

## **Reflections on the status of the Free Territory of Trieste**

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**ABSTRACT:** The Free Territory of Trieste was established in 1947 through United Nations Security Council (UNSC) Resolution 16 and a Treaty of Peace with Italy and the victorious powers. However, over 70-years on, the final arrangements agreed at the time have not been fully implemented. Conceived as a territory controlled by the UNSC, with its own Government and Statute, Trieste had a temporary Allied Military Government followed by a civilian administration (Italy and Yugoslavia), whilst awaiting the appointment of a Governor. However, the Security Council's provisions were never implemented, which means an uncertainty regarding Trieste's current status. The paper considers the key political questions since the end of the Second World War and investigates if Trieste's ambiguous status can, or indeed should, be clarified. The paper first offers an overview of Trieste's history; an explanation of the original plans for its governance and why these were never achieved; an account of the growing discontent within Trieste about the status quo; and a discussion of the likely solutions for resolving the situation. More specifically, the paper then focuses on the tensions between *de jure* versus *de facto* administration, the options for a referendum, the prospects of appointing a provisional governor, and whether the status quo should actually be considered the accepted mode of administration for the Free Territory of Trieste.

**Keywords:** Croatia, Free Territory of Trieste, governance, Italy, microstates, Osimo Treaty, referendum, self-determination, Slovenia, United Nations, Yugoslavia

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### **Introduction**

Trieste has a land area of 735 km<sup>2</sup>, with the city of Trieste at its heart. It lies on the northeast of the Adriatic Sea and has the northern-most harbour of the Mediterranean. It has a long history of autonomy, under both Hapsburg and Austro-Hungarian Empires, underpinned by its free port, which was established in 1719. With the defeat and dissolution of the Austro-Hungarian Empire, Trieste fell under Italian sovereignty with the Treaty of Rapallo in 1920. During the interwar period Trieste suffered the atrocities of Italian Fascism, and then in 1944 Nazi Germany occupied the Territory. Later, Yugoslavian troops took control briefly in the spring of 1945, before a provisional splitting of the territory was agreed between the Allied and

Yugoslav governments. With the Belgrade agreement of 9 June 1945, the Yugoslav troops withdrew, and the Anglo-American Forces took control (Capano, 2016).

Soon after, negotiations began to set the future status of Trieste, and the starting point was its long history of autonomy. The decision taken in 1946 to create a Free Territory considered the background of the city and the particular status of the area. The Free Territory was established in 1947 through United Nations Security Council (UNSC) Resolution 16, and a Treaty of Peace with Italy and the allied powers. The territory was conceived as under the control of the UNSC, with its own Government and Statute (United Nations, 1947; Kunz, 1948). Trieste had a temporary Allied Military Government (1947-1954), and then a civilian administration (Italy and Yugoslavia) whilst waiting for the UNSC to appoint a Governor. However, there was no consensus on the part of the UNSC permanent members: as a result, no Governor was appointed and the broader settlement for Trieste was not implemented, leading to the current status under the administration of three countries: Italy, Slovenia and Croatia.

The paper considers the key political questions since the end of the Second World War, and whether Trieste's ambiguous status can be clarified. It provides an overview of Trieste's history; an explanation of the original plans for its governance and why these were never achieved; an account of the growing discontent within Trieste regarding the status quo; and an assessment of the possible solutions for resolving the impasse. Specifically, the paper evaluates three options: holding a popular referendum on Trieste's future status; the appointment of a Provisional Governor to facilitate the original plans of the UNSC; and maintaining the current arrangements. The paper argues there are key and unresolved tensions between the concepts of *de jure* and *de facto* administration, and any 'break through' moment will not come easily as the UN and the administering powers have seemingly settled on the status quo, and for the time being there are no strong countervailing forces to challenge that position.

## Conceptual framework

Before we consider the position of the Free Territory of Trieste in detail, we would like to set out the key concepts and ideas that frame the discussions to come. First, there needs to be clarification on what is a free territory:

... free territories drop out of the established system of international relations where the status of spaces is defined through the concept of sovereignty. These are separate political entities under international administration. Free territories are not fully sovereign, since in key matters, primarily related to security and foreign policy, they are governed by the international community; but, at the same time, they are not international, since they do not belong to the entire world community and retain their independence in matters of self-government. Free territories should also be distinguished from the types of dependent territories under international administration: mandated and trust territories. Free territories were initially sovereign, while mandated and trust territories were created with the aim of giving them sovereignty or putting them under the control of another sovereign state (Okunev, 2020, p. 166).

We place the paper's conceptual approach within two areas of the academic literature. First, the extant work on microstates of Europe, and second the recent studies considering self-determination, several of which have been published in *Small States and Territories* journal (e.g., David, 2019; Connell, 2020). Let us first consider how our work on the Free State of Trieste can be framed, at least in part, by the academic literature on European microstates.

