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TRIESTE
UNITED
INGO INC.
ASSOCIAZIONE
MADE IN TRIESTE

Technical support by
P. A. P.

CALL FOR INPUT – Connecting the BHR and anti – corruption

Written input from all stakeholders to inform the
drafting of the report to Council for Human Rights



Topics from interested party on the drafting of the report to the Human Rights
Council by 21 February 2020.

by the TRIESTE UNITED INGO INC. & Made in Trieste
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a) ABOUT THE AUTHORS

The [Trieste United INGO INC](#), is an *American NGO*, based in *Hawaii* and since its inception, has always been involved in the defense of Human, Civil, Political, Social and Cultural Rights, participating in various events such as:

Its CEO Mrs. Kling Michelle Laura, since 2016 has participated in various Minority Rights Forum held in Geneva, as well as the first Regional Minority Rights Forum that was held in Brussels at the European Parliament in 2019. The 39th session of Human Rights Council in 2018, Geneva.

Business and Economic Forum in 2018 , Geneva.

Since 2016, the [Associazione Made in Trieste](#) has become an integral part of the NGO, dealing with the issue related to Economic, Social and Cultural rights, participating in various Forums on *Minority and Business*.

Its CEO Daniele Prelaz was accredited in October 2015 to the [56th Session on CESCR](#), in which the Italian state was present with its delegation.

From 2017 to 2019 Its was accredited at the last three *Session on Business Human Rights*;

Through On the 7th Session We had give out leaflets concerning [The status of the International Free Port of Trieste](#), where in a certain way its explained the Its potentiality.

At that time we were able to ascertain the possibility of formulating some questions relating to the Free Territory of Trieste, of which the Italian Government has the Administration of its Zone A, see attached [\(24 ottobre 1954 a Londra, Memorandum of Understanding\)](#).

Special thanks

The [Popular Assembly Project Association](#) has attended several forums in recent years at the *Palais Wilson of Geneve: Minority and Business*.

Its *CEO Mr. Potenza Vito*, reported, through the speeches, of the particular situation of the *Free Territory of Trieste*, currently in *Trusteeship* through the legal report of the *Chapter XII United Nations Statute*, signed with the *London Memorandum, 24 October 1954* .

We want to give special thanks to the *Popular Assembly Project Association*, which has provided us with the documentary support to draw up the report.

b) INTRODUCTION

On February 10, 1947, the *Security Council* voted [Resolution n. XVI](#), the same is included in the [Trattato di Pace firmato a Parigi, \(hereinafter T. of P. - 1947\)](#) between Italy and the Allied and Associated Powers.

After the agreement signed on [24 ottobre 1954 a Londra, Memorandum of Understanding \(hereinafter MoU - 1954\)](#), the Italian State acquires the Administration of Zone A of the *Free Territory of Trieste*, including the *International Free Port of Trieste (hereinafter I.F.P.T. – It's the our argument about – Call of input)*, which has as its object the maintenance of the regulatory

system established by the *Government Military Ally (hereinafter GMA)* and not in *contradictio in adiecto* to the dismantling, annexation or to start the *debellatio* (explanation to follow) to the Territory in *Fiduciary Administration*, of which the *United Nations Security Council* guarantees its *integrity and independence* ([Art.21 D.L.C.P.S. n.1430, 28 novembre 1947](#)).

With [D.P.R. 27 ottobre 1954](#), the Italian government (*hereinafter the State party*) makes the *binding legal relationship* signed in the English capital executive, appoints the institutional figure of the *Government Commissioner General* for the *Free Territory of Trieste, Zone A*, which has a constitutional legal basis for continuation of [Titolo Internazionale](#) derived from *Iter Costituzionale* ([Art.87 Costituzione italiana](#)), for the Administration of the assigned area and the *I.F.P.T.*.

We want to remember that the *Free Port of Trieste* is an *extraterritorial* and *extra-customs* area outside the *European Community* and at the service of the *International Community*, the *State party* must guarantee its special jurisdiction through the signed and ratified agreements.

The passage of *Administration*, as provided for in [Chapter XII United Nation Statute art.77 comma 1 lettera b](#)), takes place with equal powers received and exercised by the former *G.M.A.* and with further obligation to apply to all citizens, the principles of the [Dichiarazione universale dei diritti dell'uomo](#), *United Nations General Assembly* February 10, 1948, for the full enjoyment of the fundamental rights and freedoms referred to in the subsequent [Convenant](#).

