

Chamber of Deputies Act

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presented by
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Answer. — In the 1947 Treaty of peace between Italy and the victorious Allied Powers of WWII, among the provisions regarding Italian territorial cessions, there is article 21, which envisioned the establishment of the free Territory of Trieste, the integrity and independence of which would have been granted by the United Nations Security Council. This same article ruled that Italian sovereignty over the area would end at the coming into force of the treaty of peace itself. The free Territory should have been administered by a Governor appointed by the United Nations Security Council. According to the will of the victorious powers, it should have been an enclave not subject to any national sovereignty, not even Italy's, with an international administration and a functional international role, and free from influences.

The radical change in global political conditions did however prevent to enforce the clause of the 1947 treaty of peace regarding the establishment of the free Territory of Trieste.

So, even due to the consequent impossibility to appoint the Governor, an appointment on which depended the enforceability of the territory's Statute, it never saw the light of day, and the territories it included were administered, when it comes to zone B, including part of the Istrian peninsula, which today belongs to Croatia and to Slovenia, by a military Yugoslav Government, and, when it comes to zone A, including the city of Trieste and its surroundings, by an Anglo-American military government. That was a double military occupation, in which military authorities, Yugoslav and Anglo-American respectively, had all normative and administrative powers, in a situation that was necessary to be regarded as provisory.

To solve the situation of sovereignty over zone A and zone B, later, on October 5th, 1954, the Memorandum of Understanding of London was signed between Italy, Yugoslavia, United Kingdom, and United States.

With this international agreement, United Kingdom and United States, ending the military Government they had exercised until that moment in zone A, handed that over to the administration of the Italian Government, while Yugoslavia was granted territorial concessions by rectifying certain portions of the border. The transition from the allied military administration to the Italian civil administration took place on 26 October 1954. At the same time, the extension of Yugoslav administration to zone B was recognized and made official.

The Memorandum of London had amended all provisions of the treaty of peace regarding the free Territory of Trieste, which, since its coming into force, ceased to exist and have effect. This amendment took place in full compliance with the customary laws on treaties, later codified in the 1969 Vienna Convention on the Law of Treaties (which, therefore, were already in force at the time of the Memorandum) under which «Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if: (...): b) the suspension in question is not prohibited by the treaty and: (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations (...))» (article 41).

The Memorandum of London has fully respected the conditions set at art. 41 of the 1969 Vienna Convention, since it has settled a dispute regarding sovereignty over a certain territorial area, regarding Italy and Yugoslavia one one side, and Great Britain and the Untied States on the other, because they ruled over zone A. For the same reason, the coming into force of the Memorandum of London has in no way caused prejudice to the interests of other signatory States of the 1947 which were not signatories of the Memorandum itself.

It is worth emphasizing that the very 1947 treaty of peace does absolutely not forbid partial amendments by just part of its signatory States, when they are the only concerned parties. This is clear from article 46 of the treaty, which envisions the consent of all allied powers exclusively and solely with regard to eventual modifications of military, naval, and air clauses, which means, solely to part IV of the treaty. Obviously, the questions of sovereignty and borders of the Memorandum of London don't fall within the operational framework into question.

As further evidence of the possibility to partially modify the treaty, even if indirectly, contribute articles 86 and 87 of the treaty. The first one establishes that, for a 18 months time, the ambassadors in Rome of the United States, Soviet union, United Kingdom, and France are representing the allied powers in dealing with the Italian government all matters concerning «the execution and interpretation» of the Treaty itself. The following article 87 underlines that any controversy arising from the interpretation of the treaty that is not subject to other procedures (as is that at article 46), meaning «is not settled by direct diplomatic negotiations» shall be referred to the four ambassadors who act as representatives of the allied powers, even after the 18 months term. This provision does therefore allow for the conclusion of agreements in compliance with the treaty of peace under the four power's only authority (and not under all signatory States) mentioned above, which means, diplomatically, only to the concerned signatories.

Anyways, when it comes to the Memorandum of London, all four powers were fully involved, in compliance with the provisions of the treaty of peace. Not only Great Britain and United States, signatures of the Memorandum, as mentioned above, but also the Soviet union and France, as they both accept it with specific verbal notes. As for the Soviet Union, with its appropriate note of 12 October 1954, it took notice of the amendments to the treaty of peace contained in the Memorandum deriving from the agreement between Italy and Yugoslavia, without questioning anything and, instead, underlying the contribution that gave to improving international relations. On their side, the Governments of the United States, Great Britain, and France issued separate notes, with the same content, claiming they would not support claims claims of either Yugoslavia or Italy respecting territory under the sovereignty or administration of the other», thus providing an authentic interpretation of the Memorandum itself in terms of stable and final establishment of borders and, therefore, of the extension of the two bordering States' sovereignty.

