# The Judgement of the Permanent Peoples' Tribunal
# Turin-Almese Session, 5-8 novembre 2015

# FUNDAMENTAL RIGHTS, PARTICIPATION OF LOCAL COMMUNITIES AND MEGA PROJECTS
## From the Lyon-Turin high-speed rail to the global reality

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## The Permanent Peoples' Tribunal (PPT)

*"The dictates of public conscience may become a recognized source of law and a tribunal emanating directly from the conscience of the people reflects an idea that is destined to grow: it is professed that institutions derive their power from the people, but in reality these two have moved increasingly further apart and only a significant wide-spread initiative can endeavor to build a bridge between the people and power" (Lelio Basso)*

The Permanent Peoples' Tribunal (PPT) is based in Rome at the Lelio and Lisli Basso Foundation (ISSOCO). It is an international tribunal of public opinion established in 1979 as a direct extension of the Russell Tribunal II on Latin American dictatorships advanced by Lelio Basso in the '70s.

Through the establishment of the PPT, a permanent process providing visibility for victims and an independent instrument for research and analysis on the absence and impotence of international law was created, with the aim of furnishing the facts, cultural and juridical conditions for a road to freedom and justice for all people.

The PPT embodies innovation in the field of law and politics. Like any other tribunal of public opinion, the PPT has no power to enforce its decision as its traits are positioned at the confines of ethics and law. Basso's reflection on the legitimacy of the tribunal, however, still holds true today:

*"The dictates of public conscience may become a recognized source of law […] and a tribunal emanating directly from the conscience of the people reflects an idea that is destined to grow: it is professed that institutions derive their power from the people, but in reality these two have moved increasingly further apart and only a significant wide-spread initiative can endeavor to build a bridge between the people and power."*

The PPT operates on the basis of the principles expressed in the Universal Declaration of the Rights of People, or the Algiers Charter (1976), and the main international instruments protecting fundamental human rights. Since its establishment to present day, the Tribunal has conducted more than 40 Sessions on numerous cases of human rights violations. The Decisions emitted for each Session, which are the result of the work of its members and the active participation of the social actors requesting the intervention, provide a critical and multi-disciplinary analysis of the reasons for the inefficacy of the law and recommendations to orient the path to affirm and recognise the rights of people. Notwithstanding the critical and sensitive nature of the declared decisions (from the desaparecidos of the Argentinian dictatorship, to Bhopal and Chernobyl, to the more recent process on the Tamil genocide), the methods of verifying facts and the decisions of the PPT have never been subject to criticism de facto or de jure.

The specialised nature of the Tribunal, as clearly expressed in its Statute, is illustrated by its enquiries which address crimes against peace and humanity, genocide cases, as well as crimes based on economic activities and policies that produce poverty, inequality and exclusion.

**All its Decisions are sent to the major international bodies and many have been discussed at the UN's Commission on Human Rights in Geneva.**

## A historic sentence

**On Sunday, November 8, 2015,** following a four-day session open to the public, **the Permanent Peoples' Tribunal – PPT** - made a historic decision condemning not only the process used in the planning of the TAV (high speed train) **in Val Susa (in Northern Italy), but also the entire system dominant in Italy and Europe regarding mega projects:** TAV Susa Valley, the airport of Notre-Dame-des-Landes in France, HS2 in the UK, the Roșia Montană mine in Romania, high speed rail projects in the Basque Country, Stuttgart, Venice, Florence, Basilicata and other regions of Italy, etc.

The PPT's decision, which fully accepted the prosecution case, says explicitly that in the Susa Valley the fundamental rights of citizens to information and participation were violated in contradiction of numerous international conventions, and recognised that there had been incorrect criminalization of the opposition movement and unacceptable militarization of the territory (seen at first hand by the judges during their visit to the site of La Maddalena in Chiomonte).

In this respect the **PPT** identified the responsibility, in addition to that of developers and companies concerned, of the Italian Government over the past two decades and of the European Union which has uncritically accepted information without conducting the checks required by the opposition movement.

The **PPT** concluded with specific recommendations calling, among other things, for the Italian and French governments to open "meaningful consultation of the populations concerned, and in particular, the residents of the Susa Valley, in order to provide them the opportunity to express their views on the relevance and viability of the project and to assert their rights to health, the environment and the protection of their living conditions", extending the examination of all possible options "without ruling out the Zero Option" and "suspending the project pending the results of serious and full consultations".

The **PPT** also asked that the military occupation of the area should be suspended.

On this basis it is possible to open a new phase in the history of the TAV and the Susa Valley. It must happen.

Turin, November 9th, 2015

**The ContraObservatory Valsusa**

**The Judgement of the Permanent Peoples' Tribunal**
**Turin-Almese Session, 5-8 novembre 2015**

http://permanentpeoplestribunal.org/wp-content/uploads/2015/11/TPP_GRANDI-OPERE_EN.pdf

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# FUNDAMENTAL RIGHTS, PARTICIPATION OF LOCAL COMMUNITIES AND MEGA PROJECTS

From the Lyon-Turin high-speed rail to the global reality

Turin-Almese, 5-8 November 2015

## JUDGEMENT

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## JURY COMPOSITION

**President:**

**Philippe Texier (France)**
**Honourary Magistrate of the French Supreme Court of Appeals, former member and President of the Committee on Economic, Social and Cultural Rights of the Office of the United Nations High Commission**

**Members:**

**Umberto Allegretti (Italy)**
**Jurist, former professor of Constitutional law at the University of Florence, former director of « Democracy and Law », scholar of democratic participation**

**Perfecto Andrés Ibáñez (Spain)**
**Magistrate of the Supreme Court of Spain and director of the magazine "Jueces para la Democracia"**

**Mireille Fanon Mendes France (France)**
**President of the Frantz-Fanon Foundation and member of the Working Group of experts for people of African descent of the Human Rights Council of the United Nations**

**Sara Larrain (Chile)**
**Chilean ecologist and politician, director of the Sustainable Chile Program since 1997**

**Dora Lucy Arias (Columbia)**
**Lawyer, member of the Board of Directors of the Colectivo de Abogados José Alvear Restrepo**

**Pigrau Antoni Solé (Spain)**
**Professor of Public International Law at the University of Rovira y Virgili in Tarragone, Director of the Centre for the Study of Environmental Rights in Tarragone**

**Roberto Schiattarella (Italy)**
**Economist, economics professor at the University of Camerino**

**GENERAL SECRETARIAT**

**Gianni Tognoni (Italy)**
**Simona Fraudatario (Italy)**

# I. INTRODUCTION

## 1.1. The history and legitimacy of the Peoples' Permanent Tribunal

The Peoples' Permanent Tribunal (PPT) is an international organization founded in 1979 with the aim of rendering the process that began with the Russell Tribunal on Vietnam (1966-67) and on Latin American dictators (1974-76) permanent: guaranteeing space for visibility, for voices to be heard, for judgments on systemic violations of human, individual and collective rights, as well as the rights of peoples who do not find an institutional response in single countries or in communities of States. International law is, de facto, a largely imperfect series of regulations and in arduous and contentious evolution, especially regarding how to define crimes against human rights with roots that can be traced to "economic" causes and actors (that are, however, excluded from the competencies of the International Criminal Court) but which are, nonetheless, increasingly protagonists in today's society at the single nation, and regional and global market levels.

Applying international law to the dominant position held by economic rationale over the rights of peoples, was the object of in-depth analysis in the PPT session dedicated to "The Conquest of America and International Law" (Padua-Venice 1992). The original ritual in the formulation of the doctrines of international law, and their application, was very clear: a conquest, an imposition until the genocidal destruction of cultural models and social orders were legitimated by disguising strictly commercial interests and relations of strength between the dominant powers at the time, with ideological motivations and objectives declared to be in the name of a greater good that had to be accepted a priori.

The activities of the PPT have ever more frequently addressed the implications of the reverse hierarchy between human rights and economic ones in the last 20 years. This naturally, with the obvious limits of efficacy as a "court of opinion" that cannot exercise any influence that is not part of public opinion in the real sense of the term: the right to "declare the right" on behalf of a people that are the subjects of this dynamic and the guarantors of that right. The legitimacy of the PPT lies in its very existence as a tool to denounce, document and resist against an omission, a silence before the reality of violations of fundamental rights. The rigorous analysis of facts and the gaps in the practice of rights at national and international levels, creates an historic memory, for the present and the future, of the inviolable priority of the genuine right to a decent life and the dignity of people whose sovereignty is the only source of authority before the State.

## 1.2. The Session on "Fundamental rights, local community participation and megaprojects. From the Tav to global realities"

The Permanent Peoples' Tribunal (PPT) Session, which took place 5-8 November 2015, with the public audiences held at the Abele Group's Fabbrica delle E and the final reading of the sentence at the Magnetto Theatre in Almese, represents the conclusion of painstaking preparation which rigorously followed the requirements of the PPT Statute.