Trieste is a particular case, but there are clear parallels with the history and characteristics of European micro-states such as San Marino (a relatively close neighbour), Andorra and Monaco. As Dózsa notes micro-states can be identified by their small size; their very peculiar legal and economic structures; their “importance of being unimportant”; and the “peculiar close relationship that all of them enjoy with their direct neighbours” (2008, p. 95). The particularities of microstates are also voiced by Snyder, who states that “in general they were written off as unimportant at best, ‘accidents of history’ at worst” (2010, p. 247). In addition, he argues that the European microstates “have constantly fought for recognition since their inception” (2010, p. 267), including within the UN. These views are shared by Eccardt, despite the fact that they are “the oldest lands of Europe” (2005, p, 89). Eccardt argues:

Their history is part of the history of Europe itself, but with a major difference: because of their minute size, these countries hardly ever *made* history, but were more often *affected* by history. From Caesar through Napoleon to Hitler, the microstates have been invaded, bombed, traipsed through, or simply forced to play diplomatic games to preserve their independence ... [They] have not had much influence on their neighbours nor on Europe as a whole. This very lack of influence may have convinced other countries that the microstates were not important enough to annex to their own territory (2005, p. 89).

The position of the European microstates has also been analysed in the context of the literature on small states. For example, Veenendaal notes their “variety of idiosyncratic and sometimes unique features” (2020, p. 15). Therefore, as discussed, although the Free Territory of Trieste has at best, only semi-sovereignty, unlike the four officially recognised European microstates, Trieste is similar in its characteristics and challenges, and should be identified more readily alongside San Marino and the other microstates of Europe.

Nevertheless, the Free Territory is a special case as this paper highlights and as a result has not been able to take up some of the opportunities, which have been open to the microstates. For instance, Veenendaal argues, “European integration and the exploitation of niche markets have provided the microstates with great opportunities” (2020, p. 164). But, for Trieste fewer such opportunities have been available due to the political situation that faces it. Consequently, there are demands on the part of Trieste’s population for change, and this is why the paper links in with recent studies considering referenda on self-determination in other parts of the world. The paper draws on the work of Connell (2019; 2020) to consider whether a referendum on self-determination is a viable option (among several others) for Trieste. So, our paper both nestles within the extant literature on microstates and self-determination, but also extends it by considering a small, idiosyncratic, and rather forgotten part of Europe.

When considering Trieste, it is also important to note the history of the Italian peninsula and that Italy has been a unified country only since 1861 (De Oliveira and Guerriero, 2018). Before that date the country was divided into several city-states (also called ‘communes’). Former city-states such as Venice, Milan, Genoa, and Pisa, despite having small territories, flourished during this period (Epstein, 2000, p. 83), and the sentiment of belonging to a micro-area still exists today. There are two reasons for this: “first, because geographical features do not provide a natural reason for the existence of a homogenous social, cultural or economic field in Italy; secondly, because the space of Italy has always been open-ended and internally varied and divided” (Baranski and West, 2001, p. 20). Trieste can be placed within this frame of reference.

To provide the necessary depth and subtlety to the paper, a range of documents are used; most are in the public domain. Particularly important is official documentation from the UN, its branches, and nation-states with an interest in the issue. Other sources of information, include journal articles, historical documents, and contributions from several politicians and policy makers. The latter were helpful in constructing a contemporary view of Trieste, as the vast majority of the academic literature focuses on the more historical aspects of the territory's development.

The inspiration for the research stems from the fact that the lead author is from Trieste and lived there for two decades without truly appreciating the complicated and contested status of the territory. Subsequently the lead author began to speak with members of the local population who made clear that Trieste in their view was not, despite the common impression, Italian. This led to a university dissertation on the subject, which in turn led to this paper.

### **Creation and early years of the Free Territory**

The creation of the Free Territory of Trieste was a long and difficult political process (Kunz, 1948, p. 99), which was finally achieved in 1947 via in particular Article 21 of the Peace Treaty (US Department of State, 1947). The Treaty also contains several other key annexes, which set out the territory's political status, the economic and financial situation, and the position of the free port. Budislav (2010, p. 148) also argues that "according to the Peace Treaty, Italian sovereignty terminates unconditionally; the Treaty does not require any factual or legal conditions related to the Free Territory for the end of Italian sovereignty". A similar statement could also be made in relation to Yugoslavia's sovereignty claim.

