



To the Commissar of the Port Authority of Trieste
Zeno D'Agostino

protocollo@porto.trieste.it

and c.c.

to the Minister of Infrastructure and Transport
Graziano Delrio

segr.capogabinetto@mit.gov.it,

To the representatives of the States and Enterprises
holding rights and legitimate interests
as for the international Free Port of Trieste
(see *English version*)

**DEMAND TO ENFORCE THE LAW REGARDING THE MANAGEMENT
OF THE INTERNATIONAL FREE PORT OF TRIESTE**

Mr. Commissar,

we must frankly address You, and Mr. Minister who is receiving a courtesy copy of this note, our sincere concern and disappointment for certain news and public statement of local press about your recent appointment as head of the Port Authority of Trieste (Autorità Portuale di Trieste - APT).

Because these give the impression that the local administrators of the PD, authors of Your appointment are now attempting to improperly condition Your actions and that they are exploiting it on the media to violate, unpunished, the legal status of the international Free Port of Trieste, as well as the duties of the APT as its temporary administrator on behalf of the Italian Government (Ministry of Infrastructure and Transport) under the special trusteeship it has received with the Memorandum of Understanding of London of October 5th, 1954.

Because the international Free Port of Trieste is not a port of the Republic of Italy, but it is a State corporation of the Free Territory of Trieste under a special trusteeship mandate, as established and regulated to serve all the States of the International Community and their enterprises by the Treaty of Peace of Paris, in force, signed on February 10th, 1947 with the specific Annex VIII – *Instrument for the Free Port of Trieste*.

This is also the reason why, as You high have already learned, the legislative powers on the international Free Port of Trieste belong to the Italian Government or to the Commissar of Government it has delegated, not to the Italian Parliament.

Due to this, applying Italian laws to the international Free Port of Trieste, especially port and customary laws, but also the envisioned reform of Italian ports is absolutely arbitrary.

But it is also arbitrary applying the laws of the European Union to both the Free and customary port of Trieste, as well as to the whole Free Territory of Trieste, which has not become part of it yet. For instance, to legitimize the enforcement of European laws in Trieste there should be specific international agreements with the EU.

Therefore, Mr. Commissar, we bring to your attention that in Trieste does not even exist the Community - or Italian - obligation to call for - European or international - tenders the concessions regarding port areas, being these terrestrial or marine (for example, the Transalpine Pipeline - Siot), port services (for example, services regarding tug boats), nor the concession of maritime State properties (for example, leisure sailing and seaside resorts).

The imposition of said calls for tender has therefore no legal foundation and it constitutes grounds for enormous compensations to the enterprises which were cut out, through legal actions which can be opened before international or European Courts, but also before Italian Courts.

Because to legitimize, in Trieste, the enforcement, of said Italian laws, are necessary legislative measures issued by either the administering Government or the Commissar of Government, under this title and adapting these to the requirements of the mandate (Article 5 of the Memorandum of London of 1954) for the maintenance of the Free Port of Trieste in general accordance with - at least - Articles 1 - 20 of Annex VIII of the Treaty of Peace which establishes its international regime.

Not only the administering Italian Government has omitted, to this day, to fulfill its obligation under the international mandate, but it does also violate that using the laws and organizations of the Italian State, therefore it violates its own Constitution.

Besides the rights of all States, the same Treaty of Peace assigns special rights on the international Free Port to many of these: the Free Territory of Trieste, France, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics (currently Russia and its successor States), the United States of America, the People's Federal Republic of Yugoslavia (current Slovenia, Croatia and other successor States), Italy, Czechoslovakia (current Czech Republic and Slovakia), Poland, Switzerland, Austria and Hungary.

The obligations of the Treaty, which the Laws considers an overriding and Constitutional obligation for the Italian legal system as well, do therefore rule also not to subordinate or relate the management and the independence of the international Free Port of Trieste to local administrations and to the interests of Italian ports, as well as the obligation to promote the use and best possible development of its bounded Free Zones (like the Northern Free Port) and these that might be established afterwards.

There are obligations which were essentially respected by the recently expired presidency of the APT, who addressed the enforcement of Annex VIII that had started and then was

blocked in 1997 by then Minister Mr. Burlando, trying to conciliate, for possible that it was, all the legitimate interests involved, including these of Italy.

