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# International Provisional Representative of the FREE TERRITORY OF TRIESTE

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

IPR FTT Law Commission

SG/2016/LC/M-IV.Add-en

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

### Document IV.1.Add-en

#### ADDENDUM TO ANALYSIS SG/2016/LC/M-IV.1-en about the falsification of the treaties and simulation of sovereignty in Italian administrative and judicial acts

#### **8. Specifications about the liabilities of Italian public officers who commit violations of the legal obligations regarding the Free Territory of Trieste and its international Free Port.**

It seems to appear that the exercise of the temporary administration of the Free Territory of Trieste entrusted to the Italian Government gives raise to a conflict between the duties and responsibilities of Italian public officers with respect to the two States. This is why it is important explaining in detail the true nature of those responsibilities and duties.

##### **8.1. Italian public officers serving their duties in the Free Territory of Trieste.**

The Italian Government exercises the role of temporary civil administrator of the present-day Free Territory of Trieste by delegating public officers of the Italian State who, for their role, have pronounced an Oath of Loyalty to the Italian Republic, to its Constitution, to its laws, and to the duties of their office (arts. 54 and 98, Italian Constitution).

The Italian Government, as well as the public officers of the Italian State, for their role, do also have the duty to respect and to comply with the international obligations of the Italian Republic (arts. 10, paragraph 1 and 110, paragraph 1 of the Italian Constitution) with respect to the Free Territory of Trieste and all other States, without violating their rights.

The violation of these obligations and of the consequent rights, when committed by Italian civil officers, do therefore regard both the legal order of the Italian State and that of the Free Territory of Trieste, which shares the same general principles by virtue of

Decree No. 100/1955 of the of the General Commissioner of the administering Italian Government.

In accordance with the same principles, the role and duties of public officers apply to all individuals who exercise a legislative, judicial, or administrative role, including also temporary public powers or functions, and persons appointed to serve in a public office, as well as police and military forces in charge of leading roles, of granting law and order, or any other public interest service.

### **8.2. The principle of liability.**

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

The civil liability extended to the State due to violations committed by Italian public officers who exercise the temporary civil administration of the Free Territory of Trieste, or in regard to it, can be also extended to the Italian Government, both for its role of trustee of the Free Territory and as Government of the Italian State.

### **8.3. The Oath of Loyalty to the Italian Republic.**

The Oath of Loyalty sworn by Italian public officers is established and regulated by the principles of the Italian Constitution at arts. 54 *«All citizens have the duty to be loyal to the Republic and to uphold its Constitution and laws. Those citizens to whom public functions are entrusted have the duty to fulfil such functions with discipline and honour, taking an oath in those cases established by law.»* and 98 *«Civil servants are exclusively at the service of the Nation. [...]»*.

The Oath-taking formulas do therefore bind Italian public officers to be loyal to the Republic, to respect its Constitution and laws, as well as to fulfill the duties of their office. The Italian military Oath is also a commitment to defend free institutions, thus democracy.

The Italian Government requires an identical Oath of loyalty also to private subjects with public-service missions in the Free Territory of Trieste (public services personnel, lawyers and other professional groups).

### **8.4. The functions of Italian public officers serving their duties in regard to the Free Territory of Trieste.**

The functions of Italian public officers serving their duties in the Free Territory of Trieste, or duties pertinent to it, regard the recognition and the temporary administration of a foreign State, which by virtue of its status does not belong to the territory of the Italian State recognized in the Constitution of the Italian Republic.

The unitary and indivisible territory recognized in the Constitution of the Republic of Italy (art. 5) is in fact the same as it was at its coming into force, on 1 January 1948, by virtue of the territorial changes accepted with the Treaty of Peace of 10 February 1947, which came into force on 15 September 1947.