Following the signature of the Peace Treaty and the establishment *de jure* of the Free Territory, the next topic of discussion was the appointment of a Governor. The appointment was the main issue as the Governor would have sizeable authority and be directly accountable to the UNSC. During the process by which a Governor was going to be appointed, a temporary administering arrangement was installed in the Territory across two zones: UK/US in Zone A (the northern part of the territory, including the city of Trieste) and Yugoslavia in Zone B (the southern part). The populations were 282,000 (Zone A) and 40,000 (Zone B) (Kunz, 1948, p. 109). Trieste was divided in this way, as the territory was included in the wider 'Morgan Line', which was the border between two military administrations in the region: the Yugoslav one to the east and the Allied Military Government to the west. The military administration was meant to last only a few months, until the Governor was appointed by the UNSC. However, with each nomination there was a veto by one of the permanent members of the Security Council, making an appointment impossible. The inability to find a solution was becoming increasingly political.

The Cold War had already started, and the geopolitical aspect of Trieste was of extreme importance for both sides as the boundary between the West and the East. In fact, "control of Trieste combined with the control of Danube implies domination of two principal lines of communication in Central Europe" (Schuller, 1946, p 405). For this reason, Russia wanted Trieste under Yugoslavian control whilst the Allies opposed this. The Iron Curtain had already settled and ran from Stettin to Trieste, making the latter a point of expansion for the Soviets and for the West an important area of containment. As Minca (2009, p. 268) argues, during the Cold War, Trieste "becomes truly a 'borderland', the last outpost of the West before the Iron Curtain".

In March 1948, several Members of the British Parliament asked the Secretary of State for Foreign Affairs whether there was any consideration of returning the Free Territory of Trieste to Italy, considering that the setting up of the Free Territory was appearing unworkable. The arrangement that was considered involved a multilateral agreement between four nation-states that would have then reported to the UN. However, there were concerns about bypassing the UN with a quadrilateral agreement, due to the risk of undermining the organisation as had happened with the League of Nations when its position was weakened by its own members. As a result the option was dismissed. But, after more diplomatic talks, a Memorandum of Understanding (MoU) was signed between the US, UK, Italy and Yugoslavia in 1954, with the support of the UN. The MoU planned to give the Civil Administration of Zone A to Italy and Zone B to Yugoslavia (United Nations, 1954). Of course, it should be noted, that this was done whilst all parties were still waiting for the UNSC to appoint a Governor. The MoU specified that,

The Governments of the United Kingdom and the United States will withdraw their military forces from the area north of the new boundary and will relinquish the administration of that area to the Italian Government. The Italian and Yugoslav Governments will forthwith extend their civil administration over the area for which they will have responsibility (United Nations, 1954).

However, the outcomes of the MoU were not intended to be a straightforward return to Italian and Yugoslav sovereignty; rather it was an attempt to make the day-to-day running of Zones A and B more effective, whilst still respecting the Peace Treaty and maintaining and upgrading the local institutions and autonomy as per the Treaty.

Despite the MoU explicitly defining the Italian presence as a Civil Administration, the Italian administration has been controversial since the beginning, including in relation to Italian internal laws being applied to Zone A of the Free Territory. On the one hand Italy ratified the Peace Treaty in 1952 recognising the creation of the Free Territory, but on the other it included Trieste as part of the Friuli Venezia-Giulia Region in the Italian Constitution of 1963. There was a clear willingness to absorb Zone A into its territorial sovereignty (Italian Senate, 1976). However, in his article from 1962 Capotorti affirms that including Zone A in the region inside the Constitution was not enough to claim Italian sovereignty over the area; in his opinion Italy should have also dismissed the role of the Commissary for the Free Territory and declared its termination of the 1954 MoU (Capotorti, 1962). Instead, Italy went part way and mentioned the Administration of the Free Territory in several laws, including in relation to the Free Port (Italian Republic, 2017). In this case, considering that Italy included Trieste in its Constitution, it is easy to believe that the other Peace Treaty signatories (and/or the UN) were not informed as there are no official documents and communications in relation to it. Nor was the 1954 MoU terminated. Instead, it is still considered valid as reflected by contemporary Italian references to it. One could argue that the inclusion of Zone A in the Constitution seems incorrect and irregular, but the inclusion may only be for administrative purposes, which would allow both the provisions of the Italian constitution and the Peace Treaty to exist alongside each other.

A reaffirmation of Trieste's status can be seen in a US State Department dispatch sent to its Embassy in Belgrade in 1973,

The city of Trieste is included within the boundaries of the 'Free Territory of Trieste' as defined in the 1947 Italian Peace Treaty [and] use of adjective 'former' to modify the

‘Free Territory of Trieste’ should be avoided. The 1954 Memorandum of Understanding ... did not terminate juridical status of Free Territory. 1954 Memorandum provided for Termination of US-UK military Government of Zone A and substitution of Italian civil administration, and similar termination of Yugoslav military government and substitution of Yugoslav civil administration in Zone B. Continuing legal character of Free Territory of Trieste was not, repeat, not affected (US Department of the State, 1973).