On 20 April 2014, the Presidency of the PPT responded positively to the initial request to consider the planning and construction of the Turin-Lyon high-speed rail project presented on 8 April 2014, outlining the motivations for accepting the case and the parameters that had to be followed in preparing for the Session. The following was particularly noted:

- the strong coherence and continuity of the request with the experiences and competencies of the PPT, developed and documented specifically in the decisions on the policies of the International Monetary Fund and the World Bank (1989; 1994), on the Bhopal (1992; 1994) and Chernobyl (1996) disasters and in the more recent decisions on transnational corporations in Colombia (2001-2008), on EU policies in Latin America (2006-2010) and the consequences of free trade treaties in Mexico (2011-2014);

- the specific relevance and contemporary nature of the current facts related to Val Susa regarding the accusation of

a conflictual situation that has at its centre a systemic violation of the fundamental rights of a community to play a priority and essential role in the decision-making process regarding the context and conditions in present-day life and the future;

- the importance of examining and verifying the interaction and hierarchical relationship between variables and determining economic and financial factors in "megaprojects" that are proposed as strategic at a national level, and sustained at a European level, and the obligations related to respect for the fundamental rights of individuals and communities in national and international legislation;

- the opportunity to evaluate if and how much the Val Susa case could be considered the embodiment of a local conflictual situation, or whether it should be framed and compared with the international context (European and not only) related to megaprojects, to verify the possible character of its manifestation as exemplifying a systemic problem at a European and global level.

The presentation-acceptance of the formulated charge, keeping in mind the comments identified above (Attachment 2), formally opened the investigative phase which led to the inaugural Public Session on 14 March 2015, in Turin. At that point, the period of contact with the groups representative of the Italian and European context which, at first inspection, resulted more directly pertinent to the objectives of the PPT, commenced. In the case of two of these cases – in particular the case of the Notre-Dame-des-Landes airport and the Mose project in Venice – on-site visits took place by the General Secretariat of the PPT, with the aim, above all, of documenting the representative nature of the movements with respect to the local community.

According to the PPT Statute, the stakeholders identified in the indictment were invited (by registered mail and with a follow-up request) to participate in the PPT Public Session directly or through a representative. On 4 November 2015, two letters addressed to the Tribunal and signed respectively by Paolo Foietta, architect and President of the Turin-Lyon Technical Observatory, and Mario Virano, architect and Director General of TELT, the body organization charged with realizing the TAV project, were received. In both cases, they declined the invitation to participate stating that their positions were flawlessly and entirely available in documents that are easily accessible and which, they sustain, demonstrate the absolutely appropriate nature of the behaviour of the Observatory and TELT, in coherence with the mandate they have received.

As documented in the detailed programme available in Attachment 1, the PPT Public Session was carried out in the following manner:

- an initial day dedicated completely to the relations and testimonies related to the Val Susa case;

- a second day focusing on Italian megaprojects (the Mose in Venice, the TAV in Florence, the Muos in Niscemi, the thermodynamic solar plant in Basilicata, the various drilling projects scattered throughout the territory, the Messina Bridge, the Orte-Mestre toll highway, the Alpi Apuane basin) and European ones (Notre-Dame-des-Landes airport in France, the TAV in France, the Basque Region, the UK and Germany, and the mining project in Roşia Montana in Romania), identified as representative situations that are comparable and/or complementary, due to their content and the opposition-resistance activities carried out by the interested communities, to the Turin-Lyon TAV case study;

-in the morning conclusions, which included a general report on the strategy of "megaprojects" on a global level (with particular attention paid to Mexico and Latin America) and the required conclusions presented by Livio Pepino (Attachment 3);

All multimedia documentation was available to the members of the jury, who were able to question the speakers, among whom were technical and legal experts, local administration representatives and citizens of the affected communities.

## II. THE FACTS AND THE CONTEXT

In the attachments to the initial request, in the succeeding submissions, in the hearing of 14 March 2015 and the preliminary proceedings that have taken place during the present session, the claimants have produced extensive documentation related to the new Turin-Lyon Railway line project which includes – along with the allegations of the defendants – the main official documents on which the project is based, as well as the grounds supporting it published on the institutional website of the Government on 9 March 2012 (later included on 21 April following the observations by the Technical Commission of the Valsusa and Val Sangone Mountain Community). Furthermore, several films have been submitted, related to the project work, the demonstrations by the opposition movement and repressive action by law enforcement personnel (some of them originating from police authorities and introduced in criminal proceedings). Later on, in the course of the preliminary proceedings held on 5 and 6 November, at least another 30 direct or video testimonies were obtained (the latter completely recorded in dvd format that were incorporated into the official records) and the Tribunal addressed direct questions concerning certain texts. While they did not attend the proceedings, in their letters dated 4 November, the representatives of TELT (Tunnel Euralpin Lyon Turin) and the Observatory for the railway connection Turin–Lyon requested the documentation on the project that "had been widely publicized on institutional and media sites" and this allowed the inclusion of information material, inter alia of the nine booklets produced by the Observatory between 2006 and 2012 (that can be found on the site of the Italian Government). Moreover, a delegation of the Tribunal travelled to the area where the underground tunnel of Maddalena in Chiomonte is being excavated and observed the work from outside and from above (since no authorization was granted to access the tunnel on the requested date).

Besides the above mentioned material, the Tribunal obtained documents and information about other large-scale projects in Italy and Europe that were considered representative of situations that are comparable and/or complementary to the New Turin-Lyon Railway line (the Mose dam in Venice, the TAV railway line in Florence, the solar thermodynamc plant in Basilicata, the bridge in Messina, the Orte-Mestre motorway, the airport of Notre-Dame-des-Landes in France, the new high-speed railway line in the Basque Country in Spain and France, the HS2 London-Birmingham railway line and the train station in Stuttgart) as well as other similar initiatives from the point of view of their environmental impact (the Muos plant in Niscemi, the projects of widespread drillings throughout the territory, the intensive exploitation of marble quarries in the Apuan Alps, the start of open-pit gold mining in Roșia Montană, Romania). For that purpose, the Tribunal secretariat also had direct access to Notre-Dame-des-Landes and Venice. Report and direct-witness depositions were submitted over the course of the session, on 6 November.

From that vast evidentiary material the following, with regard to the aspects that are pertinent to us, should be noted:

2.1.The idea of a new railway line between Turin and Lyon goes back to September 1989 when, under the initiative of the Agnelli Foundation, a project was presented in Turin that consisted in the extension of the French TGV network and foresaw the excavation of a 50-km-long tunnel under the Moncenisio mountain pass. The presentation was followed by the establishment of a Committee for the Promotion of the High-Speed Turin – Lyon Line under the joint chairmanship of Umberto Agnelli (representing Fiat spa, the largest private economic group in Italy at that time, and also with significant participation in the ownership of several large newspapers that then became very vocal supporters of the project) and the President of the Piedmont Region. In the meantime, the project has undergone several changes, concerning the layout of the railway tracks and its ultimate purpose, which became then that of mixed railway line for passengers and freight and later on primarily for the transport of goods, in view of the progressive reduction of demand for the transport of passengers. The present project – that has its normative base in article 1 of the Agreement between Italy and France of 29 January 2001 (ratified in Italy through law n. 228 of 27 September 2002) – foresees a 270-km-long line, of which 144 km are under French jurisdiction, 58 km under mixed jurisdiction between Saint-Jean-de-Maurienne and Susa/Bussoleno and 68 km under Italian jurisdiction (RFI) from Susa/Bussoleno to Orbassano and Settimo, where it should connect to the Turin-Milan line. To date, no

work has begun on any of the three sections, which are at different procedural and administrative stages, while the excavation of the exploratory tunnel continues in France and Italy and, due to the lack of financial resources, the indication by the Government has been to proceed only with the 57-km main tunnel which should pass through the Alps at a level of about 600 meters, postponing the decisions concerning the other sections to a future date.