On 23 December 2014, the Italian parliament has voted the [law nr.190., \(legge di stabilità 2015\)](#), in which amendments *nr. 618; 619; 620* changeover the address of the final purpose, the harbour and its activity.

On 13 July 2017, the MINISTRY OF INFRASTRUCTURE AND TRANSPORT issues the Decree in the [GU Serie Generale n.177 del 31-07-2017](#), in which it claims to *Administer the Free Territory of Trieste, through the ownership of a fundamental subjective right, Annex VII guaranteed by the constitution to enforce the legality of the Italian positive order, and international obligations as well as through:*

- a) constitutional provisions (art. 117, primo comma, artt. 10, 11, 87 comma VIII, Cost.ne italiana),*
- b) from the organic regulatory adaptation having constitutional rank and*
- c) of customary law, such as conventional international peace rules, also implying limitations of national sovereignty (art. 11, Cost.ne italiana).*

The *Criminal Court of Cassation*, on 29 April 2019 confirmed the legal ownership of the **MoU - 1954**, textual: *Therefore, in the opinion of this Court, there is actually a legal title, under which Italy has been managing since 1954, this seems to be of the territory and it legitimately administers it precisely because of the mentioned Memorandum.*

To date, not only the *rights, human, civil and political* have never been respected, of which we will present a list of problems in the next session of the [ICCPR](#), but not even those in the current agenda

in session, like those relating to port companies and workers and like those changover the destination of the port areas (*debellatio*) with wrongful act, through the aforementioned law:

10. The Covenant establishes specific obligations of States parties at three levels — to respect, to protect and to fulfil. These obligations apply both with respect to situations on the State’s national territory, and outside the national territory in situations over which States parties may exercise control. (See General comment No. 24 (2017) E/C.12/GC/24/ III. Obligations of States parties under the Covenant – letter B Obligations to respect, to protect and to fulfil; 10.)

We can affirm with documentary evidence that since the entry into the *State Party's trusteeship*, the *Government Commissioner*, as its legal body, has immediately disregarded the *international legal mandate* received, despite in the legal relationship of the passage to the *Italian Administration*, were declared and safeguarded, particularly the above mentioned rights and including the correct application of attached VIII for the development of *I.F.P.T.* (see: *point 5 M o U – 1954 – n°3297 – pag.99.*; see *Allegato II Art.2 lettera a; M o U – 1954 – n°3297 – pag.99.*)

a) CALL FOR INPUT – Connecting the BHR and anti-corruption

Our report analyzes the area of the *International Free Port of Trieste (hereinafter I.F.P. – Trieste)*, in which particular legislation is in force, the same derives from international custom agreements and inserted in agreements signed after the end of the *Second World War*.

This harbour zone has been included in the [Belt & road](#), (See [LIMES, Italian geopolitical magazine](#)) which will bring strong development, work and redevelopment opportunities to the port and the city, in which many millions of euros will be invested.

Our concerns stem from the latest information published in the local press, in which we can read alarming data regarding recycling operations that took place in our city (Trieste) during the year 2019.

The former President of the Friuli Venezia Giulia Region, the Honorable Serracchiani, even denounced the [mafia and recycling alarm](#) in the press.

The *Unità di informazione finanziaria per l'Italia*, Financial Intelligence Unit for Italy (*UIF*) has published [the latest data for the year 2019](#); Suspicious money laundering operations in the city of Trieste increased, from 459 in 2018 to 553 in 2019, **with a 20%** increase, placing the city in fifth place for the number of reports of suspicious transactions in relation to the population, in our opinion an alarming fact.

Furthermore, the investigators of the *Dia (Anti-Mafia Investigation Directorate)*, as stated in the article in the local newspaper, are concerned by the construction sites, within *I.F.P. – Trieste*,

linked to the enlargement of the *Punto Franco* to the construction of the *logistics platform*, to the redevelopment of the *Old Port* and the *railway reinforcement in the harbour zone* agreed upon by the agreements between the *Italian government (hereinafter the State party) and the Chinese one*.

An example above all was the buying and selling of the [Depositi Costieri Trieste S.p.A.](#), with the money of the Camorra ([mafia-style underworld in the Campania region](#)).

Consequently to the facts described in the local news, analyzing the data published by the *UIF* in addition to those of the investigators of the *DIA*, we are extremely worried also about the situation created in the part called *Porto Vecchio (Old Port)*, in which, through the [Stability law of 23 December 2014, n. 190](#), is subjected to a *sdemanializzazione (no more State property of the Free Territory of Trieste)*.