As confirmed by the above communication, the status of the Free Territory was still unchanged in 1973 and was under administration, whilst the appointment of the Governor was still on the Agenda of the UNSC. So, although Trieste was under the *de facto* administration of Italy and Yugoslavia, there were no *de jure* provisions to permit the UN to abolish its free territory status.

### **Osimo Treaty (1975)**

Although the MoU signed in 1954 established a civil administration for the two Zones, there were still tensions between Italy and Yugoslavia. In an effort to end them they signed a bilateral agreement in Osimo (Ancona, Italy) in 1975, entitled ‘Treaty on the delimitation of the frontier for the part not indicated as such in the Peace Treaty of 10 February 1947 (with annexes, exchanges of letters and final act)’ (United Nations, 1975). At that time, and for the next two years, the UNSC Agenda was still including the appointment of a Governor for the Free Territory. However, on Friday 30 September 1977 at the 32nd Session of the UN General Assembly, Yugoslavian Foreign Minister Miloš Minić said:

The number of outstanding international problems is constantly growing, but unfortunately very few questions have been solved successfully and removed from the agenda of the United Nations. I take great pleasure in reminding the Assembly that Yugoslavia, in conjunction with Italy and as a result of the Osimo agreements, has removed two questions from the agenda of the Security Council. This may serve as an example of how it is possible, with mutual efforts and goodwill, to solve a very complex question which had burdened relations between two neighbouring countries and had threatened stability, security, and peace in Europe and, more broadly, in the world (United Nations General Assembly, 1977).

In fact, with the Osimo Treaty Italy and Yugoslavia recognised the division of the Free Territory between Zones A and B by defining the borders and the demarcation line and agreeing on minority protection and monetary compensation (Zaccaria, 2019). Although at that time it was publicly claimed that the Trieste issue was resolved and Italy and Yugoslavia had gained sovereignty over their respective areas of administration, the Osimo Treaty did not modify the status of the Free Territory as described in the Peace Treaty. It could be argued that because the border of the Territory was not entirely set, it was never officially established, therefore both Italy and Yugoslavia could agree on the new borders under their own sovereignty. However, the Territory had already been established by the Allied Military Government that created institutions, border crossing papers and border controls, and specified the demarcation line between the two zones. So, it can be argued that the borders were already set, and the Osimo Treaty only specified the exact location (albeit after a considerable interregnum), as required by Article 5.1 of the Peace Treaty:

The exact line of the new frontiers laid down in Articles 2, 3, 4 and 22 of the present Treaty shall be determined on the spot by Boundary Commissions composed of the representatives of the two Governments concerned (US Department of State, 1947).

Seemingly, the Osimo Treaty never allowed any country to obtain sovereignty over the Free Territory of Trieste but helped to reinforce what had previously been agreed.

It remains unclear why the UNSC accepted the request made by both Italy and Yugoslavia to withdraw all the issues related to the Free Territory of Trieste from its agenda, but perhaps the Osimo Treaty went far enough to reassure the UNSC that a more stable agreement was in place and allowed this intractable issue to be removed from the agenda. Although, if the issues between Italy and Yugoslavia were resolved, the rightful option would have been to proceed with the appointment of a Governor, not with the cancellation of the appointment from the Agenda. The Osimo Treaty ended the disputes and each country agreed to recognise the other's administration, whilst also protecting the respective minorities and compensating each other over the Second World War. The Osimo Treaty does not mention any change in sovereignty for the area, yet both countries applied it to their respective administrative areas, and without protest from the UNSC.

### **Dissolution of Yugoslavia and the end of the Cold War**

In October 1991, Slovenia and Croatia declared independence from Yugoslavia, and were admitted as UN members six months later, on 14 May 1992 (Croatia) and 18 May 1992 (Slovenia). In its Constitution published in the Official Gazette of the Republic of Slovenia (1991), Article 2 states that Slovenia's borders consist of the internationally recognised state borders of the former Yugoslavia, therefore not including Zone B of the Free Territory. Croatia's Constitution in Article 2 states that "The Republic of Croatia, in accordance with international law, shall exercise sovereign rights and jurisdiction over the maritime zones and seabed of the Adriatic Sea outside its state territory up to the borders of neighbouring countries" (Constitutional Court of the Republic of Croatia, 2014). As with Slovenia, Zone B of the Free Territory is not included; however, both countries applied sovereignty over the Territory in a similar way to that of Yugoslavia, which meant further complications were added to the status issue. First, and most simply, there were now three sovereign states overseeing Trieste (see [Figure 1](#)) each with their own interests, and as discussed later, any *de jure* formalisation of Trieste's status became more difficult. Second, Croatia and Slovenia divided Zone B between them and created their administrations in Trieste without fuss or controversy, thus backing the argument made earlier about the acceptance of *de facto* over *de jure* sovereignty for all three countries.

