those of the previous AMG VG.

Since 1954, there are also the normative and administering measures of the Italian Government, sub-entrusted with the temporary civil administration of the Free Territory, and of the bodies it has delegated to exercise that and which, with this authority, do mainly extend, with or without modifications, laws and measures of the Italian legal order to the administered Free Territory, thus establishing a "parallel" legislation respect to that of the Italian Republic.

This category includes measures of the administering Government, but also those of the Commissioner General of the Government, which since 1964 were substituted with the normative and administering measures of the then newly-established Commissioner of the Government in Region Friuli Venezia Giulia, and by that Region itself.

This consolidated *Corpus juris* is therefore different by origin, nature, and instruments from that of the Italian State. Its complexity and consequences in civil, criminal, and administrative questions are therefore going to be the subject of future, specific *expertises*.

Its relevance is already evident due to the fact that the whole judicial system of the administered Free Territory, from its Court of Appeal to the ushers of the Court, result to be established and, since 1954, regulated with measures of the Commissioner General of the Government, which, as such, are issued exercising the jurisdiction of State of the administered Free Territory of Trieste, not that of the Italian Republic.

The main legal problems revolves on the possibility, or the lack thereof, to enforce Italian laws in the Free Territory of Trieste, to which *Decreto* n. 100/1955 extended *"i principi generali"* // "the general principles" of the Italian legal order, while the extension of each law requires specific measures, and its enforcement depends on two conditions:

a) the act must be correctly extended, with or without further modifications, to the legal order of the present-day Free Territory of Trieste by publication on its official bulletins, which are, chronologically: the Official Gazette – *Gazzetta Ufficiale – Uradni List* of the AMG FTT (1947-1954) the *Bollettino Ufficiale – Uradni List del Commissariato Generale del Governo per il Territorio di Trieste* // Official Bulletin of the Commissioner of the Government in the Territory of Trieste (1954-1964) the *Bollettino Ufficiale del Commissariato del Governo nella Regione Friuli-Venezia Giulia* // Official Bulletin of the Commissioner of the Government in Region Friuli Venezia Giulia (1964) and the current *Bollettino Ufficiale della Regione Friuli Venezia Giulia* // Official Bulletin of Region Friuli Venezia Giulia (as for the area of the administered Free Territory).

Consequently, to ensure legal certainty and the correct administration of justice in the present-day Free Territory of Trieste it is necessary that the bodies that exercise the Italian administration be under obligation to know and enforce the law through a strict verification of their validity and enforceability in the administered Free Territory.

b) the act must not conflict with the primary norms that establish the Free Territory of Trieste or with the obligations deriving from the special trusteeship mandate of temporary civil administration.

Italian laws that do not result to be correctly extended to it are unenforceable in the Free Territory for lack (deficiency) of jurisdiction, even if they do not conflict with the norms that establish it.

Italian laws flawed with one of the two kinds of conflict of law described above, instead, are unenforceable even is extended with the correct procedures.

This means that in order to administer criminal, civil, and administrative justice in the present-day Free Territory under administration, a preliminary verification of the validity of the laws to be enforced is absolutely necessary, and this verification must take place following the sources of law and guidelines described above.

N. Normative and administrative acts enforcing to date the mandate of temporary civil administration over the present-day Free Territory of Trieste

The effective legal force and efficacy of the *Corpus juris* that recognizes and implements in the Italian legal order the international obligations of the Italian Republic and of the Italian Government respect to the present-day Territory of Trieste are confirmed by the fact that the Italian Government:

– continued exercising the Special Trusteeship mandate and the temporary civil administration sub-entrusted to it by the British and United States Governments, maintaining most regulations issued by the AMG FTT fully in force, supplementing them with own regulatory measures – mostly issues by a Commissioner General of the Government appointed for this purpose – that are (2021) in force because they were never repealed or amended;

– is exercising (2021) this Special Trusteeship mandate on the same bases in international, bilateral agreements as well as with regulatory measures of the Italian Government itself, and of its Commissioner General delegated to exercise this duty, and also of the Region.

The continuity of the exercise of the normative and administrative powers that depend on the Special Trusteeship mandate over the present-day Free Territory of Trieste entrusted to the Italian Government, directly or through bodies it has delegated to this task does especially regard the management of the international Free Port, which does also involve respect for the rights of all other States.

As further evidence see, *pars pro toto*, the following normative and administrative acts that declare to enforce international obligations established under the 1947 Treaty of Peace and under the 1954 Memorandum of Understanding, in particular obligations regarding the management of the Free Port:

1. Bilateral Agreements (1989):

Legge 30 dicembre 1989, n. 440 – *Ratifica ed esecuzione del protocollo tra il Governo della Repubblica Italiana ed il Governo della Repubblica Popolare ungherese sulla*

utilizzazione del porto franco di Trieste, firmato a Trieste il 19 aprile 1988 // Ratification and enforcement of the protocol between the Government of the Italian Republic and the Government of the People's Republic of Hungary for the use of the free port of Trieste, signed in Trieste on 19 April 1988 (G.U. 22 gennaio 1990, n. 17).

This Protocol is a bilateral agreement, correctly stipulated between the two Governments (not the two States), precisely, by the Italian Government acting as provisional administering Authority of the present-day Free Territory of Trieste and by the Hungarian Government for the obligations and rights established by the Treaty of Peace with Italy of 10 February 1947, which Hungary recognizes in full under art. 7 of its own Treaty of Peace of the same date: *Treaty of Peace with Hungary. Signed at Paris, on 10 February 1947. – Tőrveny a Párizsban 1947. évi február hó 10.* (UNTS, Vol. 41, No. 644, Section II, Article 7).

Indeed, with the 1988 Protocol the two Governments (not the two States) favor ships, vessels, and Hungarian companies working in the international Free Port of Trieste by granting them the main privileges established with Annex VIII of the Treaty of Peace with Italy, without mentioning but *"in considerazione"* // "in consideration" of the provisions of the *Accordo di Commercio e Navigazione tra l'Italia e l'Ungheria* // Commerce and Navigation Agreement between Italy and Hungary signed in Rome on 4 July 1928 and amended with the Protocol signed at Budapest on 28 March 1950.

The agreement being amended is the ***Protocole concernant le regime douanier entre l'Italie et la Hongrie***, ratified and implemented in the Italian Legal system with **Legge 23 febbraio 1952, n. 120** - *Approvazione ed esecuzione del Protocollo concernente il regime doganale fra l'Italia e l'Ungheria, concluso a Budapest il 28 marzo 1950* // Approval and enforcement of the Protocol regarding the customs procedure between Italy and Hungary, signed at Budapest on 28 March 1950 (G.U. n. 68 del 20 marzo 1952, n. 68).