Furthermore, in compliance with article 9 of the Memorandum, its text was forwarded by the four signatories to the United Nations Security council to inform its members on 5 October 1954 (UN Doc. S/3301), which means the same day it was signed. No State objected in any way, or requested to discuss the matter. This way, the Memorandum of London became officially known to all members of the United Nations, including all (excluding none) of the signatory States of the Treaty of peace. Finally, it results that the Government of then Yugoslavia, in any event and ad abundantiam, addressed an official note to all signatory States of the treaty of peace, informing them of the content of the Memorandum, and obviously none of them had anything to object about it.

With the successive 1975 Treaty of Osimo, the borders that had existed for twenty years between Italy and Yugoslavia were ultimately confirmed, officialising the effective exercise of sovereignty that both States had exercised and the renounce of the Italian claim to exercise sovereignty over zone B, thus recognized as an area under full Yugoslav sovereignty. The relations between the two States were regulated in such greater detail, that article 7 of the treaty of Osimo rules the repelling of the Memorandum of London and of its annexes. Once again, the abolishing of the 1954 agreement took place in accordance with the customary law on treaties, as codified in the 1969 Vienna convention on the law of treaties, in particular, at its article 41.

All ambiguities that existed in the 1954 Memorandum of London were ultimately settled with the treaty of Osimo, and in facts, one of the reasons why the new treaty was concluded most certainly was the will of the parties to eliminate any residual possibility to misunderstand borders. The treaty of Osimo was correctly ratified by the Parliaments of both signatory States, communicated to the United nations and to the Security council (therefore made known to all signatory States of the Paris peace treaty) and registered by the United nations; later, Yugoslavia and Italy requested (and obtained) together that the Security council removed from their agenda (where it had been handed down for decades) the question of the appointment of the governor of the Free territory of Trieste, thus certifying once again and ultimately its disappearance and nonexistence.

To the formal element examined so far, it is fundamental adding a substantial data: which is, the undisturbed and undisputed exercise of full Italian sovereignty over zone A which, by the principle of effectivity, provides full and exhaustive foundation to the State's sovereignty under international law. Identical full sovereignty was exercised for years by former Yugoslavia over zone B, and later by its successor States: Slovenia and Croazia.

To the signing of the Memorandum of London immediately followed the entrance of Italian troops in zone A, and the retreat of the Anglo-Americans. From that moment, Italy started exercising full sovereignty over zone A, not limited to mere «civil administration» just as envisioned (in ambitious terms) by the Memorandum. This was even officially notified to the United nations Security council with a letter dated 17 January 1955 and signed by the Italian observer and by the British, US, and Yugoslav permanent representatives at the United nations (UN Doc S/3351).

In particular, the Italian Government and Parliament, immediately, with normative and administrative acts (including multiple budgetary appropriation), fully enforced the Memorandum, starting from the handover between the English Commander of the Allied Military Government and the representative of the Italian army, following with the appointment, by the Italian Government, of the Commissioner of the Government, who has permanent administrative and normative powers (the latter are attributions of sovereignty, and are in essence different from those of a military occupying Government).

Italy did later confirm the borders established in 1954 with many domestic and international acts. Among the former, especially with Constitutional Law No. 1/1963 that establishes Region Friuli Venezia Giulia, with a Special Statute and with Trieste as its capital city, obviously within the united, one and indivisible State, as expressly state in the premise of that law itself. The territory of the region, and therefore implicitly but indisputably also that of the Italian State, is described as including the province of Udine (the province of Pordenone was established years later), that of Gorizia, and the six municipalities of the Province of Trieste, which are listed by name in the Statute (Trieste, Muggia, San Dorligo della Valle, Sgonico, Monrupino and Duino-Aurisina).

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Among the latter, it is important recalling the many treaties on transboundary cooperation, the one regarding the so-called Central-European initiative, and those in the military field, as well as the treaty for the accession of Slovenia to the European Union, which confirmed the inviolability and existence of its border with Italy, successive, recent agreements regarding Slovenia's admission to the Euro Zone, and in the Schengen area. Finally, it is worth mentioning the recent treaty for the accession the European Union on Croatia's part, as that exercises its full sovereignty over a significant part of former zone B, a treaty in force since July 1st, 2013, which substantially, once again, confirms the disappearance, or better, the non-birth of the free territory and contextually defines the borders between Slovenia and Croatia.

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