**Figure 1: Free Territory of Trieste.**



Source: Paolo Precali design, Trieste (2021).

There were several Resolutions of the UNSC about the former Yugoslavia prior to the admission of Slovenia and Croatia as members, but in none of them was Zone B of the Free Territory of Trieste mentioned. It is thus surprising that despite the legal texts, more was not said by the UN about Trieste's administration at this time, although it could be argued that it was because Zone B was not part of Yugoslavian sovereign territory, therefore not included in the discussions related to the new nation-states. Notwithstanding, there is evidence that the original post-war agreements creating the Free Territory of Trieste remain valid. For example, Britain's Foreign, Commonwealth and Development Office has confirmed under the Freedom of Information Act 2000, no other arrangements have been made in relation to the Free Territory of Trieste since the dissolution of Yugoslavia. Further, a letter written in 1992 by a Foreign Office official from the Central European Department confirms that Slovenia and Croatia ratified the Treaties signed by the former Yugoslavia (McLeod, 1992). Despite such sources not having legal value *per se*, they still constitute authoritative records. Also, the US Office of Treaty Affairs' 'Treaties into Force' document, includes the MoU from 1954 (US Department of State, 2020, p. 550). This strongly suggests that both Croatia and Slovenia (as well as Italy) are still deemed signatories of the Peace Treaty, the MoU, and the Osimo Treaty, and so recognise the Free Territory of Trieste as originally constituted.



## **Contemporary situation**

The contemporary situation is little different to that of the early 1990s. The main change is that all the states administering the Free Territory have improved their relations, helped by the fact that all are now members of the European Union (EU). However, there are some issues that are worth considering. Though Trieste has not faced riots or conflict, there is an increasing understanding and questioning of the status question among its residents, facilitated in part by greater access to official documents (often via the internet). For example, there was the letter by Ban-Ki Moon as UN Secretary General in 2015. This letter included a list of “precedents that was compiled for the purpose of assisting and informing any future work” with the aim of finding a solution to ensuring the protection of Palestinians, after a request from Palestine’s President that “the territory of the State of Palestine be placed under an international protection system by the United Nations” (United Nations Secretary General, 2015). The Free Territory of Trieste was in the list with an un-concluded status, and the documents referenced were the Peace Treaty and the MoU.

Further, the UN Economic Commission for Europe (UNECE) still recognises the status of the Free Territory as it acknowledges in its terms of reference that “the Commission shall invite representatives of the Free Territory of Trieste (when it is established) to participate in a consultative capacity in the consideration by the Commission of any matter of particular concern to the Free Territory” (Berthelot & Rayment, 2007, p. 142). It is interesting that a body of the UN writes about the future creation of the Free Territory, whilst another – the UNSC – is not adopting the measures to establish it by putting the appointment of the Governor back on its Agenda. At the same time, the EU Parliament mentions the Port of Trieste, confirming that “Community legislation cannot change obligations arising from international agreements with regard to Trieste” (European Parliament, 2005).

Regarding the health of the economy, Zone B was not developed until the break-up of Yugoslavia. Since then, and despite some tensions between Slovenia and Croatia, a number of important developments have taken place, including the growth of Koper’s port, improved infrastructure, and the creation of a sizeable tourism industry. However, revenues from the area are managed by the administering powers, and Zone B’s potential is constrained by the lack of connections with Zone A. The demarcation line between the two zones is treated as a hard border. Zone A also has its economic problems. One example, amongst others, is in relation to the Free Port that was supposed to be the main asset of the Free Territory and is now partially used for Italian interests and partially left abandoned since the Italian administration entered into force. Therefore, there are frustrations on both sides that economic opportunities are not being maximised.

Even if the present structure of administration provides some sort of peace and avoids armed confrontation, this is arguably not enough and certainly not a reason to leave the situation unresolved. However, the lack of involvement of the UNSC – that was supposed to protect and supervise the Free Territory – has created an even more complicated situation, now involving three countries. Currently the Free Territory is administered in a way that makes it difficult to find a viable solution to apply the prerogatives of the Peace Treaty. As the administering states are employing their own sovereignty, the question is whether this *de facto* as opposed to *de jure* approach can be considered as definitive, despite the official documents saying otherwise. The paper now evaluates some possible ways forward.

## Options for clarifying Trieste's political status

### *Popular referendum*

A referendum is often considered the most democratic and internationally accepted solution to define the will of a nation. There are several examples of this being used to settle the status of a territory or country, particularly at the end of the Cold War with the break-up of the Soviet Union and Yugoslavia. However, there are issues and risks to be considered when judging if a referendum is suitable for Trieste; similar situations around the world are instructive.