2.2.On the Italian side, the layout of the tracks, the projected entrance of the tunnel in the international section and the work in progress for the exploratory tunnel all impact the Susa Valley (Valley or Valsusa), a valley of slightly less than 40 municipalities and a population of 120.000 inhabitants (including the upper part which is not affected by the project) which is already traversed by the historic railway line, the A32 motorway and two national roads. Following the presentation of the project and the start of the preparatory work in the Valley, a broad opposition movement against it known as "No TAV Movement" emerged and continues to develop. The movement began in 1989 and encompasses citizens, local administrators, university teachers and experts from several disciplines. The main reason for the opposition is, clearly, the feared risks for the environment and the health of the population, taking into account, on the one hand, the cyclopean character of the project, and, on the other hand, the presence of uranium and asbestos in the mountains to be excavated. The meetings of experts and citizens in the Valley have become a regular feature and contribute to the overall growing awareness, knowledge and participation. Gradually, as the project progresses and the work goes forward, the opposition turned to other aspect: the perceived uselessness of the new line, the squandering of resources in times of severe economic crisis (in view of the forecast for a total expenditure estimated at 26 billion Euros by the French Court de Comptes) and the complete exclusion of the local community from any debate about the real utility of the project. Over the years (and decades) the ideologically and politically heterogeneous opposition movement has become deeply rooted in the territory, has attracted consensus at a national level and organized demonstrations with very large numbers of participants of up to 70-80.000 people according to the movement's own estimates. Until 2005, the conflict between the movement and governmental institutions, though harsh, did not generate civil strife. It, however, started on that year with the first expropriations and the beginning of the project work. The moments of highest tension took place in Venaus, on the night of 6 December 2005, with the clearing out by the police force of a protest site organized to prevent the drilling of probe-holes and the execution of work. And, six years later, on 27 June 2011 with a similar violent clearing out of a protest site in La Maddalena to prevent the beginning of the perforation of an exploratory tunnel. Since then, the substantial conflict has been accompanied by more or less frequent "attacks" on the project fencing, sometimes for purely demonstrative purposes, other times together with stone throwing, paper bombs and fireworks to which the security forces respond with the use of tear gas. Thus, an increased militarization of the territory (as will be explained later) and a radicalization of the conflict has taken place, while appeals continue being addressed to the Government – that always go unheard – from intellectuals, experts, economists, trade unionists, lawyers, religious figures, artists and also politicians of national renown, requesting the suspension of work and the opening up of a true dialogue about the real need/utility of the project.

2.3.The investigation phase has clearly revealed that no detailed and adequate information about the characteristics and the effects of the project was provided to the population or to local administrations in the phase prior to the 2001 agreement between Italy and France (which is still the legal basis for the new line). All witnesses heard on that issue pointed out that "the institutional information has been limited to (scanty) propaganda communication containing slogans and fanciful forecasts (like the film sent by the Comitato Traspadana to the municipal councillors of Valsusa and Val Sangone at the end of the nineties, that was shown during the session) and some superficial meetings organized by the sponsors at the Regional offices in Turin exclusively with representatives of the newly created "No TAV Movement". Incidentally, this situation has not been contested and has been indirectly confirmed by the Italian Government itself which in its reply to question no. 5 of the document published on its own website on 9 March 2012 ("Has the project been the subject of consultation with the territory?") refers exclusively to facts (to which we shall refer later on) from the year 2007.

2.4. Further, it has been established that, after the signing of the agreement between Italy and France in 2001, the new railway line was included by the Italian Government, in application of art. 1 of law no. 443 of 21 December 2001 (the

so-called "target law") among the "structures of overriding national interest to be realized for the modernization and the development of the Country", transferring all decisions regarding environmental compatibility to the Italian Prime Minister (with prior deliberation by the CIPE – the Interministerial Committee for Economic Planning) and consequently, negating the corresponding decision-taking process by the local administrations (thus taking away their powers to award permits, authorizations or approvals). This has further excluded local communities from the possibility to participate in the dialogue about the project. Moreover, when in June 2006, following a specific decision by the Prime Minister, the Turin-Lyon line was excluded from the field of application of the "target law", the procedure concerning the project continued as if nothing had happened (thus allowing inter alia the approval for the exploratory tunnel in Chiomonte using the procedure initiated for an earlier project in a different location and without any new tender). This was also made possible thanks to specific declarations (that were proven to be untrue) by public institutions, such as the "Technical Structure Tasks" of the Ministry of Infrastructure and Transport (Struttura tecnica di missione) in a note on 8 September 2009 replying to a specific query from LTF, stated that "the railway connection Turin-Lyon had been included in the first programme of strategic works, approved, in application of law n. 44372001, with the deliberation of the CIPE n. 121 on 21 December 2001, after which no further deliberation by the same Interministerial Committee had taken place to formally revoke the inclusion of the project in the strategic structures programme" (thus misleading inter alia the Administrative Tribunal TAR of Lazio that, in its judgment of 4 December 2013-27 February 2014, rejected the complaint lodged by the Mountain Community against the deliberation of the CIPE of 18 November 2010).

2.5. Still on the issue of participation by the local community, it is illustrative to refer to the situation of the Observatory for the Turin-Lyon railway connection, established by a decree of the President of the Council of Ministers of 1 March 2006, to carry out a dialogue among the different territorial components and to identify the solutions to be submitted to political decision-makers (by mediating in the conflict that had arisen in the preceding months). The Observatory and its activities are constantly portrayed by the project sponsors, by the Government, the Piedmont Region, the political majority, the European Commission and the independent media, in Italy and in Europe, as an example of the right relationship between institutions and citizens and as a demonstration of effective participation of local administrations and citizens in decisions regarding the project (everyone can the already mentioned "reply" no. 5 by the Monti Government of 9 March 2012, according to which: "The Observatory has gone a long, hard and complex way, seeking a consensual and shared solution, approaching primarily the issue of the appropriateness and the modalities for the implementation of the new Turin-Lyon railway line and reaching an agreement among the different representatives. On 28 June 2008, the agreement of Pra Catinat was signed, which sets out the undertakings by the different actors of the project, according to which it was decided to carry out the preliminary design of the complete section on Italian soil. The result was a preliminary project that represents the first example of participation and discussion with regard to a large infrastructure project in Italian history"). The preliminary proceedings have shown that such a statement is totally groundless. The Observatory has indeed carried out intense work gathering information and documents, as evidenced by the booklets it has published (especially the first ones) but it has avoided discussing the main issue – which is decisive for the real participation of the local community – namely, the need for a new railway line or the opportunity to modernize and utilize the historic one. No formal discussion seems to have taken place on that issue. The president of the Observatory has taken over, in this context, the position of head of the Italian delegation to the Italian-French Intergovernmental Conference for the implementation of the project (thus showing that he plays an active role in the realization of the new line). Furthermore, in January 2010, the Government decided to "redefine local representation within the Observatory", to admit "only those municipalities that expressly declared that they are willing to take part in the best realization of the project". In this regard, the issue of the so-called Pracatinat agreement, already mentioned above, is particularly telling. The agreement is presented as an historic example of participation, not only in the governmental document of 9 March 2012 but also in the Observatory's booklet No. 7, that is entirely dedicated to it, where it is said: "the text of the agreement, called 'points of agreement for the design of the new line and new transportation policies for the territory' is the product of an uninterrupted 'workshop' of around 50 hours that allowed the members of the Observatory, in the favourable conditions created by the mountain Hermitage of Pracatinat (at 1760 meters height)

to tie up all the loose ends from the arduous work initiated on 12 December 2006. At the conclusion of this work and following a continuous relationship between technicians and mayors, and multiple institutional representatives, a rich, uninterrupted, intense democratic debate that brought down to the reality of the territory and the local communities the developments and the successes of a technical discussion about sensitive issues, going beyond the strict scope of a working commission and becoming an open-ended political and social debate that was oftentimes harsh, but, thanks to the mayors, firmly rooted on institutional ground". Nonetheless, as emerged in the preliminary proceedings, such reconstruction bears no relation to reality: the document defined as an "agreement" was not signed by any mayor, but only by the president of the Observatory, the mayors who were heard by the Tribunal declared they never signed such a document (and in many cases, never participated in the workshop). There was never any deliberation of community councils to ratify such an "agreement". There wasn't any form of participation but an untrue and purely propagandistic representation of reality. The matter is particularly serious and symbolic due to the attempt to exclude any form of participation while trying to create the opposite impression of the process.

