

Alternative (NGO) Report submitted to the UN Committee on Economic, Social and Cultural Rights for the consideration of the Fifth Report of the Italian Republic during its 56th Session

SUBMITTED BY:

Unrepresented Nations and Peoples Organization

With the Support of:

Triest NGO

Contact Information:

Unrepresented Nations and Peoples Organization (UNPO)
Avenue Louise 52
1050 Brussels
Belgium

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FOCUS ON:

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SECTION A: Introduction to the Report

This Alternative Report was compiled and submitted by the Unrepresented Nations and Peoples Organization (UNPO) on the occasion of the 56th Session of the Committee on Economic, Social and Cultural Rights (CESCR) (henceforth, "the Committee"). UNPO is an international organization devoted to the promotion of democracy, non-violence, human rights, tolerance and environmental protection on behalf of indigenous peoples, oppressed communities, minority groups and territories worldwide.

This report discusses the International Covenant on Economic, Social and Cultural Rights (henceforth, CESCR or "the Covenant") to evaluate compliance with and implementation of the provisions of the Covenant by the Italian Republic ("Italy"), with regard to the particular case of Trieste.

The Alternative Report highlights how Italy's non-compliance with the right to self-determination, the right to economic development and, in some respect, with cultural and language rights, is hindering the exercise of the economic, social and cultural rights of the Triestines.

Following a brief introduction to the Free Territory of Trieste, this report will discuss the articles of the Covenant that the Italian Government is breaching, providing recommendations on how to rectify and/or prevent abuses.

SECTION B: Free Territory of Trieste

The Free Territory of Trieste is a region on the Adriatic Coast which has a multicultural community - a reflection of its turbulent history. The region lies at the crossroads of Europe's main cultural groups: Latin, Germanic and Slavic. From 1382 to 1918, the region was part of the Austro-Hungarian Empire, of which the City of Trieste was one of the main cities and the main sea port. After World War I, in 1918, the territory became part of Italy, which governed it until 1945, when it was turned over to a United Kingdom-United States occupational administration that held sway over the area until 1947.

In February 1947, the Free Territory of Trieste was set up by the United Nations via the Treaty of Peace with Italy, which came into force in September of that year. The establishment of this *sui-generis* regime was meant to accommodate the multicultural community and the claims by Italy and Yugoslavia on the territory. In 1954, Yugoslavia and Italy obtained civil administration of the Free Territory of Trieste, and in 1975, they signed a bilateral treaty to formalize their administration over it. The Treaty of Osimo came into force in 1977.

Nowadays, the territory is administered partially by Italy and partially by Slovenia and Croatia, as successor States of Yugoslavia. Whereas the population is declining, the functioning of the port of the City of Trieste does not comply with the standards set out in international law for a free port.

In this Alternative Report, UNPO will focus on the challenges faced by the citizens of Trieste. A number of urgent actions are requested from the Italian Government in compliance with its obligations under CESCR.

Section C: Compliance with CESCR

Article 1: Right to Self-Determination

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

In its submission to the CESCR, Italy “recognizes that development is a comprehensive economic, social, cultural and political process which aims at the improvement of the well-being of the whole population and of all individuals on the basis of their active and free participation in development and in the fair distribution of benefits resulting there from”¹. However, by subverting the right of self-determination of the citizens of the Free Territory of Trieste Italy is undermining their free pursuit of economic, social and cultural development.

The Free Port of Trieste was constituted and is regulated by Annex VIII of the 1947 Treaty of Peace with Italy² (henceforth, Treaty of Peace). Ruling number N.530/2013 of the Italian Administrative Regional Tribunal of Friuli Venezia Giulia (TAR FVG) stated that the Free Port has not been abolished by the Treaty of Osimo of 1975 and that the provisions regulating it, i.e. Annex VIII of the Treaty of Peace and the modifications contained in the London Memorandum of 1954, are still in force³. Despite this ruling, there has not been, to date, any law enacted by the Italian state regarding the implementation or execution of the key provisions of the Peace Treaty. In turn, this creates a scenario in which Triestines have been denied their right to self-determination.