Indeed, both Slovenia and Croatia held referenda for their independence from the former Yugoslavia. These referenda were also undertaken in Zone B of the Free Territory of Trieste. The common belief in Zone B is that the referenda finally defined that Slovenia and Croatia had sovereignty over the area, as the people of the Free Territory decided to be part of their respective republics. However, in both referenda there was no mention of the Free Territory, so even for those that voted, a say on Trieste's status was not an option. It is important to note that the voters were residents of Zone B and only made-up part of the Free Territory as per Annex VI, Article 6 of the Peace Treaty (US Department of State, 1947). The conclusion could only be that those Yugoslavian citizens living in the areas of Slovenia and Croatia voted for Slovenian and Croatian independence, however the status of the Free Territory was unchanged, as it was not included in the referenda questions and did not include the population of Zone A.

A referendum in the Free Territory would be challenging for several reasons. Firstly, there would be the issue of the question, not only in relation to the question itself: what would be the question, but who should decide the right one(s) – the UN, Italy, Slovenia or Croatia, or all of the signatories of the 1954 MoU (including the US and UK), and into what languages should the question(s) be translated: three languages or only the official languages of the Free Territory, which are Italian and Slovenian (US Department of State, 1947). Second, which voting system ought to be used; who should monitor the referendum; and how to avoid irregularities. Third, there would be the issue of whom is supposed to vote, which could include the residents and/or the citizens *de jure* of the Free Territory. Fourth, there is no guarantee that a vote would bring about change. According to Baldacchino (2010, pp. 44-45), between 1967 and 2007 16 status referenda in island micro-territories did not lead to any change. Several similar votes have been held since, for example in Puerto Rico and St Eustatius, again with no change in status; also, in mainland territories such as Scotland and Catalonia. Although of course in the latter the Spanish Government did not accept the legitimacy of the referendum and therefore the result. New Caledonia and Bougainville have also recently held votes on self-determination and are particularly useful reference points for Trieste.

The first of New Caledonia's referenda was held in November 2018. The question was 'Do you want New Caledonia to achieve full sovereignty and become independent?' (Connell, 2019, p. 246). The process that led to the vote had been long and complex, and even after the vote there remain issues regarding the system used. The referendum saw a turnout of 81% of the voting population, and the result was 56.7% in favour of remaining with France versus independence. Further votes were held in 2020 and 2021, and again both saw victories for the 'No' to independence supporters. The scope of the franchise was robustly debated. The pro-independence Kanak indigenous population was worried about how the franchise of the resident population would be defined, as in the past decades there has been significant immigration of French citizens (Fisher, 2019). So, the social and economic discord within New

Caledonia impacted on debates regarding the electoral franchise. A compromise was finally reached “that gave voting rights to all Kanaks and to other people with 20 years residence before an end of 2014 deadline” (Connell, 2019, p. 247). However, this did mean that “almost 36,000 French citizens living in New Caledonia (17% of the electorate) were excluded” (Brouard et. al., 2021, p. 3). Another point of note was the agreement that “should some parts of New Caledonia vote for independence and others not, the territory would not be divided with one part only becoming independent” (Connell, 2019, p. 247). Finally, the vote in 2021 was compromised by a boycott by the Kanaks, which meant turnout fell to only 44%. They wanted a delay to the vote due to COVID-19. New Caledonia’s congress president, Roch Wamytan, a pro-independence leader, argued,

This referendum, for us, is not the third referendum. We consider that there are only two legitimate referendums. 2018 and 2020. This referendum is the referendum of the French state, not ours (Rose and Packham, 2021, n.p.).

The 2019 referendum in Bougainville (part of Papua New Guinea) has also some useful pointers for a potential vote in Trieste. First, the lack of funding delayed the completion of an adequate register of voters, and the referendum itself required funds from the UN (Boege, 2019; Regan, 2019). Second, concerns were voiced that independence “would revive claims to independence in the nearby islands” (Connell, 2020, p. 383). Third, unlike in New Caledonia, non-resident Bougainvilleans were allowed to vote, with voting booths established overseas. Fourth, the Papua New Guinea parliament had to approve the final outcome; which so far, they have not done (Connell, 2020).