The 1950 amendments to the 1928 Agreement are those consequent to the political and territorial changes established with the 1947 Treaties of Peace that did make partially unenforceable previous Agreements of State between Italy and Hungary.

Among those changes, there is the ceasing of Italian sovereignty over Trieste and over its port, which became an independent State to be governed in accordance with a special trusteeship mandate entrusted to the Governments of the United States and of the United Kingdom.

This is why at art. 4, points c) and d), the 1950 Agreement establishes that the provisions at arts. 1, 2 and 3 (regarding the regime of the most favoured Nations, with customs and other tax advantages) do not apply to:

«*c) aux advantages spéciaux que l'une des deux Parties a accordé ou bien pourra accorder à l'avenir à des territoires ayant un statut juridique spécial reconnu internationalement ou bien à des territoires conférés ou qui pourront être conférés à cette même Partie en administration fiduciaire; d) aux advantages accordés actuallement ou qui pourront être accordés a l'avenir par l'Italie à la République de San Marino et a l'État de la Cité du Vatican.*» // c) to the special advantages that one of the two Parties now accorded or which may hereafter be accorded to territories with an internationally recognized special status or to territories entrusted or that may hereafter be entrusted to the same Party under a trusteeship mandate; d) to the advantages now accorded or which may hereafter be accorded by the Italian Republic to San Marino and to the State of Vatican City.

The function of similar provisions is the same as that of art. XXIV.3.d. United States-Italian Agreement of 2.2.1948 (see point D.2), although the 1950 Italian-Hungarian Protocol the mentions of San Marino and of the Vatican are separate from that of the Free Territory of Trieste, and its name is substituted with the description of its internationally status (*territoires ayant un statut juridique spécial reconnu internationalement*) recognized by the United Nations and by both States each in their 1947 Treaty of Peace, also, the Conventions refers to the possibility that its special trusteeship be entrusted to the responsibility of one of the two signatory Governments (*territoires conférés ou qui pourront être conférés à cette même Partie en administration fiduciaire*).

The reference to the 1950 Protocol in the 1988 Protocol regarding the use of the Free Port of Trieste does therefore confirm the legal and effective nature of the second act: it is not a State agreement between Italy and Hungary for the use of an Italian Port, rather, it is an agreement between the Italian Government, exercising the special trusteeship mandate that makes it the temporary civil Government of the Free Territory of Trieste, on one side, and the Hungarian Government on the other side, exercising the rights the Treaty of Peace with Italy grants to Hungarian ships, goods, and enterprises over the international Free Port of the Free Territory of Trieste.

2. *Decreti del Presidente della Repubblica - DPR (Decrees of the President of the Italian Republic) enforcing obligations established under the Treaty of Peace respect to the Free Territory of Trieste*

It is measures regarding different matters that involve the present-day Free Territory of Trieste, thus issued by the President of the Italian Republic exercising the special powers for the enforcement of the Treaty of Peace, assigned to their Office under art. 2 of DlgsCPS // Legislative Decree of the Provisional Head of State 1430/1947. In particular, see the following DPR issued in 1959 and in 1965:

DPR 30 settembre 1959, n. 1017 – *Revoca di dichiarazione di zona di endemia malarica nel Territorio Libero di Trieste* // Revocation of the status of malarial area in the Free Territory of Trieste (in G.U. 4.12.1959, n. 293) repealing *Regio Decreto* (Italian Royal Decree) 25 gennaio 1925 n. 174, regarding the Municipality of Duino Aurisina - Devin Nabrežina, declaring that «*il Territorio Libero di Trieste, allo stato attuale, non ha più Comuni con zone dichiarate di endemia malarica.*» // «at the present time, the Free Territory of Trieste has no longer Municipalities with official endemic malarial areas.».

DPR 10 novembre 1965, n. 1492 – *Concessione di un contributo statale al comune di Muggia, quale concorso agli oneri ad esso derivanti dalla fornitura di acqua alla Jugoslavia da parte dell'acquedotto del Comune medesimo, in esecuzione della Convenzione italo-jugoslava firmata a Capodistria il 13 dicembre 1958* // Concession of a State contribution to the Municipality of Muggia, as part of the economic burdens deriving to it from water supply fon Yugoslavia through the aqueduct of the same Municipality, under the Italian-Yugoslav Conventions signed at Capodistria - Koper on 13 December 1958 (GU n. 17 del 21-1-1966), regarding territories «*sotto amministrazione*» // «under administration» and issued «*Visto l'art. 2 del decreto*

legislativo 28 novembre 1947, n. 1430, che dà esecuzione al Trattato di pace fra le Potenze alleate ed associate e l'Italia, firmato a Parigi il 10 febbraio 1947» // «in view of art. 2 of Legislative Decree No. 1430 of 28 November 1947, enforcing the Treaty of Peace between the Allied and Associated Powers and Italy, signed in Paris on 10 February 1947».

3. Direct acts of the administering Italian Government

It is acts adopted by the Italian Government, though its Ministries, to implement the 1947 Treaty of Peace and the special Trusteeship mandate sub-entrusted to it under the 1954 Memorandum of Understanding of London. In particular, see the following two Ministerial Decrees of 1960 and of 1989-1996, which show a clear distinction between the administered Free Territory of Trieste and the sovereign territory of the Italian Republic:

a) Decreto Ministeriale 20 gennaio 1960, *Esenzioni dal diritto fisso istituito con legge 28 dicembre 1959, n. 1146, nei confronti degli autoveicoli e rimorchi adibiti a trasporti internazionali di cose importati temporaneamente* // Exemptions from the flat fee established with Italian Law No.1146 of 28 December 1959 on vehicles and trailers involved in international transport of things which are imported temporarily, art. 3: «*Gli autoveicoli e i rimorchi adibiti a trasporti internazionali di cose, appartenenti a persone residenti stabilmente all'estero, temporaneamente importati in Italia per effettuare trasporti di merci da e per il territorio o il porto di Trieste sono esenti, per esigenze di traffico, dal pagamento del diritto fisso di cui all'art. 1 della legge 28 dicembre 1959, n. 1146*» // «Vehicles and trailers involved in international transport of things, belonging to people permanently resident abroad, that are temporarily imported in Italy to transport goods to and from the territory of the port of Trieste are exempted, to meet traffic needs, from the payment of the flat fee established at art. 1 of Law No.1146 of 28 December 1959» also, art. 1, last paragraph, rules that: «*Il diritto fisso deve essere corrisposto per ogni viaggio effettuato in entrata, o in uscita dal territorio italiano.*» // «The flat fee will be paid for each journey to or from the Italian territory.» (G.U. 26.2.1960, n. 49).