The State party wants to transform an *extra-territorial* and *extra-customs harbour zone*, bound by *international obligations*, into an area for housing and speculative construction, *expropriating international law* that has persisted in its *free zones* delimited *since 1939* and included in *international agreements*.

The Italian state, through its peripheral organs, and through the organs of the territory, are violating every day, not already the spirit of the Treaty, but above all they are not "guaranteeing the goods themselves the freedom of transit, in accordance with the usual international conventions" , discriminate and impose liens and royalties, without consideration for services rendered, apply with regard to the movement of goods to or from the Free Port, any more discriminatory discriminatory measure regarding tariffs, services, customs, health regulations, police and of another nature, in violation of art. 16 of Annex VIII; (To compare: F.A. Querci, Il Porto di Trieste come territorio internazionale, op. cit., 11. (20) In Riv. Dir .int. priv. e proc.1990,II,984 – (See Campailla Massimo – Il regime giuridico delle zone franche del porto di Trieste)

Therefore, the *State party* does not carry out specific obligations such as: respect, protection and follow-up, in particular in situations where the *State party* has obligations outside the national and extraterritorial territory ([see General comment No. 24 – 2017](#)), in which it exercises [control, since 1954 \(p. 3555\)](#), the year in which the *State party* signs in London the legal report for the *Administration of the Free Territory of Trieste* together with the *I.F.P. – Trieste Administration*.

Coming to the report on the agenda, we can report that up to now, the *State party* has never applied the correct agreements of *International Law*¹ that has ratified, in particular *Annex VIII*,

incorporated into the positive order of the *State* by virtue of *rules international* and non-repeatable legal instrument to administer *the I.F.P. – Trieste*.

The *State party* has always violated *economic rights* by not recognizing and not applying them, despite having *signed international agreements* for their application, making them enforceable in its own system, contravening and contradicting the obligations assumed and written in the report sent to the [Working Group Human Rights Committee of the International Covenant on Civil and Political Rights, CCPR / C / ITA / 6 16 November 2015 \(See II. Information relating to Articles of the Covenant point 10\)](#)

The *State party* has signed the [1954 London Memorandum \(hereinafter M or U - 1954\)](#), a legal relationship with which it takes charge of the *Administration of the Free Territory of Trieste, Zone A (hereinafter FTT - Zone A)*², with which subscribes to the commitment to maintain and not, *contradictio in adiecto*, to tamper with the rights included in the *Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on the 10th of December, 1948*.

The non-application of *articles 21 to 26* inserted in *Annex VIII* in conjunction with the obligations of the *M or U - 1954*, have given the *State party* unilateral management of an *International area, (I.F.P. – Trieste)*, in which, through rules and national laws, has constantly violated the entire constitutional regulatory system, regarding *International Treaties*.³

The *State party* has systematically applied its laws, going against and expropriating *the International Property Law*, which cannot be repealed, of the *free zones* of the *I.F.P. – Trieste*, established and regulated by virtue of the Italian *super-constitutional rule ex art.10, first paragraph*.

These violations of *economic rights, included in the I.C. on E.S.C.R. artt.1; 2, recalled at the Twenty first session (1984) General comment n ° 12; Fifth session (1990) General comment No. 3*, also affect the *International Commercial Operators*, who are denied the right to a concrete operation, through the correct application of the *international munus* of the autonomous legal system, such as *Annex VIII*⁴.

¹ See, *Vienna Convention on the Law of Treaties Art. 26, (Pacta sunt Servanda)*

² *United Nation Statute Article 77, letter b – Chapter XII: International Trusteeship System*

³ See, *Vienna Convention on the Law of Treaties Art. 27 Internal law and respect for treaties Internum legis observantia atque discindi*

⁴ See, *Annex II Special Statute Artt.1; 2, letter, a – Memorandum of Understanding*.

The *State party* exercises its jurisdiction in an area, *I.F.P. – Trieste*, in which the *Autonomy of the International Free Port* belongs to the entire *International Community*, in which, *radicitus*, the creation of a unique and exclusive jurisdiction and relevance of *special areas* is excluded, in the hands of a *single State*. (See Art.3, n.2, annex VIII – Lg.1430 28 novembre 1947).

The *State party* departs, through the [Stability Law of 23 December 2014, n. 190](#), has undergone a *real dispossession*, aimed at modifying the free zones delimited since 1939 and devolved in ownership to the *I.F.P. – Trieste* through *international agreements (Trattato di Pace di Parigi, strumento All.to VIII, ex art.3, comma 2)*.