2.6. An important part of the session was dedicated to the analysis of data and the forecasts mentioned by the proponents and Italian and European governmental institutions to support the need for the project. This is relevant for the purpose of the present trial because the already mentioned Italian-French agreement of 29 January 200, "taking note of the recommendations submitted by the Intergovernmental Commission in its report of 15 January 2001", foresees, in article 1, that "the Italian and French Governments undertake, in applying the present Agreement, to build or to have the project built on the Italian-French common portion which are necessary for the realization of a new mixed railway connection for freight and passengers between Turin and Lyon, the activation of service of which should take place at the date of saturation of the existing projects". Beyond the prudence in use of terminology of international agreements, this means that, at the moment of the signing of the agreement, the underlying premise for the construction of the new line – although it was wished by the signatory Governments – was the actual or immediately impending saturation of the historic line (as is, incidentally, evident not only due to common sense but evident in parliamentary debate, especially with regard to the French side). Thus, from all the collected information, including from governmental sources, and beginning with that contained in the above mentioned booklets from the Observatory, it follows that the envisaged conditions are very far from happening and, as a matter of fact, they are destined not to take place, given that the historic line is utilized at 20-30 per cent of the existing capacity and, instead, a consistent reduction of traffic, either by rail or by road, on the East-West axis can be observed (which inter alia has proven all the forecasts advanced by the proponents of the project at the beginning of the nineties wrong). This is also admitted by the Italian Government which, in the above-mentioned document of 9 March 2012, though the text of the Italian-French agreement has remained unchanged, claims in support of the need for the new line, no longer the saturation of the old one but rather its "suitability". In reply n. 8 of the above-mentioned document, it is indeed said that: "The Fréjus historic line is like a typewriter in the age of computers: a service that nobody wants anymore. It is thus necessary to create a new infrastructure that satisfies the demand for goods and persons. The requirements of a modern and efficient freight transport, in which the private component takes on an ever increasing role, make the utilization of the existing capacity on the historic Turin-Modane line impossible. Taking into account the objective of promoting the rebalancing of transport modes between road and rail in the Alpine region in every possible way, it is necessary to build a new railway pass and a new railway route. In a nutshell, given the objective of modal shift in the Alpine arc, it becomes necessary to promote the use of the railway at a speed and at a cost that the market considers satisfying. These requirements cannot be ensured by the present railway line between Turin and Modane". However, such an assertion, which is obviously provocative and propagandistic in nature, cannot be sustained by reliable forecasts and verifiable data available in several respects: the development of traffic in the sense already mentioned, as well as its future projections, the cost-benefit ratio, the modalities for the transport mode shift from road to rail (at a time when among other things, the doubling of the Fréjus motorway tunnel is taking place), the environmental impact related to the execution of the project and the pollution caused by trains travelling at the projected speed, the connections between the new line and the existing routes, and so forth. The weakness, the inadequacy and the unfounded basis of the (few) elements produced by the proponents and the interested institutions have been underlined by all experts (from different disciplines) that have

taken the floor during the session and are documented in the numerous material submitted. Quite obviously, this has a significant impact on the democratic processes regarding either the definition of public interest (that must be defended also against private interests) or with regard to the decision-making processes and participation in them (which must be based on reliable information).

2.7. Over the course of the session, it was established that, starting in 2003 to the present, an extraordinary number of requests, demands, appeals, documents (some of them are attached) have been submitted to the Government, to the Head of State, to the European institutions by municipalities, environmental associations, doctors, university professors, scientists, citizens, intellectuals, church representatives and the labour sector, with a view to obtaining a real dialogue, the suspension of the preliminary activities and the involvement of independent international experts to verify the real utility and the environmental safety of the project. Such requests have remained for the most part unanswered and, even in those (rare) instances in which representatives have been received by the relevant authorities, the meetings do not seem to have allowed for any substantive dialogue.

2.8. A similar lack of response has also been the result of numerous appeals filed by representatives of the anti-TAV movement before the courts, both in the administrative and the ordinary jurisdictions. Concerning administrative justice, the limitations of the Italian normative system must be emphasized, since it does not foresee any specific protection for scattered interests (but only for interests related to an individual or a group of individuals with legal standing) and prevents collective legal action for the protection of the common good, like those affected by the situation of Valsusa. With regards to ordinary jurisdiction, it has been established that the different demands concerning general or specific aspects that were brought to the Public Prosecutor's Office (Procura della Repubblica) in Turin and Rome were shelved and discontinued de plano without a specific review of the merits (as was the case for the issue addressed on 31 March 2014 to the Prosecutor's Office in Rome – Roma da Cancelli – with three submissions relating to potential criminal charges of "abuse of power, irregularities and false testimony" related to the project) or have produced a "boomerang effect" (like the request submitted on 22 May 2013 to the Prosecutor's Office in Turin by the president of Pro Natura Piemonte and the representatives from other environmental associations about the danger of an active landslide affecting the area foreseen for the construction of the Maddalena exploratory tunnel, that led to the commencement of criminal proceedings against the complainants with charges of causing a "false alarm").

2.9. Another matter of particular relevance dealt with during the session, which has produced an enormous amount of documents (some of them submitted also by nationally well known entities like the National Association of Democratic Lawyers) has to do with the restrictions to some fundamental rights taking place in Valsusa. The lack of dialogue and consultation with the local population on the part of national institutions has generated – as outlined previously – frequent and harsh confrontations. This has been followed by institutional responses that have often exceeded the physiological threshold for maintaining democratic law and order and balanced crime prevention, engendering, through the methods employed, distortions and excesses, substantive violations of constitutionally guaranteed rights (especially with regard to freedom of movement, the right to demonstrate, freedom of expression and thought as well as liberty tout court). In fact, from the witness testimonies and the documents obtained it emerges that:

a) ad hoc rules have been issued, with the introduction of a sort of "special" criminal code for the area around the construction site at La Maddalena in Chiomonte. Article 19 of law n. 183 of 12 November 2011, in a provision that has only a precedent in law-decree n. 90 of 23 May 2008 relating to waste disposal facilities in Campania establishes: "To ensure the construction of the Turin-Lyon railway line and, to that effect, guarantee the smooth progress of the work concerning the exploratory tunnel at La Maddalena, the areas and sites of the Municipality of Chiomonte identified for the installation of the exploratory tunnel and the construction of the base tunnel constitute areas of national strategic interest. Unless the offence in question constitutes a more serious crime, any person gaining unauthorized access to the areas of national strategic interest dealt with in para. 1 or preventing or obstructing authorized access to the said areas shall be punished under article 682 of the criminal code ("Entry to places where

access is forbidden in the military interest of the State") which provides that: "anyone who enters places where access is forbidden in the military interest of the State shall be punished, if the act is not a more serious offense, with detention from three months to one year or with a fine between 51 and 309 Euros". In this manner, the area surrounding the construction site in question has been transformed, for all intents and purposes, into a military zone (with the ensuing application of rules that are close to those that govern military conflicts).

b) in the immediate vicinity of the above-mentioned construction site, a "red zone" has been set up, access to which is prohibited to citizens unless there are substantiated reasons connected to their work. This has been achieved by the continued and recurring issuance of substantially identical executive orders from the Prefect of Turin through which the area surrounding the construction site at La Maddalena in Chiomonte has been entrusted to the police forces, prohibiting "anybody" from "entering and parking" in the zone, as well as forbidding circulation in nearby areas. Over and above that fact itself, it is questionable that such prefectural orders have been issued for an uninterrupted period of over four years (from the 22 June 2011 to the 30 September 2015, with a validity period until 30 January 2016), on the basis of article 2 of the Single Text on Public Security (Royal Decree n.773 of 18 June 1931), that provides for powers that can be exercised in conditions of need and urgency ("In case of urgency or great public need, the prefect is empowered to adopt the necessary measures for the protection of public order and public security").

c) in the described zone and, in general, in large areas of the Valsusa a veritable militarization of the territory has taken place, with the anomalous utilization in peacetime of army units in charge of controlling the territory and supporting the different police forces. This has meant restrictions to the right of freedom of movement, intrusive monitoring of people and serious disruption in the daily life of those areas, affecting work and personal relationships. This state of affairs was directly experienced by the delegation of the Tribunal that travelled to visit the zone and, in order to access an area that was not subject to the restrictions of movement and circulation, had to endure a long delay and the monitor and registration of documents and was then followed, photographed and filmed during the entire visit by law enforcement personnel.

d) in order to control the territory and to overcome the existing resistance and opposition, a presence has been put in place and use has been made of legal powers and force that were, at the very least, disproportionate: constantly requesting documents for the purpose of identification, photographing and filming peaceful citizens, particularly violent interventions to carry out the removal of demonstrators at Venaus on 6 December 2005 and La Maddalena on 27 June 2011 (seriously damaging the necropolis situated there that dates back to 4000 B.C.), massive use of tear gas in the attempts to control demonstrations in the vicinity of the construction site, and so forth.

2.10. The documents gathered in the preliminary proceedings also show the collaboration in the violations described above of some European institutions, in particular the Commissioner designated as Coordinator for the TEN-T n. 6 priority project, Laurens Jan Brinkhorst, and the Committee on Petitions of the European Parliament. Concerning the first, as can be established on the basis of several declarations made either of his own accord or as part of annual activity reports, he reproduces the allegations of the Italian Government and the president of the Observatory for the Turin-Lyon railway link without taking into account (albeit to contest them) the observations of the territorial institutions and their experts, underestimates the potential damage to the environment and the underground water tables as a result of the project, and acknowledges (in a manner that does not correspond to the truth) the existence, in Valsusa, of a broad consensus about the new railway line. Regarding the Committee on Petitions of the European Parliament, what has emerged, also through witness evidence originating in the Parliament itself, is the continued inaction and the "omissive" behaviour of the Committee regarding on-the-spot checks of the complaints lodged by the territorial institutions and citizens (which took place only once without providing any follow-up to the report provided by the dispatched delegation) and the lack of a contradictory debate of the complaints, that were all shelved without considering the merits of the case.