It is exactly for this reason that this Presidency had been furiously obstructed by local politicians since, contrarily to that, they are long attempting to seize the management of the port with no rights, to destinate the Northern Free Port to building speculations which have under serious anti-mafia questions, to favor the diversion - from Trieste to Italian ports - of the trades of the Baltic-Adriatic and Transsiberian routes, and to downgrade Trieste from an international Free Port to a regional port.

These abnormal activities they carry out, other than being clearly harmful for the port and the city, as well as depending on logics and transversal ties which are still awaiting a plausible explanation, constitute severe violations of both domestic and international law, which are obviously malicious whenever the ones who support the violations do publicly justify themselves (Senator Russo) stating that politics prevails on the law.

And the violation of international obligations - technically defined as “international crime” - established under a multilateral normative Treaty (which, therefore, is not contractual) as is the Treaty of Peace of 1947, does not remain non-prosecutable when, as for this case, it harms the rights and interests not only of a local population which is illegally kept under control, but also these of a wide community of States and, therefore, of their public and private enterprises.

Which means a very significant number of subjects, each of these has the right to claim, at any moment, their rights, completely and by suitable means, before international (but also Italian) courts, even when it comes to the liability of commercial detriment.

Whatever they did tell You about the Port of Trieste those local politicians and the other supporters or accomplices of said violation - even from the institutions - to involve You as well, due to Your role of Officer of the Italian Government, you should know, Mr. Commissar, that this is not a local matter nor a question under domestic Italian law depending on Italian politicians, rather, it is an international question which might outbreak on the level of international justice at any moment and at the will of any of the many public and private subjects involved, for these are many and not all of them can be kept under control.

In order to defend the international Free Port, the economy of the city of Trieste and the interests of the International Community, we did also formalize and publish a formal notice (from Vienna) to the administering Italian Government for it to fulfill its international obligations, criminal complaints (from Trieste) against the same politicians – especially Ms. Serracchiani, Mr. Cosolini and his predecessor Mr. Dipiazza – for the crimes of per reati di disturbance of the concession tenders of the APT regarding the Northern Free Port, which, reached their peak months ago, with the - yet inapplicable - deceptive amendments of Senator Russo to the Italian Financial Law for year 2015.

Currently, we must learn from local news that after Your appointment to office, which was archived through abnormal pressures on the precedent Minister, Mr. Maurizio Lupi, by these same politicians who are promoting the violations, they do act in public as the

conquerers and owners of the Port Authority, portraying its Commissar as if he were on their leash and subject to them, even if the local administration in the name of which they say to be taking action (Municipality, Region, Province) do not have the title to intervene on the management of the international Free Port of Trieste.

In whatever sane administrative, political institutional and business reality of Europe, a situation like the one we have outlined above would not be tolerated and it would have already led since long inquiries from judicial and anti-corruption authorities as well as the suitable reaction of civil society.

Also, if it were one of the big Italian ports, being that Venice or Genoa, Livorno or Naples or even Gioia Tauro, to have the status of international Free Port as does Trieste, that would be exploited as much as possible and no local politician would dare to sabotage it.

In the end it seems clear, and not only to the specialized centers of investigations and analysis, that here in Trieste we are before a systematic, harmful conduction of public interests and properties which is less visible but very similar to these, more visible, which affect most of the Italian peninsula.

Therefore, we consider it our duty addressing Your attention on the fact that the Port Authority of Trieste is a technical-administrative body, which has the institutional duty to remain outside of political-party logics and the influence of other organizations, as well as that of standing first in line when it comes to contrasting the commission of these crimes in order to firmly protect the international Free Port, legality, public interest and the interests of both the International Community and of the States holding special rights.

Also, to clear the special legal status of the structure that You are temporarily managing, we are annexing and addressing to Your institutional attention, Mr. Commissar, the integral texts of our formal notice to the Italian Government and of the criminal complaints for disturbing the concession tenders which, since now, are to be considered known to You, as these already are when it comes to the Minister who has assigned to You the current role of Commissar in Trieste.