b) Decreto ministeriale 5 settembre 1989, n. 339, as amended with *decreto* 372/1996 – *Regolamento concernente la definizione delle modalità di applicazione delle tasse e dei diritti marittimi vigenti per navi, merci e passeggeri nel porto franco di Trieste* // Regulation concerning the definition and implementation rules for taxes and maritime duties for ships, goods, and passengers in the free port of Trieste issued by the *Ministro della Marina mercantile di concerto con il Ministro delle Finanze* // Minister for the Merchant Navy together with the Ministry for Finances: «*[…] Viste le disposizioni contenute nell'Allegato VIII al Trattato di Pace di Parigi del 10 febbraio 1947, reso esecutivo con Decreto Legislativo del Capo provvisorio dello Stato 28 novembre 1947, n. 1430, ratificato con legge 25 novembre 1953, n. 3054, nonché nei decreti n. 29 in data 19 gennaio 1955 e n. 53 in data 21 dicembre 1959 del Commissario Generale del Governo italiano per il Territorio di Trieste […]*» // «[...] In view of the provisions at Annex VIII of the Treaty of Peace of Paris of 10 February 1947, enforced with Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947 as well as with decrees No. 29 of date 19 January 1955 and No. 53 of date 21 December

1959 issued by the Commissioner General of the Italian Government for the Territory of Trieste […]» (G.U. 15.7.1996, n. 164).

c) Decreto interministeriale 13 luglio 2017 - *Organizzazione amministrativa per la gestione dei punti franchi compresi nella zona del porto franco di Trieste //* administrative organization for the management of the free zones of the Free Port of Trieste (G.U. 31 luglio 2017, n. 177) issued by the *Ministro delle Infrastrutture e dei Trasporti di concerto con il Ministro dell'Economia e delle Finanze* // Italian Ministry of Infrastructures and Transport together with The Italian Ministry of Economy and Finance in compliance with the provisions of article 6, paragraph 12, of the Italian Law No. 84 of 28 January 1994 (see above at point L.4.) and of the *«memorandum d'intesa di Londra sottoscritto il 5 ottobre 1954 tra i Governi d'Italia, del Regno Unito, degli Stati Uniti e della Repubblica federativa popolare di Jugoslavia, concernente il regime di amministrazione provvisoria del territorio libero di Trieste, previsto dall'Allegato VII del Trattato di pace tra l'Italia e le Potenze Alleate e Associate, firmato a Parigi il 10 febbraio 1947». //* «Memorandum of Understanding of London of 5 October 1954 between the Governments of Italy, of the United Kingdom, of the United States, and of the Socialist Federal Republic of Yugoslavia regarding the regime of temporary administration of the Free Territory of Trieste, envisioned at Annex VII of the Treaty of Peace between Italy and the Allied and Associated Powers, signed in Paris on 10 February 1947».

By this Interministerial decree, the Italian Government had to confirm that the Treaty of Peace and its provisions regarding the Free Territory under a special trusteeship mandate, as well as the Memorandum of Understanding with which the Governments of the United States and of the United Kingdom have sub-entrusted this provisional regime of Government to the Italian Government itself are in full force within both the legal system of the Italian Republic and in that of the administered, present-day Free Territory of Trieste.

This form of the decree was necessary due to the unavoidable legal fact that the international Free Port of Trieste, over which all States hold rights, is established and can only exist as a State corporation of the Free Territory of Trieste (art. 2 of Annex VIII of the Treaty of Peace).

4. Normative decrees with the rank of laws issued by the *Commissario del Governo italiano per il Territorio di Trieste* // Commissioner of the Government since 1954, and legislative measures delegated to the Region

Normative decrees with the rank of laws issued by the Commissioner of the Italian Government for the Territory of Trieste in force to date (2021) in its following two functional offices of *Commissario Generale* // Commissioner General and of *Commissario nella Regione* // Commissioner in the Region, range, in normative continuity and authority a sequence of legal acts longer than 62 years, ever since 1954.

The legislative powers of the Commissioner of the Government were exercised in all fields of law, and exclusively by this Officer, with both direct legal acts and by extending Italian Laws to the administered Territory, until the coming into force of Italian Constitutional Law No. 1/1963, which, at art. 70, transferred competence over certain matters to the Regional Administration (see above).

Since that date, the Commissarial legislation of the Free Territory of Trieste continues through the measures of the Region for all matters that were delegated to it, and through measures of the Commissioner of the Government in the Region for all other matters, including, in particular, the extension and functioning of the Free Zones of the international Free Port and the management of the budgetary funds destined to the needs of the Territory of Trieste (the so-called "*Fondo Trieste*" mentioned above at point G.3.3.Note).

The sequence of the normative decrees of the Commissioner General regarding the international Free Port does therefore continue from 1954 to 2015 with the following main acts, issued:

a) by the *Commissario Generale del Governo italiano per il Territorio di Trieste* // Commissioner General of the Italian Government for the Territory of Trieste:

- **Decreto n. 3 del 1 novembre 1954** – *Nomina del Direttore del Porto* // Appointment of the Director of the Port (B.U. n. 1 dell'1.11.1954);
- **Decreto n. 29 del 19 gennaio 1955, n. 29** – *Porto franco di Trieste* // Free Port of Trieste (B.U. n. 3 del 21.1.1955);
- **Decreto n. 53 del 23 dicembre 1959** – *Istituzione di un Punto Franco nel comprensorio del Porto Industriale di Trieste* // Establishment of a Free Zone in the complex of the Industrial Port of Trieste (S.O. del 24.12.1959 al B.U. n. 36 del 21.12.1959);
- **Decreto n. 4 del 10 febbraio 1962** – *Ampliamento dell'area del Punto Franco nel comprensorio del Porto Industriale di Trieste* // Expansion of the Free Port area in the complex of the industrial Free Port of Trieste (B.U. n. 5 del 12.2.1962).

b) by the *Commissario del Governo nella Regione Friuli Venezia Giulia* // Commissioner General in Region Friuli Venezia Giulia, exercising (art. 70 L.cost, 1/1963) the special normative powers of the *Commissario Generale del Governo italiano per il Territorio di Trieste* // Commissioner General of the Italian Government for the Territory of Trieste:

- **Decreto n. 19/8-212/83 dell'11 settembre 1984** – *Operazioni di imbarco, sbarco, movimentazione e deposito nei magazzini dello Scalo Legnami di Servola* // Operations of embarkation and disembarkation, handling and storage in the warehouses of the Servola timber terminal;
- **Decreto n. 19 del 25 agosto 1988** – *Ampliamento del "Punto Franco di S.Sabba" con l'estensione del regime extradoganale all'adiacente comprensorio dell'Ex Esso italiana* // Extension of the "Free Zone of San Sabba" and extension of the duty-free regime to the nearby former Italian Esso area;
- **Decreto n. 19/8-52/92 dell'11 aprile 1992** – *Ampliamento del "Punto Franco" con estensione del regime extradoganale a tutto il comprensorio degli "ex Stabilimenti Meccanici VM" ed alle adiacenti aree interessate dal collegamento stradale tra il "Punto Franco Nuovo" e quello dello "Scalo Legnami"* // Extension of the "Free Zone" and extension of the duty-free regime to the whole area of former "*Stabilimenti Meccanici VM*" and other surfing areas involved in the road link between the "New Free Zone" and the free one at the *"Scalo Legnami"* (Servola timber terminal);

− **Decreto n. 19/8-33/2015 del 14 maggio 2015** – *Ampliamento della concessione di cui all'atto formale n. 6/2001 del 1 maggio 2001 mediante concessione a Samer Seaport & Terminal s.r.l. di una nuova area. Estensione del Regime di Punto Franco all'area interessata dall'ampliamento* // Extension of the concession described at official act No. 6/2001 of 1 May 2001 by awarding Samer Seaport & Terminal s.r.l. a new area. Extension of the Free Zone regime to the area involved in the area affected by the enlargement.

When it comes to the administration of the budgetary funds destined to the needs of the Free Territory referred to L. 514/1955 (see above at G.3.3.), the most recent legal measures are, in particular:

− **Decreto del Commissario del Governo n. 47 del 3 agosto 2007**, registered at the *Corte dei Conti* // Italian Court of the Accounts on 17.12.2007 − *Piano Triennale di riparto 2007-2009* // Budget for the period 2007-2009, and the associated allocation plan, with which the Commissioner of the Government approves the allocation of EUR 15 Million for the three-year period.

− **Decreto n. 20 del 16 giugno 2014** with which the Commissioner of the Government established the current criteria for the payment of aid "*de minimis*" to enterprises.

5. Recent laws of the Parliament of the Italian Republic (Budget for the period 2018-2020)

Legge 27 dicembre 2017, n. 205 – *Bilancio di previsione dello Stato per l'anno finanziario 2018 e bilancio pluriennale per il triennio 2018-2020* // **Italian Law No.205 of 27 December 2017** – Projected State balance for Financial Year 2018 and Multiannual Budget for the period 2018-2020 (G.U. n. 302 del 29 dicembre 2017, S.O.; for the new version of the text, with notes, see: G.U. n. 15 del 19 gennaio 2018).

Art. 1. paragraph 66, letter b, of the Italian law amends paragraph 618 of art. 1 of the Italian *Legge di bilancio 23 dicembre 2014, n. 190* // Financial Law No. 190 of 23 December 2014, confirming once again the legal force «*del Trattato di Pace fra l'Italia e le Potenze Alleate ed Associate firmato a Parigi il 10 febbraio 1947, reso esecutivo dal Decreto Legislativo del Capo provvisorio dello Stato 28 novembre 1947, n. 1430, ratificato ai sensi della legge 25 novembre 1952, n. 3054*» // «of the Treaty of Peace between Italy and the Allied and Associated Powers signed at Paris on 10 February 1947, enforced with Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947, ratified with Italian Law No. 3054 of 25 November 1952».

6. Legislative acts of mixed jurisdiction

Legislative acts that we may call of "mixed jurisdiction" are mostly those of the Italian Parliament that recognize some tax advantages related to the legal *status* of the administered Free Territory to Italian citizens or companies, or that recognize and provide funds for the exercise of the special normative and administrative powers of the Commissioner General of the Government for the Territory of Trieste, or of the part of this powers that, since 1964, is delegated to the Commissioner of the Government in Region Friuli Venezia Giulia, allowing them to carry out the duties of that Office.

The second category includes also annual and multiannual budget laws of the Italian State, and the consequent decrees of the Italian Ministry of Finances that mentions them, since 1955, including the latest clauses (for years 2018 to 2020), regarding special funds for the enforcement of the international obligations of both the Italian Republic and the Italian Government respect to the administered Free Territory.

See, *pars pro toto,* the very recent **Decreto 28 dicembre 2017 del Ministero dell'Economia e delle Finanze** // Decree of the Italian Ministry of Economy and Finances, without number, of 28 December 2017 – *Ripartizione in capitoli delle Unità di voto parlamentare relative al bilancio dello Stato per l'anno finanziario 2018 e per il triennio 2018-2020* // Distribution into items of the Parliament's matters of decision for the State budget for financial year 2018 and during the 2018-2020 three-year period (G.U. n. 303 del 30 dicembre 2017, S.O.) which, at item 7364 does still include *«Somma da erogarsi a cura del Commissario del Governo nella Regione Friuli-Venezia Giulia per l'esecuzione di opere pubbliche, comprese le opere marittime e portuali, nonché le opere di interesse artistico e per interventi di carattere straordinario nel Territorio di Trieste». //* «Sums granted by the Commissioner General of the Government in Region Friuli-Venezia Giulia to carry our public works, including maritime and port works, as well as works of artistic interest and works of exceptional nature in the Territory of Trieste».

O. Normative acts, legal acts, and circumstances that cannot discard or amend the normative *Corpus juris* examination

1. In the Italian legal order, the instrument that constitute the coherent and univocal *Corpus juris* that recognizes and enforces, since 1947, the international obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste, and the consequent obligations respect to other States and the United Nations, result to have never been discarded, amended, made unenforceable by upper-ranking or equal-ranking titles in the hierarchy of sources of law.

2. Indeed, the following titles are ineffective for this purpose:

2.1. **Legge 14 marzo 1977, n. 73** - *Ratifica ed esecuzione del trattato tra la Repubblica italiana e la Repubblica socialista federativa di Jugoslavia, con allegati, nonché dell'accordo tra le stesse Parti, con allegati, dell'atto finale e dello scambio di note, firmati ad Osimo (Ancona) il 10 novembre 1975* // Ratification and enforcement of the Treaty between the Italian Republic and the Social Federal Republic of Yugoslavia, with annexes, as well as the agreement between the same Parties, with annexes, of the Final Act and of the Exchange of Letters, signed at Osimo (Ancona) on 10 November 1975 (in G.U. 21.3.1977, n. 77 – S.O.).