2.11. As has been stated, as part of the preliminary inquiry, the Tribunal also carried out an in-depth investigation concerning numerous other Italian and European projects. In this regard, in preparation for the present session, the review of the project for a planned airport of Notre-Dame-des-Landes, and the related opposition movement, was particularly thorough and included on-site access. The project, which concerns adding a new airport to the present one near the town of Nantes, dates back to the end of the sixties and became topical again in 2000, with the forecast of completing the construction in 2017. Since the seventies, strong opposition has emerged and has grown over the years, due to the perceived uselessness of the project (in view of the possibility of enlarging and rationalizing the already existing international airport), the unsustainable cost and the ensuing environmental damage (including the irreversible loss of agricultural land and particularly valued wetlands). The opposition movement presently embodies over 50 committees, associations, political movements and trade unions and develops intense and continuous activities in certain fundamental areas: resistance within the territory (which includes the occupation of an area called "ZAD", that stands for "Area To Be Defended", crop extensions and repeated demonstrations), documentation and condemnation of the uselessness of the project and the irregularities that characterize it (that has had the effect of enlisting significant sectors of the local administration in opposition) and legal action (with the submission of complaints to courts at all levels, both against the expropriation of land and against specific aspects related to the execution of the project). As a result of such intense and continuous opposition, in spite of the advance of administrative procedures, the construction work for the airport has not yet started. However, the governmental political forces continue to maintain that the project is necessary and that it will be implemented in any case and the conflict with opponents has become increasingly harsh. In addition to those that have already been pointed out, the preliminary investigation has demonstrated that there are many common traits between the case of Notre-Dame-des-Landes and that of the TAV in Valsusa. These include: the breadth and heterogeneity of the opposition movement itself which, above and beyond the affected territorial area, encompasses people from very diverse social categories; the lack of effective involvement and real consultation with the interested communities and the respective institutions in the decision-making process about the projects or the purely superficial character of such consultations (as occurred specifically in the management of the procedure for the Dèbat public); the establishment, following some violent clashes in 2012 of a "Commission for Dialogue" that has, however, excluded any discussion about the "zero option" (that is, the option of enlarging the existing airport, cancelling the construction of new structures); the lack of response to appeals, requests, accusations and the failure to transmit documents submitted by opponents to European institutions; the repeated manipulation of data and the provision of completely unbalanced information in favour of the project by institutions; the adoption of police intervention with a disproportionate use of force to oppose the protest demonstrations and a especially harsh judicial repression for offences committed by demonstrators; the use at a political and journalistic level of terms and language aimed at criminalizing the opposition movement (and even going as far as categorizing it as "terrorism").

2.12. As has been previously mentioned in point 1.2, other large projects admitted for review by the PPT include the Mose dam in Venice, the TAV railway passage in Florence, the solar thermodynamc plant in Basilicata, the Messina bridge, the Orte-Mestre motorway, the airport of Notre-Dame-des-Landes in France, the new high-speed railway line in the Basque Country in Spain and France, the HS2 London-Birmingham railway line and the train station in Stuttgart) as well other similar initiatives from the perspective of their environmental impact (the Muos plant in Niscemi, the widespread drilling projects throughout the territory, the intensive exploitation of marble quarries in the Apuan Alps, the start of open-pit gold mining in Roșia Montană, Romania). It should be particularly emphasized that the reports regarding the Mose were the result of an entire and very intense day of public hearings in Venice, with the presence of the General Secretariat of the PPT, on the 10 October 2015. In the case of the railway underpass in Florence, according to the opinion of the experts from the people's committees, the appraisal of the following risks is completely inadequate: pollution and deviation of the water tables with consequential damage to buildings, reduction of soil resistance, a permanent "mortgaging" of the underground portion of an extremely delicate city which necessitates action on urban traffic including adoption of using the underground area, which would be prevented by the "barrier" created by the project, the lengthening of connection times between high-speed trains and the regional railway network, the non-compliance with seismic norms, outdated and unreliable project data and tests and an improper use of the "observational" model.

Without going into details, very notable similarities emerged (in some cases we can even speak of overlaps) in the methods used with reference to such projects, regarding the authoritarian and centralized character of the decisions related to them, the exclusion of the local population and administrations from decision-making (or with a purely superficial involvement), the inadequacy and (sometimes) clear inconsistency of the data provided in support of the projects, the transformation of political issues inherent to the projects into issues of public order that are assigned to the police and the judiciary (including through the use of special legislative and administrative measures of a general character) and the rather heavy police and judicial interventions that are interpreted by many as direct methods to discourage and/or block emerging opposition and protest.

The management of the TAV affair in Valsusa has thus emerged not as an isolated stand-alone episode but as symbolic of a widely used method of interference with regard to major issues concerning territorial modification and the environment.

## III. ASSESSMENT OF THE FACTS AND FRAME OF REFERENCE FOR THE SCHEMA

A global evaluation of the roles and responsibilities of various public and private bodies characterized as sponsors and agents of the development and management of major development projects and identified in the structured and very precise documentation submitted to the PPT (a summary of its essential elements was presented at the previous session) may be broken down into three types of considerations.

### 3.1 Democracy as the fundamental frame of reference

The processes of building democratic systems are the outcome of a long path of democratic conquests by peoples enabling the establishment of an order of human rights, social rights, political rights and cultural rights, which are the basis and the guarantee for democracy and the legitimacy of the state's powers and institutions.

The international system has shaped the International Charter of Human Rights which is the basis for all national constitutions. It was later reinforced by other international instruments. More recently, it has explicitly stipulated social groups and ethnic minorities, after they had demanded recognition and self-determination for which a more general wording is provided by Article 16 of the Universal Declaration of Human Rights proclaimed in Algiers in 1976. It is considered as the specific frame of reference (on the doctrinal and operational level) for all activities, working criteria and rulings of the PPT: "Every people has the right to conserve, protect and improve its environment."

The universal character of these rights as the fundamental principles of coexistence and democratic governance is even recognized as such on a constitutional level and is the fundamental pillar for the notion of public interest. Faced by the development of critical environmental and territorial situations, the international community and individual states have developed other frames of reference, which have consolidated the specific obligations and rights of peoples and states in view of a sustainable management of common goods, natural resources and territories. It is appropriate at this stage to emphasize in particular the multilateral conventions on the environment and certain more specific documents such as the Aarhus Convention which provide for mandatory procedures for the participation of local communities in all decision-making processes regarding the management of the environment and territories. It is especially appropriate to highlight the protection of the right to access adequate information, which is provided within a given (opportune) period on projects proposed for development in specific territories, the participation in the decisions taken in the context of activities to be realized and access to legal remedies by mechanisms of administrative law whose outcome shall be to resolve disagreements or diverging opinions on these processes.

In this sense, the essential respect of the right to participation matches the principal instrument guaranteeing and legitimising decision-making processes in connection with projects concerning the respective rights and territories of individuals and local communities as well as reviewing the need for such projects, and this might ultimately result in alternative options to expressing opposition. Any major limitation to exercising the right of participation

constitutes a barrier to guaranteeing other rights and translates into a violation of democratic governance.

In this context, we clearly see the devastating emergence of recent developments in the international economic and financial system, their progressive institutionalisation as well as the creation of a system of parallel rules which, in the interest of promoting economic growth as the primary condition of well-being and development, purport to be independent and hierarchically superior to the system of democratic rights and guarantees.

### 3.2 Local interest and general interest

On the one hand, at the very least all the evidence in the dossiers presented over the course of these days has allowed the PPT to reflect upon the limits of the affirmation which argues that any local interest cannot be totally opposed to the interest considered as a general one. On the other hand, the statements before the Tribunal highlighted that the way of developing an opposing view to major development projects is emblematic of a deterioration of relations between politics, the state and its citizens.

Considering the common sense saying that the interests of the many prevail over the interests of the few – which, generally speaking, could be considered valid – may be considered valid when "qualitatively" similar interests are compared. These are the only cases when the determining element (which will prevail) is really the "quantity" of the interests at stake. In the cases before us, the problem is that the interests at stake primarily refer to the local community, the local people, while the interests defined as the general interest diverge and are not defined in the same way. When local communities identify with a specific and clearly defined territory, the larger community falls back on a concept of the market, which is not only difficult to identify, but also stands for different values. In the cases submitted for the debate there is no opposition between the local interest and the general interest; instead, they refer to something qualitatively different. It is a matter of confronting values: on the one hand, the social values and reasons the acceptance of which is geographically defined, and the values and reasons defined by the economy, on the other. It is a question which may be qualified as physiological in a market economy, but it must be given the highest level of attention. We must not forget that the market economy may be considered as the expression of a bet, which professes to allow for the coexistence of market signals and a respect of the values providing the basis for building a modern democracy, and that it will always be possible to find a balance between these different signals.