For instance, Article 2.2 of the Peace Treaty states that “all Italian state and para-statal property within the limits of the Free Port which, according to the provisions of the present Treaty, shall pass to the Free Territory shall be transferred, without payment, to the Free Port”. Despite this clear and precise wording, Italy still considers the aforementioned property to belong to the Italian State and has repeatedly attempted to appropriate areas of the Free Port for its own economic benefit. The “Portocittà” project⁴ is one concrete example of Italian claims to property that, by law, cannot be considered that of the State. This project attempted to turn the Old Free Port, i.e. the northern area of the Free Port, into a residential area without the consent of the Triestines. However, this project was suspended when the Port Authority and the enterprise decided to mutually dissolve their concession in 2013, following a decision by the TAR FVG (Regional Administrative Court)⁵.

It should also be noted that Article 2.1 of the Peace Treaty states the following: “the Free Port shall be established and administered as a State corporation of the Free Territory, having all the attributes of a juridical person and functioning in accordance with the provisions of this Instrument”. Furthermore, Article 3 of the Peace Treaty establishes that “1. The area of the Free Port shall include the territory and installations of the port of Trieste within the limits of the 1939 bound areas; 2. The establishment of special zones in the Free Port under the exclusive jurisdiction of any State is incompatible with the status of the Free Territory and of the Free

¹ *Consideration of reports submitted by states parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Fifth periodic reports of States parties due in 2009 - Italy:* paragraph 32.

² Treaty of Peace with Italy (1947): <http://www.loc.gov/law/help/us-treaties/bevans/m-ust000004-0311.pdf>

³ Italian Administrative Regional Tribunal of Friuli Venezia Giulia (TAR FVG), case number N.530/2013

⁴ Portocittà project: <http://www.portocitta.com/en/project/>;

⁵ Port Authority Document 19/2013, available at www.porto.trieste.it/app/webroot/allegati/52d6533bdc276.pdf and TAR FVG Decision n. 400/2013.

Port". When read in conjunction, these two articles make it explicitly clear that the Free Territory, and by extension Free Port of Trieste, has its own legal personality within whose territory it is not permitted to have areas under the jurisdiction of another State entity. Nevertheless, the Italian State considers the Free Port to be under exclusive Italian jurisdiction.

In light of the above, there is a clear trend by the Italian Republic to continuously undermine the right to self-determination of the Free Territory of Trieste through its non-compliance and non-implementation of the Peace Treaty. Consequently, these (in)actions have had serious effects on the ability of Triestines to freely determine their political status, as Italy claims exclusive jurisdiction over the Port, in spite of clear provisions stating that this is incompatible with the status of the Free Territory and the Free Port. In turn, this has had consequences for their ability to freely pursue their economic, social, and cultural development, as the non-implementation of the conditions of the Peace Treaty have resulted in an Italian monopoly of these policy-areas, thus stifling the Triestine identity, culture, and economy.

Article 1: Right to Economic Development

2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

It is observed with concern that Italy, within the scope of the right to economic development in its submission to CESCR, focuses almost exclusively on the Millennium Development Goals (MDGs)⁶. While important, this focus indicates that the Italian state perceives that the fulfilment of this right is to be done abroad or externally, while neglecting the effects that its policies or lack thereof, have had, and continues to have, internally. With regards to the Free Territory and Free Port of Trieste, the lack of implementation of the provisions of the Peace Treaty has resulted in a clear hindrance of the right to economic development of the region.