The Italian-Yugoslav Treaty signed at Osimo on 10 November 1975 is an abnormal political bilateral convention with which the two signatory States commit to recognize (arts. 1 and 2) in mutual relations a terrestrial and maritime frontier «*pour la partie non indiquee comme telle dans le Traité de paix du 10 février 1947*.» // «for the part not indicated as such in the Treaty of Peace with Italy of 10 February 1947.», providing a topographic description of it at Annexes I to IV of the Convention.

However, the convention does not mention the fact that the frontier therein described and mutually recognized corresponds with the demarcation line between the two provisional administration zones of the Free Territory of Trieste, established as a sovereign State by the 1947 Treaty of Peace, and sub-entrusted with the quadrilateral Memorandum of Understanding of 5 October 1954 to the civil administration of the Governments (not to the States) of Italy and of Yugoslavia.

The reason of this omission is that a bilateral convention cannot amend multilateral obligations deriving from previous international and domestic legal acts that the two signatory States and their Governments have already taken on respect to other States under a multilateral Treaty of Peace and a quadrilateral Memorandum of Understanding (see art. 30 of the Vienna Convention on the Law of Treaties).

Therefore, the 1975 bilateral Italian-Yugoslav convention cannot have legal effects on third States (the Free Territory of Trieste and all others: *res inter alios acta, tertio neque nocet, neque prodest*), and its efficacy is limited to just the acts of international and of domestic law regarding the mutual relations between its two Signatory States, Italy and Yugoslavia, without giving raise to obligations or restrictions for their Governments either.

This is confirmed at art. 7 of the bilateral convention, which explains that: «*A la date de l'entrée en viguer du present Traité, le Memorandum d'Accord de Londres du 5 octobre 1954 et ses annexes cessent d'avoir effet dans les relations entre la Republique Italienne et la Republique Socialiste Federative de Jugoslavie*.» // «On the date of the entry into force of this Treaty, the Memorandum of Understanding signed at London on 5 October 1954 and its annexes shall cease to have effect in relations between the Italian Republic and the Socialist Federal Republic of Yugoslavia.» thus only in mutual, bilateral, relations and without prejudice to the rights of third parties, and especially (art. 8) to the provisions regarding the rights of respective ethnic minorities.

Therefore, the 1947 Treaty of Peace, the 1954 Memorandum of Understanding, and the 1975 Italian-Yugoslav Treaty do not conflict with each other, because they have legal efficacy on different levels: multilateral, quadrilateral, and bilateral respectively; also, they are all in legal force (2020, see: U.S. Department of State, *Treaties in force*; HMDS FCO, *UK Treaty Series*).

Indeed, both the Italian and the Federal Yugoslav Government continued exercising the 1954 special Trusteeship sub-mandate of temporary civil administration over the Free Territory of Trieste also after the (1977) ratification of the 1975 bilateral Treaty of Osimo. The Italian Government is still exercising it (2021), while the Yugoslav Government has exercised it into its legal extinction (1992).

Note: the Italian-Yugoslav Treaty of Osimo of 10 November 1975, ratified in 1977, is an abnormal bilateral Cold-War era agreement, with the purpose of ending Italian political claims against Yugoslavia, then an external NATO ally, because the United States was concerned for its possible destabilization after the imminent death of elderly President Tito, which happened in 1980.

Italian politicians were actually fuelling (and still do) nationalistic propagandas to put the legal validity of the Treaty of Peace into question, especially of the provision ending Italian sovereignty over the then newly established Free Territory of Trieste and over the territories ceded to Yugoslavia since 15 September 1947, therefore, driving Yugoslavia into reacting to those claims.

Italian claims to destabilize Yugoslavia were supported both by anti-Communist Italian parties, and by the pro-Soviet Italian communist parties, and the consequent political tensions were

especially strong in the two administration zones of the Free Territory of Trieste, sub-entrusted to the temporary civil administration of the Italian Government (Zone A) and of the Federal Yugoslav Government (Zone B) respectively.

This is why in 1974 Italy and Yugoslavia were confidentially invited to stipulate an official political pact to ultimately give up on mutual claims over the administered Free Territory.

Since those claims were political in nature, and had no legal bases, the claims waiver was drafted as a bilateral political Treaty with which Italy and Yugoslavia agree to recognize in that area a frontier between the two States, without mentioning that it coincides with the internal administrative demarcation line of the administered Free Territory, which therefore is not mentioned.

The 1975 bilateral convention has therefore the value of a political renounce of both Italy and Yugoslavia to claim a different border one at the expenses of the other, it has legal value only in their bilateral relations, and does not constitute a breach, nor an amendment, of the 1947 Treaty of Peace, 1954 Memorandum of Understanding, of the Charter of the United Nations, nor of the principles of the Helsinki Final Act, and of national laws that ratify and enforce those instruments of international law within the Italian and the Yugoslav legal orders.

After the ratification (1977) of this abnormal political conventions, the international discussions it could have triggered were delayed *sine die* by removing the items regarding the appointment of the Governor and other fulfillments regarding the Free Territory of Trieste from the list of urgent matters that the United Nations Security Council is seized with, thus those items are pending ever since (see: UNSC letter dated 20 May 1983, prot. PO 210 PI; UNSC Document S/2015/809, Annex, Chapter V, *Free Territory of Trieste)*.

The contingency of the purposes and strategic meanings of the Treaty of Osimo, as well as their limited efficacy, are confirmed by US diplomatic and intelligence documentation on the matter [v.doc. Arch.].

For the 1974 to 1994 time, see *pars pro toto,* documents:

– U.S. Department of State, 9.4.1974: (P 091827Z APR 74): diplomatic cable of the Deputy Secretary of State David Kenneth Rush to the US Embassies of Rome and of Belgrade: «*Subject: Trieste Zone B dispute* […] *3. Use of the adjective "former" to modify the phrase "Free Territory of Trieste" should be avoided.* […] *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. Continued legal character of Free Territory of Trieste was not rpt not affected.* […].».

– C.I.A. Report 25.9.1975 (A.f.R. 2005/04/22: CIA-RDP86T00608R000500040030-1): «[…] *Italy and Yugoslavia will sign a protocol, possibly by the end of next month, that will conclude their dispute over Trieste area* […]. *President Tito, who wants the Trieste question settled before he dies, sees hesitation in Italy as a mask for territorial claims that could be levied against a possibly troubled Yugoslav successor regime* […].*».*

– U.S. Department of State, 1.10.1975: diplomatic cable of Deputy Secretary of State Robert S. Ingersoll to the US Embassies in Rome, Belgrade, and London regarding the *«Italian-Yugoslav Agreement on Trieste Zone B»*, referring that according to the Italian Ambassador in Washington, Roberto Gaja *«there will probably be a need for some juridical arrangement to bring the Agreement into force without reopening the 1947 Peace Treaty».*

– U.S. Embassy in Italy, 26.10.1994, official letter of Ambassador Reginald Bartholomew to the people of Trieste *«nel quarantesimo anniversario dell'amministrazione civile italiana»* // «on the fortieth anniversary of Italian civil administration».