The issues relating to the referenda in New Caledonia and Bougainville have some similarities with, and some warnings for, Trieste. Trieste has had large-scale emigration since the 1950s due to a lack of jobs and future possibilities in the area. At the same time, there has been a strong influx of Italian citizens, especially civil servants paid by the Italian government who have become residents in Zone A. In relation to Zone B, the majority of Trieste’s population was forced to leave by the Yugoslavian authorities, and their houses were occupied by Yugoslavian citizens. So, who are the resident populations is a difficult question to answer. The main issue is that the citizens of the Free Territory are “Italian citizens who were domiciled on 10 June 1940, in the area comprised within the boundaries of the Free Territory, and their children born after that date, shall become original citizens of the Free Territory with full civil and political rights. Upon becoming citizens of the Free Territory, they shall lose their Italian citizenship” (US Department of State, 1947, Annex 6.6). Since 1954 there has been no census of the citizens of the Free Territory; however, considering that there were 300,000 citizens living in the area, it can be assumed that they could now be around six million people living around the world as a result of emigration, versus around 400,000 residents in the whole Free Territory. This data is calculated through comparison with the Italian immigration to Argentina, where just over a million Italians emigrated, and today at least 20 million Argentinians declare to descend from emigrated Italians (Itenets, 2003). Furthermore, only allowing residents to vote would mean again excluding the rights of perhaps six million people. So, for Trieste a full (and potentially lengthy) debate would have to be held on the extent of the franchise, followed by the creation of a credible register of voters. If not, the integrity of the whole exercise could be put at risk. But would funding be made available to create a credible register of voters? Quite possibly not, at least from the administering powers, if one considers Bougainville.

A potentially more fundamental issue of concern for holding a referendum relates to how the present status of the Free Territory is considered under international law. Above we discussed the fact that the administration of Trieste could be considered as *de facto*, but over time that has become recognised as legitimate, thus undercutting the importance of the original post-war settlement, including the Peace Treaty of 1947. But none of this has been considered and ruled upon by a court of law. Thus, it is questionable whether there would be the necessary legal and constitutional clarity to legitimately hold a referendum. In such circumstances there would have to be a review of the Peace Treaty and perhaps an assessment of whether Trieste had been administered in ‘good faith’ in regard to Article 26 of the Vienna Convention (*Pacta sunt Servanda*) that says that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith” (United Nations, 1969). But even if a ruling was made that gave precedent to the Peace Treaty it would not necessarily lead to a referendum; rather the original obligations of the UNSC might have to be revisited. On the other hand, if the *de facto* administration was affirmed then that would not necessarily preclude a referendum, however, the fact that Italy, Slovenia, and Croatia would have seen their claims and position reinforced, might mean one, two, or all three could refuse to hold a vote. Or if they did, they could limit the funding for it, refuse to accept the result or find another way to delegitimise the outcome, particularly if the three areas of Trieste produced different results. Thus, it is quite possible that the general uncertainties around the status and administration of Trieste would make it almost impossible to reach a point whereby a referendum could be held and its result accepted as legitimate.

### ***Appointment of a Provisional Governor***

The inability to appoint a Governor was the main issue that brought the Territory to be administered by foreign states. If the UNSC would be willing to appoint a Governor, the process of establishing the Free Territory could restart. Following a request of clarification from a citizen of Trieste in 1983 on what is the possible way forward to have Trieste back on the UNSC’s agenda, the Security Council replied that “any resumption of consideration of the issue mentioned in your letter would require an initiative on the part of a Member State of the United Nations” (United Nations Director of Political Committee Division, 1983). The most recent note that standardises the process of removal/retention of items for which the UNSC is responsible, confirms that “the deletion of an item does not imply that such an item cannot be taken up by the Security Council as and when it deems necessary in the future” (United Nations Security Council, 2010). The same document further specifies that,

the Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration. The practice of including an agenda item in the summary statement once it has been adopted at a formal meeting of the Security Council will remain unchanged (United Nations Security Council, 2010).

It also confirms that if an item was removed from the agenda, it does not mean that the issue related to that item is concluded, and that it can be added to the agenda if needed.

A possible solution to kick-start the process would be the appointment by the UNSC of a Provisional Governor with the same privileges as the permanent postholder that would substitute the administrations of the three states. An option would be for Italy, Slovenia, or Croatia to make the request; however, this could be done by another signatory of the MoU or by any UN Member. Even if there is a concern over legitimacy and that he/she could become

a permanent Provisional Governor it would allow the application of the Peace Treaty and the full implementation of the Free Territory, and it would be a step forward from the current temporary administration. This solution would align with a request signed by 14,000 citizens of the Free Territory to appoint a Governor sent to the UN in 2013, which at the time of writing (March 2022) has had no official reply.

However, the option of appointing even a Provisional Governor is unlikely, considering the interests of the administering powers (and their allies) in the area. For example, if the situation in Trieste moved towards a *de jure* resolution, then the damage to Italy could be significant, with the risk of Trieste's case precipitating other areas to start secession (i.e., Veneto Region and/or Sardinia). Even though the position of Veneto and Sardinia are different from Trieste, as they are part of Italy, they could use the challenge to *de facto* Italian administration for their own ends to seek independence, or at least greater autonomy that could have an impact domestically, but also internationally. Further, Italy would lose the Port of Trieste that is a key link with Central and Eastern Europe, with high revenues for the economy of north-east Italy. Moreover, Italy would lose the taxes and VAT paid by Trieste's small and medium-sized enterprises, which could have an effect on the Italian economy. In Zone B, Slovenia would lose its access to the sea and would become landlocked. It would also lose the revenues from the port of Koper and the coastal tourism sector. A solution to overcome these losses might involve reparations. However, both Zones have been administered under *de facto* sovereignty and the question would be who should compensate who, because all three countries involved could have to compensate the population that had to pay taxes to a foreign country for decades.