Such a balance does not imply that market forces will always prevail over those of society, that this balance may only be realised by an open and transparent confrontation or meeting of the parties concerned and public opinion.

It is this confrontation/meeting which has obviously failed in the cases presented for review. On the one hand, it has failed for institutional reasons, i.e. the fact that the decisions on major development projects were made by technical international institutions which are more aligned with the market factors of a given territory and, from the first stage of the decision-making process, this makes a comparison almost impossible. Furthermore, this confrontation or comparison must certainly not be confused with the national governments adopting the indications provided by these institutions. On the other hand, the comparison has failed in the decision-making process by national institutions which seem to be a disruptive element with respect to these persistent balances. Such behaviour seems to be the more or less conscious expression of the will to pursue a project of an "economic society" meeting the requirements of hypothetical economic laws. As a result, the balance between economic reasons and societal reasons sacrifices the latter for the benefit of the former whose only plausible outcome presented is revenue growth, a growth for which other values may be sacrificed in the longer term.

A society, which thus differs from the society conceived by the European constitutions and embraces the idea of a general interest which is confused with market interest and exposes politicians to the risk of being crushed by the interests and the culture of large economic powers.

The absolute lack of transparency in the manner in which investments of such importance are decided and the "weakness" of technical arguments, which have been widely stressed in the witness statements, are therefore presented

to the Tribunal as emblematic and not occasional factors, as the expression of problems of a more general nature, which are related to a change of attitude among politicians, when it comes to the role to be given to the economic dimension in relation to the non-economic dimension; it is ultimately a matter of reviewing the very meaning given to the market economy in the past, and also a matter of a change, for which the functioning of democracy has to pay a high price in the broader sense, and of the relationship between the state, society and politics.

The facts presented to the Tribunal during the debate, the very harshness of the confrontation in their often widely differing geographic realities may – in this sense – be a statement in themselves. Politics basing its choices on the direction of international institutions and systematically forcing society to adapt to economic laws no longer manages to protect these rights and simultaneously leads to a loss in the "quality" of democracy. From this perspective, it is the primary reason for which the state must reform itself so that it is able to impose the logic of the economy on the logic of the law, particularly because it disrupts its relationship of trust with its citizens, a rupture which makes the aggressions of sectoral interests against politics possible on the one hand, and on the other, forces politics itself to embrace stories with a view of creating short-term emotional confidence, even though they will ultimately weaken this confidence.

From the perspective presented in the witness statements regarding questions of an opposition between the general interest and special interests, it is possible to discern a greater respect for the general interest in the motions coming from local communities than in those coming from politics and businesses which, in the latter case, support the evidence developed around major special interests.

### 3.3. Megaprojects: a counter-model

Based on the general picture which was presented of megaprojects and which emerged from the documentation submitted in this session of the PPT, it is useful to simply introduce and design a model or rather a counter-model, when the criteria considered for the deliberation are the only criteria of value in the discourse of the sponsors of these development projects.

Normally, they concern enormous projects, which will significantly change the physical reality in which they are realized, which regularly lead to devastating effects on the environment and, therefore, significantly and irreversibly change the pattern of life in the affected communities. If these are the effects of megaprojects on a socio-structural level, they will be just as negative for the institutional order. Given the very nature of these projects which impose a modus operandi, which translates into the development of real states of emergency in the proper sense of the term, together with the accompanying legal and political environment, this cannot be any different. This is the way in which a project plan should be characterized which – in the Italian case – must label hundreds of these projects as "strategic" and equate them to a militarization in view of precluding queries and questions coming from a justifiably alarmed opinion.

The governments emerging from the elections have constitutional competences to realize development projects which are physiologically embedded and introduced in the electoral programmes backed by the citizens' vote. In these circumstances, it is possible to legitimately impose on citizens – or one or the other group among them – potential sacrifices which are proportionate and sufficiently justified while respecting the procedures provided by law. This type of option, which is submitted to an obvious rationale in a review of the correlation of means and outcomes, is a sign of normalcy in democratic politics.

The problem is caused by an absence of this kind of rationale. Such an absence may occur when the outcomes are not constitutionally recognizable: either because they might be right and proper but they have not been considered with all the necessary coherence in the context of the means employed. Or even, and this is the most serious hypothesis, when – according to the available data – the means or the outcomes, i.e. the ways of proceeding, are objectively inacceptable.

And this is exactly the case for the planned megaprojects. It is, therefore, possible to conclude that they do not respond to the outcomes of general interest proclaimed by the sponsors, an element which, taken by itself, is already a powerful de-legitimising factor. Furthermore, on the level of the means and the procedures used, their workings disrupt the legal and regulatory frame of reference, which must support any action by administrative and political powers in a constitutional democracy.

From the start, the above-mentioned state of emergency becomes more visible when the identity of the authentic players in the decision-making process is disclosed, i.e. the truly responsible agents who are well-established in the opaque extra-institutional circles and therefore escape the scope of the control bodies which function, at least in principle. Secondly, using institutional operators through individuals or other means, they employ ad hoc procedures to act – in the name of efficiency (efficiency without principles) – in the framework of an atypical formality/informality which actually makes them irreproachable.

The lack of transparency of the outcomes pursued in reality requires obscure formulas in their programming and the presentation of activities undertaken while replacing transparency with secrecy and thus providing the perfect breeding ground of authoritarian power.

In at least formally democratic contexts populated by citizens who are not only the holders of rights but also the owners of decision-making as such, it is inevitable that the previously described procedural methods result in the more than justified demand to be precisely informed about these subjects – especially when they directly and profoundly concern these citizens. It is also clear that this "will to know" expressed by the movements having demanded this session of the PPT is doubly legitimate; above all because it concerns their direct interest being confronted by a serious risk of their inalienable rights being violated and, secondly, because this will is practised in a confrontation with subjects and forms of exercising power which happen at the margin of existing rules, as well as and above all, forms of exercising factual power insofar as they are integrated in institutions or use them for their own purposes.

This is the reason why the highly doubtful legitimacy of options, decisions, procedures and practices arising from them is rightfully submitted for discussion from the very start and is part of a particular continuity as a result of the form and the quality of intolerable reactions to the justified concerns and questions raised by the communities concerned.

A strategy of penalizing protests is the response to a wide variety of these protests. This concerns not only the decisions and the debates which are challenged by a behaviour seriously infringing on the rights and vital interests of important demographic groups, but this demographic group is also subjected to a new form of violence, violence added to violence, on the one hand.

On the other, the lack of transparency and insufficient clarity surrounding the choice of objectives, decision-making processes and the evolution of megaprojects as such, become even more intolerable, when the manipulation by major media is extended to the movements opposing these development projects. The media transform themselves into agents of disinformation or even "contaminants". Integral "agents" at the service of the sponsors and the beneficiaries of megaprojects given the fact that the owners of these publications belong to the same sphere of interest.

A kind of antidemocratic and oligarchic vicious circle then encloses the populations, which are already victims of major development processes, and these are managed by interests considered to be very powerful, with the major economic players using the institutional resources of the democratic system for their own exclusive interests. In reality, the media which should guarantee the fundamental and absolute right to information turn out to be accomplices.

For the reasons shown in this summary, it is appropriate to conclude that the strategy of megaprojects symbolized by the TAV are, when:

- considering the manner in which choices are made, how economic decision-making centres intervene in the political sphere where they escape its control;

- considering the dissimulation of the outcomes actually pursued, the enrichment of private entities opposed to the public interest;

- considering the procedures which are characterized by exceptional measures and secrecy (confidentiality);

an anticipatory metaphor for the development of crisis management at a global level. Governed by the institutional centres which differ from those of the representative democracy of the countries on which they impose their interests, they are opposed and alienated from the strategies of concerned citizens who are deprived of their rights, while the role of constitutional institutions is reduced to providing police services and upholding law and order.

This is exactly the reason why these policies become the subject of discussion and opposition by utilizing both reason and the law, as well as the practices which result from them in the realization phase, as it is not only a matter of defending the legitimate interests of the persons directly concerned but of translating them into a specific contribution toward the re-establishment of constitutional order as the only legitimate framework for democratic policies, which must not ignore a clear culture of support by citizens.