2.2. **Legge 7 novembre 1988, n. 518** // Italian Law No. 518 (7 Novembre 1988) - *Ratifica ed esecuzione dell'accordo tra la Repubblica italiana e la Repubblica socialista federativa di Jugoslavia per il regolamento definitivo di tutte le obbligazioni reciproche derivanti dall'articolo 4 del trattato di Osimo del 10 novembre 1975, firmato a Roma il 18 febbraio 1983, con scambio di note* // Ratification and enforcement of the agreement between the Italian Republic and the Socialist Federal Republic of Yugoslavia for the ultimate settlement of all mutual obligations under article 4 of the Treaty of Osimo of 10 November 1975, signed in Rome on 18 February 1983, with exchange of notes (G.U. n. 286 del 6.12.1988, S.O. n. 108).

Art. 4 of the bilateral Italian-Yugoslav Treaty of Osimo declares that the Italian and the Yugoslav Government would soon conclude an agreement on a global lump-sum

compensation in respect of the property, rights and interests of Italian natural and juridical persons that were situated in the part of the territory "*referred to in article 21 of the Treaty of Peace with Italy of 10 February 1947.*" (thus in the area that the Treaty established as Free Territory of Trieste in 1947) that were nationalized, expropriated or subjected to other restrictions after the date on which the Yugoslav Armed Forces occupied that area (1945-1947).

It is for this purpose that the with this Agreement, ratified and enforced in the Italian legal order with Italian Law 518/1988, the Government of the Italian Republic and the Yugoslav Government (Federal Executive Council of the SFR Yugoslavia) recall the purposes of bilateral and cross-border cooperation recalled in the *Accordi di Osimo* claiming that those property, rights and interests «*sono considerati*» // *«are considered»* as permanently acquired by the S.F.R. of Yugoslavia, and do therefore decide that the Yugoslav Government shall pay the Italian Government a USD 110 million compensation, and shall availability of certain property to those entitled.

Just like the Treaty of Osimo (see above) the Agreement implementing its article 4 remains a bilateral convention, with legal efficacy only respect to international and domestic legal acts that regard mutual relations between the signatory States, Italy and Yugoslavia and, since 1992, between Italy and the successor States of the S.F.R. of Yugoslavia.

Note: the fact that the legal efficacy of the Treaty of Osimo and of the descending Agreements is limited *ab origine* to mutual relations between the two signatory States has no legal consequences on the borders or on the obligations of the Republics of Slovenia and of Croatia as successor States, since 1992, of the S.F.R. of Yugoslavia in that area.

When the Federal Government of Yugoslavia was dissolved, the international mandate of temporary civil administration over then Zone B of the Free Territory of Trieste, which was entrusted to it under the 1954 Memorandum of Understanding of London, could not be involved in the succession of States, because it was a Special Trusteeship mandate.

Also, the legal *status* of that accessory Zone of the Free Territory, placed under the direct protection of the United Nations Security Council, had not been changed by the bilateral Treaty of Osimo, which, as such, could not allow sovereignty over the area to Slovenia and to Croatia by succession of State, despite them being sub-administering authorities over it by delegation of the ceased Federal Government either.

The consequent legal void was overcome by UN Resolutions S/RES/753(1992), A/RES/46/238, S/RES/754(1992), A/RES/46/236, S/RES 777(1992), A/RES/47/1, which, after plebiscites, recognized the independent Republics of Slovenia and of Croatia within their current borders, which do also include the parts of former Zone B of the Free Territory of Trieste they were respectively administering before (1954-1992), as well as confirming the dissolution of the S.F.R.Y. and of its Federal Government.

Indeed, the aforementioned UN Security Council and UN General Assembly Resolutions made unenforceable (art. 30.3 of the Vienna Convention on the Law of Treaties) the provisions of the Treaty of Peace of 10 February 1947 that included in the Free Territory of Trieste its former Zone B, without changing the independent legal *status* of the main area of the present-day Free Territory, which is sub-entrusted to the temporary civil administration of the Italian Government by the Governments of the United States and of the United Kingdom as primary administering authorities on behalf of the Security Council.

The fact that the sovereignty of Slovenia and of Croatia over former Zone B of the Free Territory of Trieste was obtained *ex novo* with the aforementioned UN Resolution of 1992, thus not by succession of State from the S.F.R. Yugoslavia under the bilateral 1975 Treaty of Osimo does also discharge both Slovenia and Croatia from the obligations of the bilateral Treaty and by the connected Agreements originated or deriving from it. Slovenia and Croatia, for instance, are no longer bound to by the Italian Government any of the compensations established in the 1988 Italian-Yugoslav Government regarding expropriated properties.

For the same reasons, since 1992, the present-day independent Republics of Slovenia and of Croatia can be also considered successor States of the Free Territory of Trieste in its former Zone B, and this does also involve the fiscal and port rights established under international law before European Treaties and before the adhesion of the two Countries to the EU.

Therefore, Slovenia and Croatia have the right to open a multilateral negotiation with the present-day Free Territory of Trieste and with its primary British-United States administering Government, upon consultation with the Countries of their *Hinterland* what have special rights and interests in this regard (Switzerland, Czechia, Slovakia, Austria, Hungary).

2.3. **Italian national or regional laws and administrative acts** claiming or implying the permanence or re-establishment of Italian sovereignty over the Free Territory of Trieste after 15 September 1947.

Such acts are *ipso facto* unenforceable because they conflict with the prevailing provisions of the Treaty of Peace with Italy of 10 February 1947, in particular, with its art. 21, paragraphs 1, 2 e 3, implemented in the Italian legal order as a law of the State under DlgsCPS 1430/1947, in force, ratified with Italian Law 3054/1952 and ranking higher than national Italian laws in the hierarchy of sources of Italian law under both pre-Constitutional (art. 2 DlgsCPS 1430/1947) and Constitutional law (arts. 10, first paragraph, and 117, first paragraph).

See, *pars pro toto,* the radical illegitimate, anti-Constitutionality, and consequent unenforceability of **paragraphs 618, 619 and 620 of art. 1 of the Italian Financial Law No. 190/2014** that were surreptitiously included within that law to by certain Italian politicians to deceive the unaware Italian Parliament into ruling, without sovereign powers to actually do so, about the regime and immovable property of one of the permanent Free Zones of the international Free Port of thee Free Territory of Trieste, which are under strict constrain under the prevailing obligations established by the Treaty of Peace (Annex VIII, arts. 2 and 3), of Italian laws that enforce the Treaty, and of art. 5 of the 1954 Memorandum of Understanding.