### *Status quo*

Finally, it is important to consider if the current situation is actually the most viable solution as it has maintained peace in the area for many decades and has created a norm – even though in possible contravention of several treaties and international conventions. There exists a stable peaceful situation that is accepted by the international community, and the economic situation, although disappointing in some respects, is relatively good based on many measures. Maintaining the status quo for the foreseeable future could well be the most viable solution if there are no significant changes to domestic or international circumstances.

However, the situation could change rapidly. In the past, people of Trieste have suffered from economic crises, and the impacts of the COVID-19 pandemic will mean a challenging period going forward. There have already been large protests with around 8,000 people calling for a true Free Territory of Trieste, and there are renewed tensions in Zone B between Slovenia and Croatia over sea borders in the Gulf of Piran. In both Zones A and B there are groups that are asking for the application of the Peace Treaty, and some of them are organised as political parties and stand in local elections. Their growing strength lies in good links with certain parts of the population and a vision for the future that is seen by many as positive and forward looking. The international situation could also flare-up, especially if tensions arise between the countries that have a geopolitical interest in the Free Territory, for example those in Central Europe (for the Free Port), but also China (that has included Trieste in its Belt and Road Initiative), the US (signatory of the MoU), and the UK (particularly after Brexit).

So, maintaining the current situation could be beneficial in the short to medium-term for the stability of the region in and around Trieste, and for the wider international community,

including the UN itself, particularly if the other policy options are not feasible. Although, there are risks to this ‘leave it alone and do nothing’ approach. Karklins and Petersen (1993, p. 589) have discussed “the mechanism and process of revolt against powerful regimes”, whereby large and frequent demonstrations can gain the upper hand against a regime losing strength and the confidence of its people. It is not beyond the realms of possibility that such a scenario could develop in one or indeed both zones of Trieste.

## Conclusion

The position of the Free Territory of Trieste is an interesting one. Even though there are some similarities with the small states of Europe, such as Andorra, Trieste’s status and the questions surrounding it are particular and have become rather unclear over the last 70 years. In the late 1940s and early 1950s significant efforts were made to create a specific status for Trieste based on the Free Territory model, under the auspices of the UNSC. However, Cold War politics and the general intractability of achieving Free Territory status for Trieste meant that alternative and temporary arrangements were made, giving Italy and Yugoslavia *de facto* administrative control. Since then, initiatives such as the Osimo Treaty have solidified the *de facto* administration of Trieste and lessened the original centrality of the *de jure* approach, in part as neither the UNSC nor the international community more generally has questioned the existing status quo. But there are risks in not trying to find a more permanent solution, as both international power politics and the domestic politics of Trieste might become less benign.

The paper evaluated some possible alternatives, but none provide an easy way forward. Although a referendum is the most democratic way to decide the preferred status of a territory, it is difficult to apply to Trieste. The Territory’s status is internationally recognised; there is a risk of violating the Peace Treaty that is still acknowledged by many; a citizens’ census would be required and would take years to complete, and there are issues around how the referendum would be conducted. So, it is difficult to consider a referendum as a viable option. Appointing a Provisional Governor would require applying UNSC Resolution 16 and the Peace Treaty; but there could be an issue of legitimacy. The temporary appointment could support the recreation of the local institutions and would also be the point of contact between the people of Trieste (represented by the Popular Assembly) and the UN. A Provisional Governor would also overcome the possible risk of the UNSC not being able to agree on a candidate. Further, this solution would address the problem of sovereignty and the role-holder would be able to be the neutral contact with the parties involved. However, the diplomatic process would be tense, and potentially intolerable, especially if the states administering Trieste do not agree. And as has been noted, Italy, Croatia and Slovenia have solid reasons to maintain their role. Another possibility could be the implementation of a blend of options, such as appointing a Provisional Governor whilst organising a census in order to create the basis for a future referendum. But again, there would be significant hurdles to overcome.

Therefore, on balance, it seems that the status quo will continue. The existing *de facto* situation is well established and recognised, at least tacitly, by the international community. Italy, Croatia and Slovenia have significant interests in maintaining their administering roles, and so far at least, there is not a critical mass of the Trieste population calling for change. Using Connell’s (2019, p. 254) assessment of New Caledonia, an “infinite pause” is likely to remain in place for some time. And yet, at the very least, there should be greater diplomatic and academic scrutiny of the present situation in the Free Territory of Trieste because there are undoubtedly issues of concern bubbling under the surface, and its study should be incorporated more readily into the literature on European microstates and self-determination.

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