## JUDGEMENT

## PERMANENT PEOPLES' TRIBUNAL

Whereas the Universal Declaration of the Rights of People adopted in Algiers in 1976 and, in particular, articles 7 and 10;

Whereas international treaties and other instruments for protecting human rights, including economic, social, cultural and environmental ones, as well as civil and political rights;

Whereas art. 21 of the Universal Declaration of Human Rights of 10 December 1948 in particular, and art. 25 of the International Covenant on Civil and Political Rights of 16 December 1966, which recognizes the right of all people to participate in issues of public interest;

Whereas the Convention on access to information, public participation in decision-making processes and access to justice on environmental issues adopted in Aarhus on 25 June 1998, which has 47 member states including Italy since 13 June 2001 and France as of 8 July 2002, and approved by the EU with decision 2005/370/CE of the Council of 17 February 2005, the partial application of which was realized at a Community level with Directive 2003/4/CE relative to civil society access to environmental information and Directive 2003/35/CE related to public participation in procedures related to the environment;

Whereas Directive 85/337/EEC of 27 June 1985 concerning environmental impact assessments of public and private projects modified through Directive 2011/92/EU regarding environmental impact assessments of public and private projects and Directive 2014/52/EU of 16 April 2014;

Whereas all of the documented evidence and testimonies that were presented over the course of the session,

HOLDS that art. 1 of the Universal Declaration of Human Rights must be mentioned, which affirms: "All human beings are born free and equal in dignity and rights" and above all: "They are endowed with reason and conscience and should act towards one another in a spirit of fraternity." The concept of fraternity, which is too often substituted with solidarity, has a constitutional value in French law (Preamble and art. 2, French Constitution 4/10/1958) referring to the idea that it is through the fraternity of human beings on a world level and on an intergenerational level that the imperative of protecting the environment is radicated. Therefore, it is important to refer back to

the judicial value of the concept of fraternity as an active principle that inspires, guides and provides a frame of reference in formulating legislation. In the Italian Constitution, which deems fulfilling the duties of political, economic and social solidarity mandatory, the principle of fraternity is absent, but the requirement of fulfilling the duties noted above, in fact recalls the notion of fraternity, in the way that it is used in the Universal Declaration of Human Rights. It is this fundamental principle of "fraternity" that is the heart of the claims of the people who are mobilized against the TAV, the unnecessary megaproject.

THE TRIBUNAL in keeping with the cultural and judicial trends which are already affirmed and guaranteed in treaties and other international norms cited above, regarding the behaviour linked to the construction of megaprojects, understood as projects that produce important territorial and environmental repercussions, as listed in the attachments of the Aarhus Convention: RECOGNIZES, that included in the fundamental rights of individuals and peoples, is that of participating in the deliberations pertaining to those same projects. This right, in addition to being an expression of the right of individuals and peoples to participate in their government – as was established in the Universal Declaration of Human Rights (art. 21) and the Convention on Civil and Political Rights (art. 25) – is integral to the principles of democracy and popular sovereignty and the guarantee of the effective respect of other human rights, including the right to an environment and quality of life in conformity with the human dignity of the individuals and local communities affected by the projects.

HOLDS censurable all States who, in rights and praxis, are not open to effective forms of participation – the model of which can be gleaned from the Aarhus Convention – regarding the procedures of megaprojects. REQUESTS therefore, that all States, in Europe and the world, equip themselves with the norms and follow the procedures necessary for this. The cases presented in the PPT session by representatives of the communities from Val di Susa, Notre-Dame-des-Landes, from HS2 London-Birmingham, from Roșia Montană, from France's Basques country, from Stuttgart, from Venice, from Florence, from Basilicata and the regions of Italy concerned about drilling projects, from Messina and Niscemi, and all the other projects considered, document a general model of operational non-conformity with these principles, on the part of a large number of governments, public agencies, as well as those charged with realizing the megaprojects.

THE TRIBUNAL FINDS ILLEGITIMATE this procedural behaviour and denounces it before the public opinion of the world and

## DECLARES

- that in Val di Susa the fundamental rights of its inhabitants and local communities have been violated. On the one hand, those of a procedural nature, like the right to full disclosure of information on the objectives, characteristics and consequences of the new Turin and Lyon railway line (known as the TAV), initially provided for in the bilateral Agreement between France and Italy on 29 January 2001; to participate, directly and through institutional representatives, in the decisional processes related the feasibility and ultimately the design and construction of the TAV; to have access to legal processes that are effective for upholding the above-mentioned rights. On the other hand, fundamental civil and political rights have been violated such as freedom of opinion, of expression, to demonstrate, of movement, as a result of the strategy of criminalizing the protest which will be described in detail further on.

- that these violations have been committed both by commission and by omission. On the one hand, by omitting an important study on the environmental impact of the project in its entirety, before authorizing it; complete and truthful information was not guaranteed with enough advance time for the communities involved; individuals and local communities were excluded from every effective participatory process in the deliberation and monitoring of the realization of the project, simulating fictitious and ineffective processes of participation; there has been no application of the procedures activated by tribunals to uphold the right to access information and participation in the decision-making processes. On the other hand, there are violations that are the product of deliberate and

planned acts: the diffusion of false information and the manipulation of data regarding needs, utility and impact of the work; simulation of a participatory process with the establishment of the Osservatorio for the Turin Lyon railway link, which ends up excluding dissent (Decree of the President of the Ministers Council of 19 January 2010), and announcing an inexistent Accord of Prà Catinat from June 2008, largely used in relation to public opinion and the European institutions;

the adoption of legislative measures with the objective of excluding participation of citizens and local communities; the strategy of criminalizing protest with administrative, legislative, judiciary and police practices that also include disproportionate penal persecution and the imposition of excessive and repeated fines, the disproportionate use of force.

- that, in particular, illegally declaring the territory around the construction of mega projects "areas of strategic importance", with special systems that modify and interfere with the ability to manage the territory excluding the local administrations, with Law 433 of 21 December 2001, known as the Legge Obiettivo ("Proxy to the Government regarding infrastructure and strategically productive initiatives and other interventions to re-launch productivity") and law-decree 190 of 20 August 2002 ("Implementation of Law 21 December 2001, n. 433, for the realization of infrastructure and strategically productive initiatives of national interest") or law-decree 133 of 12 September 2014 ("lays out emergency measures to open the work site, executing public projects, digitalization of the country, bureaucratic simplification, the hydrological emergency and kick starting productivity".) Subsequent modifications of the government's position in utilizing the Legge Obiettivo in the TAV case, based on false data, have resulted in the decision of the Lazio Administrative Tribunal sentence regarding the Mountain Community which, in a decision (Decision 02372-2014 Tar Lazio 04637-2011 Reg. Ric), deduced from a ministerial note, provides the proof that the project never exited from the Legge Obiettivo, while the document attached to the 7th DPEF 2010-2013, to which the ministerial note refers, attests to the exact opposite. The decision is irrevocable as it is not subject to appeal by the Mountain Community because that entity has vanished (commissioned) with a Piedmont Region decree only 3 days after notice of the sentence.

- that the hundreds of projects defined as strategic can (as is happening in Val Susa) be subjected to police and military control and forbidden to citizens. In the case of the Maddalena work site in Chiomonte (Turin-Lyon Project), on the one hand article 19 of Law 12 November 2011, n. 183 (commonly known as the "Stability Law" or 2012 budget) provides, under the heading « Interventions for realizing the Turin-Lyon corridor and the Tenda Tunnel » that « the areas and sites of the Municipality of Chiomonte, identified for setting up the work site for a geognostic tunnel and for realizing the base tunnel of the Turin-Lyon railway line, constitute areas of strategic national interest », moving Italian military troops to that location. On the other hand, an incorrect application of art. 2 of the Single Text on public safety was set in motion, amplifying the situation in the affected area in an exaggerated manner, and converting it into permanent a measure that could have been only transitory, through successive ordinances by the Prefect of Turin, starting from 22 June 2011, who stationed police in the area adjacent to the work site, prohibiting access, parking in the area, and circulation in the surrounding area. During their visit to the area, members of the PPT delegation were treated like potential criminals. This illustrates that the effects on the daily life of inhabitants are enormous, from the perspective of the obstacles impeding normal work activities (moving from or to place of residence and agricultural work place), to the moral damage represented by the fact of having to continually show identity documents and being faced with the arbitrariness of the public enforcement agents for authorization or not to pass, or the fact of having to be, in peacetimes, impotent observers of the occupation of your territory by the national armed forces, as a direct action against citizens by their own State. In this context freedom of expression and to gather, are repressed as they are considered issues of public security, and those who participate are even accused of terrorism crimes, leaving it to police and the judiciary to repress issues of democratic and social relevance.

- that the people mobilizing against the TAV like those against the Notre-Dame-des-Landes airport or other projects, must be considered « sentinels who set off the alarm » in identifying rights violations that can have a grave social and environmental impact and whom, through legal means, are trying to alert authorities with the view of

stopping acts against the interest of all of society. Academics, professionals, civil servants, farmers, any inhabitants can play this role. In European law the rules are numerous and precise and the recommendations that define the statue of this function of being a "sentinel that sets off the alarm": these rules are binding for the judges of each single country (European Council, Resolution 1729 (2010) of 29 April 2010 and Recommendation CM/Rec (2014)7 of 30 April 2014).