Examples of this hindrance can be seen in light of Article 18 of the Peace Treaty, which mandates that the administration of the Free Port is to be carried out by the Director of the Free Port (hereafter, 'the Director'), who represents it as a juridical person; further stating that the Director "shall not be a citizen of Yugoslavia or Italy". However, the Free Port has been run by the Port Authority⁷ as any other Italian port would be, treating Trieste as any regular Italian port - something which contravenes the wording of the Peace Treaty and ignores the special status of the Free Port within the Free Territory of Trieste. Moreover, every single director of the Port Authority has been Italian. Within this context, the Free Port of Trieste has been denied by Italy the internationally mandated administrative authority to govern it. This denial of administrative control as envisioned in the Peace Treaty has denied the Free Port the benefits that such an administration would have brought to its economic development, as the Peace Treaty gives leeway to the Director to pursue particular avenues of development. For example, Article 3.4 allows for the expansion of the area of the Free Port upon the proposal of the Director, and with the decision and approval of other administrative bodies. Given that these do not exist, the expansion of the Port has not taken place. To the contrary, the Free Port has been decreasing in

⁶ *Consideration of reports submitted by states parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Fifth periodic reports of States parties due in 2009 - Italy*; paragraph 32-42.

⁷ Port Authority of Trieste: <http://www.porto.trieste.it/eng/port-authority/mission-eng>;

size. Additionally, Article 7 provides for the processing of goods in the Free Port (7.1) as well as for manufacturing activities (7.2) upon the permission of the Director. In sum, the non-compliance and non-implementation of Annex VIII of the Peace Treaty by the Italian Republic has diminished the size of the Free Port of Trieste and restrained its capacity to freely pursue its economic development due to the highlighted lack of the administrative structure.

As a consequence of the lack of economic development of the Free Territory of Trieste and of its Free Port, there has been a lack of available jobs which have majorly contributed to the decline of the population of Trieste⁸. Moreover, by denying the Free Territory and Free Port of Trieste their international legal status and thus indirectly preventing the exploitation of the unusually deep waters that the Free Port provides, Italy is effectively neglecting the right of the citizens of Trieste to economic development.

Article 15: Cultural & Language Rights

2. The steps being taken by the States Parties to the present Covenants to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

Italian legislation currently in place provides for the protection of the country's linguistic and cultural minorities, and offers equal opportunities to persons belonging to minorities, including the Slovene and Friulian communities of Friuli-Venezia-Giulia, the region in which Trieste is located.⁹ Commendable examples include the availability of both Slovene and bilingual schools, as well as the possibility to use minority languages in the public sphere and for local topographic indications.

However, the implementation of some of these protections have suffered from severe budget cuts linked to the protracted financial crisis. Access to media in Slovenian – a right of persons belonging to the Slovene minority - was considerably delayed as reported technical problems were not solved in due time.¹⁰ Moreover, media and other services remain scarce in Friulian, another local language.¹¹

At the same time, students who do not belong to a minority community do not get the opportunity to enjoy minority cultures or languages, and little effort has been made at the national level to sensitize children about the existence of minorities, with teaching materials and study plans giving them very limited attention.¹²

⁸ UNData: <http://bit.ly/1h2eqNl>; <http://www.tuttitalia.it/friuli-venezia-giulia/provincia-di-trieste/statistiche/censimenti-popolazione/>

⁹ See for example art. 3 and art. 6 of the Italian Constitution, but also, locally, the revised Statute of the Province of Trieste, which entered into force on 17 April 2010.

¹⁰ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Italy, adopted on 15 October 2010, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c68c>, par. 24.

¹¹ Ibid.

¹² Ibid. par. 28-30.

SECTION D: Recommendations

The Unrepresented Nations and Peoples Organization strongly urges the Italian Republic to consider the following recommendations:

1. *Fully implement Annex VIII of the Treaty of Peace, which was not abrogated by later international Treaties;*
2. *Enact appropriate legislation regarding the implementation or execution of the key provisions of the Peace Treaty concerning the Free Port;*
3. *Refrain from appropriating areas of the Free Port for its own economic benefit;*
4. *Facilitate the setting up of administrative structures in the Free Port of Trieste that would ease the area's economic development;*
5. *Facilitate the creation of jobs in Trieste, in order to halt the population decline;*
6. *Enact legislation that would allow for the exploitation of the deep waters of the Free Port, to the economic benefit of Trieste;*
7. *Support – financially and otherwise – the operation of minority language media outlets, so as to ensure that persons belonging to minorities have access to media in their own language;*
8. *Promote the history and culture of minority communities at the national level through their inclusion in study curricula and materials.*