So, Mr. Commissar, You can finally have a better understanding of why Your management of the APT - and especially of the international Free Port of Trieste - for much that it is yet at its beginning and certainly not as known as it would be needed, might lead to actual violations of illegal omissions of the mandatory enforcement of specific provisions, which are mandatory and binding under both the international and the Italian legal order.

Because these are obligations established under specific provisions of the Treaty of Peace (*United Nations Treaty Series, Volume 49 – 1950, N° 747*) and implemented under the Legislative Decree of the Provisional Head of State No. 1430 of November 28th, 1947 (*GU - Official Gazette No. 295 of 24.12.1947 and ordinary supplement*), ratified with Law No. 3054 of 25/11/1952 (*Official Gazette No. 10 of 14.1.1953*), and of the obligations to respect the Memorandum of Understanding of London of 1954 established under Law 848/1957, all mandatory under Law No. 112/1974 and sealed under the Constitution of the Republic of Italy at Articles 10, sub-paragraph 1 and 117 sub-paragraph 1. The Treaty of Peace of 1947, which is also a law of the Republic of Italy, as well as the Memorandum of

Understanding of London, are both related instruments of international law, recognized and in force (cfr. anche: *U.S. Department of State, Treaties in Force, 2013*).

Therefore, under the law and beyond any - for legitimate that it is - personal opinion, political view or doctrinal exercise, the legal status of Trieste and of its international Free Port, as well as their Economic and State privileges is precisely established and regulated under the specific international and national legal instruments in force.

We are firmly determined to defend that with any legal action, as You can now learn from the acts we have annexed, as well as by our recent initiative for the correct registration of the ownership of the Northern Free Port to subtract it to the well-known illegal operations which are under serious anti-mafia questions and sold as urban renewal.

The Italian Land Registry Judge decided to immediately reject the instance on the bases of formal reasons, since he cannot question the Treaty of Peace and since no public or private subject can oppose to that equal - or efficacious - titles of legitimacy, but we have already solve this first problem during the procedure, since the litigation on the ownership does, no matter what, block the legal and financial possibility to carry out the illegal speculation attempts on the area of the Free Port.

Also, we must also bring to Your attention that here, in Trieste, under the same legal titles, and likewise to other previous registrations, the ownership of any Italian movable or immovable property of Italy existing on September 15th, 1947 cannot be assigned to the State Property of the Republic of Italy or its State and para-statal organizations, contrarily to the deceptive ideas on this matter which were spread in order to take advantage of that and to violate the very legal system of Italy.

Because the ownership of said properties does exclusively and *ex tunc* belong to the State and demanial property of the Free Territory of Trieste, as State established and recognized since that date (Treaty of Peace, Article 21, points 1 and 2, Article 90; Annex X, Article 1; Legislative Decree of the Provisional Head of State No. 1430/1957, Law No. 3054/1952, Articles 10 and 117 of the Constitution of the Republic of Italy), and the part of these properties which is included in the boundaries of its bounded Free Zones is assigned to the State corporation Free Port (Treaty of Peace, Annex VIII Articles 2, points 1 and 2; Article 3, point 1).

The registration and assignation of Land Registry Numbers of these rights of ownership *ope legis* on the above mentioned public properties is *ex officio* a duty impossible to avoid for public administrations, and anyone holding interests on the can demand it.

Therefore, we trust Your personal competence and correctness, Mr. Commissar, for You to keep into rightful account, from now on, in the continuation of Your semestral mandate of head of the APT, granting with the needed strictness both the enforcement of the actual legal provisions and the independence of the APT from politicians, parties and administrations of local authorities which have no legal title to interfere in the management of the international Free Port of Trieste and which are favouring the above mentioned clear and prosecutable violations.

Also, we invite You to grant, in fulfillment of the same obligations, the needed separation between the legitimate interests of Trieste, which Your current role of Commissar has the right to protect, from these - different - of the ports of the Republic of Italy.

This communication has the value of a formal invitation to the Commissar and to the Administration of the “*Autorità Portuale di Trieste - APT*” (Port Authority of Trieste) to respect the law in the provisional management of the international Free Port of Trieste, as well as the value of a notice of default for any case in which said law is violated.

Awaiting your kind answer,

Best regards,

Trieste, April 22nd, 2015.

The President of the Free Trieste Movement

Roberto Giurastante