The *State party* departs, through its *peripheral bodies, Municipality, Port Authority, Friuli Venezia Giulia Region*,⁵ It has started to expropriate an area at harbor's vocation, in housing's speculative, in violation of international obligations, included in international agreements.

The *State party*, is a member of the *European Community* since 1950 (*Treaty of Rome*), the *FTT – Zone A* and its *I.F.P. – Trieste*, are outside the *Community Area (European Union)*, by virtue of *article 307 Statute of E.U. (former, 234)*, the rule guarantees the rights and obligations deriving from agreements concluded, prior to the entry into force of the same Treaty (*see Vienna Convention, 1969 - Application of treaties Art. 28 Non-retroactivity of treaties*).

The *State party* by extending the community laws together with its internal national laws, to the area of *the FTT - Zone A and IFPT, simulates its sovereignty* and begins to change the mandate of the *Trusteeship*⁶.

This operation by *Debellatio*, carried out through the *peripheral organs*⁷ in claiming for itself the sovereignty, towards the Territory and its Port, violates the obligation deriving from an agreement pact *erga omnes, T.di P. - 1947*, of which the its integrity and security is guaranteed by the Security Council of the UN.

In contemporary *International law*, the *Debellatio* does not constitute a valid reason for extinction of the *legal personality of the state*. (*Contra: DINSTEIN, The International Law of Belligerent Occupation, cit.,p.2*)

[...] in such cases the same power of government is limited, as it cannot take place in contrast with the conditions set in view of the future structure of the territory, and the situation has an immanent transitory character which is incompatible with the concept of sovereignty, which has instead, the character of stability. [...] (*Corte Suprema di Cassazione R.G.N.1084 - 1085/75 - 22/02/1978*)

Therefore, the principle *ex iniuria ius non oritur*, which prevents recognition of legal relevance to a situation in violation of the provisions of *Cogenti International Law*. (see *Art.41, par.2 Responsibility of States for internationally wrongful acts*)

On March 21, 1996, the *Council of State in plenary meeting* on the subject for the application of taxes in the *I.F.P. – Trieste* expressed itself textually: "*Goods in transit for the Free Port of Trieste will enjoy freedom of transit pursuant to art. 16 of this Instrument*".

"*The international regime of the Free Port of Trieste will be governed by the provisions of this instrument and the customs in force in the other Free Ports in the world*".

The execution order, therefore, obliges all subjects (legal, state and foreign bodies, international economic operators) to the mere and rigorous observance of the legal figure crystallized from the regulatory structure of Annex VIII (articles from 1 to 26), and by international customs in force in all the other free ports in the world. From these articles, as repeatedly pointed out (art.3, n.2), any Italian or other jurisdiction is excluded, both in special areas specially waxed, and in the Old Free Port of Trieste. (see EUT Edizioni Università di Trieste trasporti diritto economia politica, n.108, 2009, L'ANNOSA QUESTIONE DEL PORTO FRANCO INTERNAZIONALE DI TRIESTE – Atto di appello davanti all'Ecc.mo Consiglio di Stato per l'annullamento della sentenza TAR Lazio – Roma, Sez. II, 16 marzo 2009, n. 2677.)

The *Lg 84/94* however, recognize the specialty of the single customs duty, and focuses all remaining public authority deriving from *Annex VIII*, the Ministry of Transport and the State Navigation (a body part), so the Port Authority of *I.F.P. – Trieste* becomes a consultancy only entity without freedom of action.

The systematic and multiple violation of *articles 1 to 20* of the *Instrument* referred to in *Annex VIII* of the *T.diP. – 1947, ætates continuandum* to date, by the organs of the *State party*, constitute an internationally illicit fact, that is, a violation of international law attributable to a subject of this legal system. (See *Article 40, Chapter III Serious breaches of obligations under peremptory norms of general international law The Internationally Wrongful Act of a State – 53th Session - 2001*).

Taxation through the application of the national tax of the *I.R.P.E.F.* in the wage, of workers within the *I.F.P. – Trieste*, in addition to being in violation of the internal regulation, *art. 7, p.3 Law 601, September 29, 1973*, is a combined violation of the *International Obligation* included in *point 3, Annex VIII T. diP. - 1947*, and *art. 169 (international agreements) Law n.917, 22 December 1986*, therefore the *State party* is faced with a complex violation of *ius cogens*, which constitutes a civil

offense against workers of the **I.F.P. – Trieste** and an *International offense*, to international shipping operators engaged in the marketing and processing of goods in the **I.F.P. – Trieste**.