The duty of Italian public officers serving their duties in the Free Territory of Trieste does therefore consist in a special mission to a foreign State, undertaking the international obligations of the Italian Republic towards the Free Territory of Trieste, the United Nations – and towards the Governments of the United States of America and of the United Kingdom – by virtue of the following international and Italian legal instruments:

- Treaty of Peace of 10 February 1947, undersigned without reserves with Italian Law 811/1947 and executed with Decree of the Provisional Head of State 1430/1947, ratified with Italian Law 3054/1952, and extended to the present-day Free Territory of Trieste with the publication on volume 17/1956 of the Official Bulletin of the General Commissioner for the Territory of Trieste;
- Memorandum of Understanding regarding the Free Territory of Trieste, signed in London on 5 October 1954 between the outgoing administering Governments and their successors, executed with Decree of the President of the Republic of Italy of 27 October 1954 and with Italian Constitutional Law No. 1/1963, extended to the present-day Free Territory of Trieste with the publication on volume 7/1963 of the Official Bulletin of the General Commissioner for the Territory of Trieste;
- Charter of the United Nations of 26 June 1945, ratified by the Italian Republic with Law No. 848/1957, extended to the present-day Free Territory of Trieste with the publication on volume 31/1957 of the Official Bulletin of the General Commissioner for the Territory of Trieste.

Also, the Italian Republic provides the military personnel needed for the defensive cover of the present-day Free Territory of Trieste exercised by the NATO after the withdrawal of the special United States and British forces (NATO Doc. PO/55/341 and others). The President of the Italian Republic is the commander-in-chief of the armed forces (Italian Constitution, art. 87).

#### **8.5. Honor and violation of the Oath of Loyalty to the Italian Republic.**

For the reasons described above, the civil and military personnel of the Italian State honors its Oath of Loyalty to the Italian Republic and its pertinent duties in compliance with the mandates of temporary civil administration and of military defense, entrusted to the Italian Government and to the NATO respectively, when it correctly serves its duties in the present-day Free Territory of Trieste, or duties pertinent to it.

For the same reasons, civil or military officers of the Italian State who abuse of their functions in the Free Territory of Trieste, or of functions pertinent to it, in order to simulate the sovereignty of the Italian State do violate their Oath of Loyalty to the



Italian Republic, to its Constitution, to its laws, and to the duties of their office, as well as exposing the administering Italian Government and the Italian State to international sanctions and civil liabilities.

Under Italian criminal law, similar abuses committed by them can be prosecuted as crimes against the State, and as breaches of Law 17/1982 if it results that they were secretly organized by a group of people.

#### **8.6. Forge and use of deceptive public acts.**

Analysis SG/2016/LC/M-IV.1-en ascertained that certain Italian officers and magistrates violated their duties pertinent to the Free Territory of Trieste forging public acts (decrees, ordinances, judgments, official communications) in order to falsely attest that the Free Territory of Trieste «*does not exist and never existed*» and would be consequently subject to the sovereignty of the Italian State.

This kind of deceptive public acts had the purpose of demonstrating the legitimacy of significant illegal actions, committed by a consociation of other public officers, politicians and speculators at the expenses of the Free Territory of Trieste and of its international Free Port.

Under Italian law, this behavior is described and punished at art. 479 of the Italian Code of Criminal Law as “ideological falsehood” committed by the public officer who, producing a public act in the exercise of their duties «*falsely states facts of which said act shall proof the truthfulness*».

The drafting of public acts that falsely attribute to the Italian State, or to other public or private entities, ownership rights on movable or immovable properties that belong *ex lege* (Treaty of Peace with Italy: Annex X, art. 1, Annex VIII, art. 2; Italian Law 3054/1952) to the Free Territory of Trieste and to its international Free Port as a State corporation of the Free Territory does as well constitutes the same crime.

The Italian legal order rules that a public officer found guilty of this crime is punished with 3 to 10 years imprisonment, and the civil liability for the compensation of the damages caused to third parties is extended also to the public body they represent, and to the State.

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This Addendum was completed in September 2016  
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, artt. 41, 42, 45, 47, 49)  
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