Indeed, the unenforceability of those paragraphs of Italian Financial Law 190/2014 was ultimately demonstrated by the above-mentioned **article 1, paragraph 66, letter b. of Italian Law No. 205/2017** which amended the aforementioned paragraph 618 of art. 1 of Italian Financial Law 190/2014 subjecting it to comply with the «***Trattato di Pace fra l'Italia e le Potenze Alleate ed Associate firmato a Parigi il 10 febbraio 1947, reso esecutivo dal Decreto Legislativo del Capo provvisorio dello Stato 28 novembre 1947, n. 1430, ratificato ai sensi della legge 25 novembre 1952, n. 3054.***» // «Treaty of Peace between Italy and the Allied and Associated Powers signed at Paris on 10 February 1947, enforced with Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947, ratified with Italian Law No. 3054 of 25 November 1952».

2.4. **acts of the administering Italian Government and of the bodies it has delegated that violate the norms that establish the present-day, administered Free Territory**

It is normative and administrative acts issued by legitimate authorities (the administering Government or the bodies it has delegated, in this role), but ultimately result unenforceable due to a conflict with the provisions of the Treaty of Peace that establish and regulate the Free Territory of Trieste: arts. 4, 21, 22, 48.5, 78.7, 79.6.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).

In particular, art. 2, fourth paragraph, of Annex VII of the Treaty of Peace establishes that the administering Government must enforce all compatible norms of the Permanent Statute that prove compatible with the Provisional Regime.

Note: The main compatible norms of the Permanent Statute are, as recalled above, those regarding: Democratic Rights, Human Rights and Fundamental Freedoms (art. 4); Civil and Political Rights (art. 5); Citizenship (art. 6); Official Languages (art. 7); State insignias (art. 8); Constitutional principles (art. 10); Elections (art. 12); Judiciary (arts. 14, 15, and 16); Direct dependency from the UN Security Council (arts. 17 and 25); Budget (art. 21); Power of Pardon and Reprieve (art. 22 and 23); Foreign relations (art. 24); Criteria for the Appointment and Removal of Administrative Officials (art. 26); Law, Order, and Police Forces (arts. 27 and 28); Railways (art. 31); Commercial Aviation Registers (art. 32); Naval Registers for the Free Territory and for other States (art. 33); International Free Port (art. 34); Freedom of Transit of goods to and from the Free Port (art. 35); Interpretations and amendments to the provisions of the Statute, and right to submit Petitions to the UN Security Council (arts. 37 and 36).

The obligation to enforce art. 34 of the Permanent Statute gives raise to the obligation to enforce Annex VIII - Instrument for the Free Port of Trieste, which otherwise could not be enforced.

Since those acts violate both the legal system of the Territory of Trieste and the obligations respect to it that are recognized and enforced in the Italian legal order, their enforcement cannot change the legal *status* of the administered Free Territory.

See, *pars pro toto*, the recent case of **Decreto n. 19/8-5/2016 del 26 gennaio 2016** // Decree No. 19/8-5.2016 of 26 January 2016 with which the Commissioner of the Government in Region Friuli Venezia Giulia of the time ruled, unlawfully implementing paragraph 618 of art. 1 of the aforementioned Italian L. 190/2014, to "transfer" of the regime of the international Free Port without having the legal power to do it, and in breach of arts. 2 and 3 of Annex VIII of the 1947 Treaty of Peace with Italy, del DlgsCPS 1430/1947, which is extended to the legal system of the administered Free Territory (B.U. 11 giugno 1956, n. 17), and of the 1954 Memorandum of Understanding.

All legal acts consequent to this decree (tenders, sales, asset exchange transactions, concessions, rents, etc.) are therefore flaws with absolute nullity and voidness *ab origine*.

2.5. **enforcement, in the Free Territory of Trieste, of Italian laws that were not extended to its legal order through the necessary official measures of Administering Authorities**

Enforcing, in the Free Territory of Trieste, Italian laws that were not extended to its legal order through the necessary official measures of Italian Administering Authorities (the Italian Government and its Ministries, the Commissioner General of the Government, the Commissioner of the Government in the Region, the Region itself) cannot change the legal *status* of the Free Territory under the so-called principle of effectiveness.

For instance, under the principle of effectiveness the prevailing circumstances are:

- that the administering Italian Government has uninterruptedly continued to exercise the Special Trusteeship Mandate that was sub-entrusted to it with the Memorandum of Understanding regarding the Free Territory of Trieste since 1954, and
- that the legal order of the Italian Republic maintains in full legal force the laws that ratify and enforce the international obligations established under the 1947 Treaty of Peace and under the 1954 Memorandum of Understanding, which do also prevail over Italy's own national law.

Due to this, the enforcement of Italian Laws that were not correctly extended to the legal order of the Free Territory of Trieste with the needed, official acts of its Administering Authorities do not constitute a form of exercise *de facto* of Italian sovereignty, rather, they constitute plain violations (of civil, criminal, administrative, fiscal nature) of the aforementioned obligations established under international and Italian domestic law, therefore such circumstance is a legitimate contentious issue to seek both the necessary re-establishment of the rule of law and the reparation of all consequent damages.

2.6. **judgments and other legal decisions of Italian Courts, regarding all matters and instances of judgment, claiming or implying the persistence or re-establishment of Italian sovereignty over the Free Territory of Trieste after 15 September 1947**

The legal order of the Italian Republic belongs to the Roman-German civil law system (*diritto codificato*), in which, unlike in the Anglo-Saxon *common law* tradition, judgement have no normative value, and Italian judges are bound to apply the law.

Therefor, each judgment issued by Italian Courts only applies to the case it discusses, it does not constitute a legally binding precedent case, but only the expression of an opinion; this means that a judgment is null and void, or unenforceable, if expressed in breach of upper-ranking provisions of Italian domestic law.

Judgments and other decisions of Italian judicial bodies, regardless to their nature or instance of judgment, that claim or imply the persistence or re-establishment of Italian sovereignty over the Free Territory of Trieste, which ceased on 15 September 1947 under the Treaty of Peace, are therefore unenforceable because they constitute a breach of the law, in particular, of DlgsCPS 1430/1947 ratified with L. 3054/1952, which enforces, also in derogation from other laws and international obligations, the Treaty of Peace with Italy of 10 February 1947, therefore granted and confirmed upper-ranking by the Italian Constitution (arts. 10 first paragraph, 117 first paragraph, and 120 second paragraph).