The *International obligation* assumed by the **State party** is in the execution and ratification of the **T. of P. - 1947** and specifically its *Annex VIII*, which prevents the same **State party** from exercising its jurisdiction in hindering the activities of the operations, including those of the services rendered, within the **I.F.P. – Trieste**, (See articles 3, p.2; 16, p.2 Attached VIII).

It follows that the State on which the free port insists, cannot exercise its jurisdiction over the marketing processes of goods within the free port, imposing duties, prohibitions and controls, restrictions. (See Ordinance No. 919/97 R.G. 13 May 1997, Pres. Da Rin, Rel. Pellegrini; Soc. Crossbow - Avv. Campailla; c. Min. Finance and Port Authorities of Trieste - Avv. Zunarelli)

Likewise "immune" from jurisdiction will also be employment contracts involving services to be performed in the territory of the Free Port. (Cfr - Trampus Francesca - University of Trieste in transport - law, economics, politics volume 2000 - n ° 81; LIMITE DI GIURISDIZIONE NEL PORTO FRANCO DI TRIESTE – PAG 168)

The proof is in the fact that: These rules of international law, give the port of Trieste the territorial operation in total exemption and immunity from the power of the State and its judicial union, moreover we are faced with a phenomenon of lack of jurisdiction , due to the improbability of any question, on the assumption of the total lack of a subjective right that can be activated or protected by the Italian Statutory system. (Cfr Cit. Carnelutti; Querci F.A. Professore ordinario di Diritto della navigazione nell'Università egli Studi di Trieste in trasporti – diritto, economia, politica volume 1999 – n°79;)

This shows that there is on the *Territory in Administration* by the **State party**, the continuing in **ætates continuandum** international violation of the Covenant to its *art.2 point 1* as described in *art.40, Chapter III - Serious breaches of obligations under peremptory norms of general international; The Internationally Wrongful Act of a State*.

The continuing in **ætates continuandum** international violation of the *Vienna Convention, 1969 Part III Respect, application and interpretation of the treaties Section 1 Respect of the treaties in articles 26 and 27*.

The continuing in **ætates continuandum** international violation of the *Statute of the International Court of Justice to its art.38*.

The continuation in *actes continuandum* of the wrongful act *Is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.* (See Part Three The implementation of the International responsibility of a State - Chapter I, art.42, p.ii)

¹ <https://uif.bancaditalia.it/homepage/index.html>

² <http://direzioneeinvestigativaantimafia.interno.gov.it/>

³ <https://ilpiccolo.gelocal.it/trieste/cronaca/2020/01/19/news/il-porto-i-maxi-cantieri-sul-fvg-la-mano-del-crimine-organizzato-1.38352049>

⁴ [General Comment n. 24 Obligations to respect, to protect and to fulfil – B – 10. E/C.12/GC/24; 10 August 2017](#)

⁵ [24 ottobre 1954 a Londra, Memorandum of Understanding](#)

⁶ [Lg.190 23 dicembre 2014](#)

⁷ [General Comment n. 24 Obligations to respect, to protect and to fulfil – B – 11 letter C. E/C.12/GC/24; 10 August 2017](#)

d) RECOMMENDATION

- ✓ Continue the efforts to set up a Human Rights Institution that should function in an independent manner, in accordance with the Paris Principles.
- ✓ Establish at the government building in the City of Trieste (Commissariato di Governo), a table inclusive consultation with civil society of the Territory for the establishment of the National Human Rights Institution, in which to process laws eligible in accordance with the Attached VII, for Administered Territory of which the Security Council of the United Nations, will have to guarantee its integrity and independence.
- ✓ Send as soon as possible an International Commission provided for in articles 21 to 26 of Annex VIII, recalling that the International Port and the Territory of Trieste are in trust.

e) CLOSING, our consideration

- ✓ In thanking you for taking into consideration our reports, we hope to have a meeting with the Committee in the Private Session, in which to provide further elements to better understand our situation in the working group.

- ✓ We hope that this Session will give us back our economic, social and cultural rights, which we have been waiting for for too long.
- ✓ We also hope that the Committee takes our requests into consideration, we hope to meet you personally in order to start a common process of change for our Territory.
- ✓ In conclusion, in order to clarify the meaning of the obligations of the States, they are sometimes divided into three categories: respect (refrain from interfering with the enjoyment of the right), protect (prevent others from interfering with the enjoyment of the right) and fulfill (take appropriate measures towards the full realization of economic), social and cultural rights.

Trieste United Ingo INC.

Associazione Made in Trieste