The legal infringement does especially regard the obligations to enforce the provisions of the Treaty of Peace that establish and recognize the Free Territory of Trieste as independent Sovereign State (art. 21), of those regulating its international Free Port, and of all those reserving all disputes regarding the interpretation and enforcement of the same Treaty to specific procedures of international law (art. 87; Annex VI, art. 36, Annex VIII art. 24, Annex IX art. 7, Annex X art. 19), therefore denying national Courts the authority to express themselves about it.

In the Italian legal order, the competences of national judges on international matters is also excluded, in principle, by the international obligations under Constitutional constrain that are granted by the Vienna Convention on the Law of Treaties, ratified and enforced in the Italian legal order with L. 112/1974 (namely, arts. 65, 66 and 67 of the same Convention).

This is why judgments of Italian judicial authorities that claim or imply the permanence or the re-establishment of Italian sovereignty over the Free Territory of Trieste are avoiding to enforce Italian legislation on the matter, and present a “circular evidence” based on deceptive doctrines of politicized jurists, which consist in gross falsifications of the letter and of the meaning of instruments of international law, Italian

nationalistic claims, and even threats against the citizens and residents of the Free Territory who disagree from that and claim compliance with law in force.

See, *pars pro toto*, the contents of recent judgments of the Regional Administrative Court for Friuli Venezia Giulia - TAR FVG 400/2013 and 530/2013 described and analyzed in the dedicated expertise SG/2016/LC/M-IV.1(-en-it) of the I.P.R. F.T.T. [s.Arch.doc.]. The full tests of both judgments are published on the official website of Italian *Giustizia Amministrativa* // Administrative Justice.

2.7. **The effective exercise of administrative, judicial, and military functions** in the present-day Free Territory of Trieste by public officers of the Italian Republic who have sworn an Oath of Loyalty do not receive indemnities for missions abroad and are not informed about the special legal status of the Free Territory for the exercise of their duties.

Those circumstances have no legal value, since:

– as explained above, this personnel is provided by the Italian Republic to the Italian Government in order to carry out the special trusteeship mandate sub-entrusted to it for the temporary civil administration of the present-day Free Territory of Trieste, not to exercise the sovereignty of the Italian State over it;

– public officers entrusted with this service are therefore bound by the Oath of Loyalty to the Italian Republic to respect the Italian Constitution and national laws which, as documented in this analysis, recognize and enforce the obligations of the Italian Republic and of its Government respect to the present-day Free Territory of Trieste;

– mission allowances for Italian officers serving their duties in the Free Territory were correctly paid for years, and their termination remains a question of Labour Law within Italian authorities, and it has also given raise to legal actions under Administrative Law;

– the circumstance that the Italian Government does not provide them with the needed information about the special legal *status* of the Free Territory, nor of their consequent duties and rights, or the fact that they receive incorrect information or instructions on this matter, resulting in false beliefs and illegal behaviors, is as well an internal problem between Italian Authorities.

P. Liabilities for the violations

The Italian Government exercise the special trusteeship mandate of temporary civil administration of the present-day Free Territory of Trieste that is sub-entrusted to its responsibility by delegating its conduction to civil and military officers and employees of the Italian State who, for their role, have sworn an oath of loyalty to the Italian Republic, to its Constitution, to its laws, and to their official duties (arts. 54 and 98 of the Italian Constitution).

In the Free Territory of Trieste, their duties regard the administration of a foreign State that, therefore, is not part of the sovereign territory of the Italian State. For instance, the present borders of the Italian State are those existing at the coming into

force of its own Constitution, on 1 January 1948, after the territorial changes deriving from the Treaty of Peace of 10 February 1947, in force since 15 September 1947.

The duty of those civil and military officers and employees of the Italian State is therefore a special mission abroad, in compliance with the international obligations undertaken by the Italian Republic and by the Italian Government respect to the Free Territory of Trieste, to all other States, and to the United Nations with the instruments of international and of Italian domestic law that constitute the subject of this analysis.

For those reasons, civil and military officers and employees of the Italian State serving their duties in the present-day Free Territory of Trieste fulfill their Oath of Loyalty to the Italian Republic if they do correctly exercise the functions of temporary civil administration that are entrusted to them.

This is also why the civil and military officers and employees of the Italian State who take advantage of their functions in the Free Territory of Trieste, or respect to it, to simulate it be subject to the sovereignty of the Italian State are violating their own oath of loyalty to the Italian Republic, to its Constitution, to its laws, and to their official duties.

Violations committed by those acts affect both the legal order of the Italian State and the legal order of the Free Territory of Trieste, which shares its general principles as well as part of the same laws, including those about crimes committed by public officers against Public Administration.

Italian public officers, employees, and administrators who commit similar violations by forging or using deceptive acts bear both criminal and civil liabilities, including that for the compensation of damages, which does also extend to the Italian State and to the Italian public bodies the liable persons work for.

The forging of deceptive public acts is described and punished at art. 479 of the Italian *Codice Penale* // Code of Criminal Law as "*falsità ideologica*" // "ideological falsehood" committed by a Public Officer who, producing a public act in the exercise of their duties «*attesta falsamente fatti dei quali l'atto è destinato a provare la verità*» // «falsely states facts of which said act shall proof the truthfulness».

The principle of responsibility is established at art. 28 of the Italian Constitution: «*I funzionari e i dipendenti dello Stato e degli enti pubblici sono direttamente responsabili, secondo le leggi penali, civili e amministrative, degli atti compiuti in violazione di diritti. In tali casi la responsabilità civile si estende allo Stato e agli enti pubblici.*» // «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 provision is as well extended to the legal order of the present-day Free Territory of Trieste under *Decreto n. 100/1955 del Commissario Generale del Governo italiano* // Decree No. 100/1955 of the Commissioner General of the administering Italian Government.

Annexes:

- *Dlgs 1430/1947* // Legislative Decree 1430/1947 (abstract of the provisions regarding the Free Territory of Trieste), in Italian;
- *Legge 3054/1952* // Italian Law 3054/1952, in Italian;
- *Decreto interministeriale 13 luglio 2017 sulla gestione amministrativa dei punti franchi compresi nella zona del porto franco di Trieste* // Interministerial decree 13 July 2017 about the administrative management of the free zones of the Free Port of Trieste included in the area of the Free Port of Trieste, in the original Italian language, with translation provided by the I.P.R. F.T.T.

This analysis was updated in January 2021
by the I.P.R. F.T.T. Law Commission
with the supervision of the I.P.R. F.T.T. Secretary General
(I.P.R. F.T.T. Instrument of Constitution, arts. 41, 42, 45, 47, 49)
© I.P.R. F.T.T. all rights reserved