- that resorting to the denigration and criminalization of the protest is the most evident proof of the inconsistency and lack of credibility of the arguments of the promoters of the mega project, which aims to convince people and communities affected of the benefits and advantages of the projects. Wide reaching means of communication participate in a decisive manner in this activity, substituting their function of providing the service to fulfill the right to information with explicit disinformation in the service of the interests of their owners and managers.

- that authorization to go ahead with the work for the tunnel at Maddalena is particularly serious, in that it was decided despite: no preliminary environmental impact assessment able to adequately define the current and future risk derived from the presence of asbestos and uranium, the impact on the hydrological balance in the area was conducted as a precaution; a defined plan of analysis and treatment of the material that is being extracted as a prevention measure, doesn't exist to this day. Moreover, it must be noted that this has resulted in the deliberate and unjustifiable destruction of a necropolis dated at 4000 b.c., which represented a fundamental element of archaeological patrimony for the region, demonstrating the absolute lack of social and cultural sensibility of the perpetrators.

- that responsibility for these violations must be attributed firstly to the Italian governments in charge over the last two decades, to the public authorities responsible for making the decisions and the implementation of procedures that have been exposed, and to the promoters of the project and the company responsible for realizing it TELT (Tunnel Euralpin Lyon Turin).

- that responsibility for these violations must also be attributed to the European Union which, with its omission to respond concretely to the complaints repeatedly formulated by the communities affected and presented to the Petition Commission of the European Parliament, and by uncritically accepting the positions of the Italian State, has permitted the consolidation and, even more serious, the co-financing of the project that is being developed is a clear violation of the principle of prevention, affirmed in art. 191 of the Treaty on the Functioning of the EU, of the European directives on the environmental impact assessments of projects, on access to information and participation in the adoption of decisions regarding the environment, in this way distorting the priority criteria that foresees the construction of links still unfinished and the elimination of bottlenecks especially in trans-boundary sections according to the corresponding European norms in force (Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network, and Regulation (EU) n. 1316/2013 of the EU Parliament Council of 11 December 2013 establishing the Connecting Europe Facility").

- that it is underscored the particular gravity and insensitivity of the behaviour of the European Coordinator of the TEN-T Mediterranean Corridor Laurens Jan Brinkhorst, who contributed to the uncontrolled diffusion of information and the disqualification of the protest by the community of Val di Susa ignoring the real content, and stigmatizing them as being unrepresentative and violent.

- that the non-application of the principles referred to above to ensure the full and effective participation of citizens, so well documented in the Val Susa case, is not an isolated case in Italy as it was possible to observe in all the cases presented in the public sessions and as the PPT was able to constitute in many other cases examined in non-European citations.

- that everything that has been highlighted seems to demonstrate the existence of a consolidated model of behaviour in the management of the territory and social dynamics each time that a scenario pertaining to the approval and

realization of infrastructure mega projects is present: the governments are at the service of big economic and financial, national and supranational interests and their institutions having neither limits nor controls in the disposition of their territories and their resources: opinions and arguments are ignored, but even more so the real sentiments of the populations directly affected. This represents an extremely serious threat to the essence of the rule of law and the democratic system in the heart of Europe which must necessarily be based on the participation and promotion of the rights, well being, dignity of its people.

This session allowed the PPT to appreciate and share the enormous capacity the community of Val di Susa has in putting together their energy and knowledge, which are the result of the scientific and technical competencies and diffused knowledge that derives from a life and daily work routine with profound roots in the territory, and permitted the construction of a reality of knowledge and a coherent and convincing narrative, allowing for the continued struggle of 25 years in the defense of their fundamental rights.

## RECOMMENDATIONS

Noting that in the case of the TAV Turin-Lyon, in the Notre-Dame-des-Landes airport case and in all the cases under examination, the Moises dam of Venice, the High Speed Rail link of Florence, the MUOS in Niscemi, the thermo dynamic solar plant in Basilicata, the drilling projects spread in the Italian territory, the Messina bridge, the Orte-Mestre motorway, the Apuane Alps basin) and European (the High Speed Rail links in France, in the Basque country, in the United Kingdom and in Germany as well as the mine of Rosia Montana in Romania, in this session dedicated to « Fundamental rights, participation of local communities and mega projects », the right to information and citizen participation, as well as many other fundamental rights, have been violated.

## THE PERMANENT PEOPLES' TRIBUNAL

Recommends, in the case of the Turin-Lyon TAV that the Italian and French States proceed with serious consultations with the affected population, in particular with the inhabitants of Val di Susa to guarantee the possibility of expressing themselves on the pertinence and suitability of the project and ensure their rights to good health, safeguarding the environment and the protection of their social context. These consultations must be realized without omitting any technical data on the economic, social and environmental impact of the project and without manipulating or deforming the analysis of its economic and social utility. All possibilities must be considered without discarding the « Zero » option. Until this serious and complete popular consultation is not guaranteed, the realization of the project must be suspended in order to wait for these results, which must be able to guarantee the fundamental rights of citizens.

Recommends that the French State, in the case of the Notre-Dame-des-Landes airport, present a documented study on the usefulness and necessity of the project and its social, economic and environmental consequences and suspend the realization of the project.

Recommends that the Italian government reconsider the Legge Obiettivo of December 2001, which totally excludes local administrations from the decisional process related to the project, as the "Sblocca Italia" decree of September 2014 does by formalizing the principle according to which it is not necessary to consult the populations affected in the event of projects that transform the territory.

The military control of the territory in the area of the project in Val id Susa constitutes a disproportionate use of force. In a democratic State in peace times, the army cannot interfere in internal affairs, limiting the rights of citizens guaranteed by the Constitution, the Universal Declaration of Human Rights and the European Convention on Human Rights.

The PPT recommends that the Italian government suspend the military occupation of the Val di Susa area.

The State must also stop criminalizing the citizen protest which is justified given the lack of consultation and is

protected by the Constitution and by many international instruments ratified by Italy. The PPT recommends that the State must not impede the expression of social protest.

Asks that the Authority for Archaeological Heritage of Piedmont inspect the archaeological zone of the Maddalena to verify the damage sustained by archaeological objects by the military according to the testimony collected at the location also on the part of the Tribunal, so as to adopt the necessary measures for safeguarding and restoration.

Asks that the competent European institutions, the European Commission and the Petition Commission for the European Parliament, examine with the appropriate seriousness and in a critical manner, the projects presented by the promoter companies and the States, taking into consideration the real interests of the communities affected and the populations in general. Recommends that governments consider embarking on mega projects only if they are examined thoroughly with serious and effective technical participatory procedures which demonstrate the real necessity in substituting or integrating existing infrastructure where it has been assured that significant improvement is impossible. To give priority, with regards to mega projects, to vast and effective programs inherent to services and projects of vital and day-to-day interest to citizens, such as projects that address the hydrological phenomena and hydrological situations of degradation and the lack of maintenance to buildings and transportation of public interest.

The Tribunal recommends to social movements, associations and committees which struggle against or could struggle against the violation of the above-mentioned obligations regarding mega projects, to ask with the same vigor, according to the example of what has taken place in Val di Susa, to the States and other subjects responsible for ensuring public participation in the deliberation process from the beginning of each deliberation activity and for the duration, as is requested in the Aarhus Convention ; as well as trying every legitimate instrument to compel them in the case of the failure of such obligations, in particular recourse to the Compliance Committee of the Aarhus Convention.

Finally, the States have the constitutional duty to protect the rights of their citizens. For this reason they must uphold this protection against national and transnational economic and financial lobbies by examining every project according to the criteria defined by the various international treaties, in particular the Aarhus Convention of 25 June 1998 which foresees providing appropriate and effective information, effective citizen participation during the decision-making process and the obligation of competent institutions of taking into account the results obtained by citizen participation in the appropriate manner.

## Annex 1

PERMANENT PEOPLES' TRIBUNAL

Fundamental rights, participation of local communities in megaprojects

From the TAV (High-speed train) to the global reality

Torino, Almese, 5-8 November 2015

PROGRAMME

Thursday 5 November, Turin – Fabbrica delle "E"

9 a.m. OPENING OF THE SESSION

Gianni Tognoni (General Secretary of the Tribunal)

9:15 a.m. Presentation of charges

Livio Pepino (Controsservatorio Valsusa)

9:30 a.m. – 7 p.m. THE TAV IN VAL SUSA AND DENIAL OF PARTICIPATION

1. 1. General situation of Valsusa

Speaker Ezio Bertok (Controsservatorio Valsusa)

Witness hears and films projected

1. 2. Denial of participation: manipulation of data and forecasts

Speaker Angelo Tartaglia (Professor, Politecnico of Turin, Member of the Technical Committee of the Comunità Montana Val Susa and Val Sangone)

Witness hearings and experts

1. 3. Exclusion of citizens and institutions from the decision-making process

Speaker Luca Giunti (naturalist, Member of the Technical Committee of the Comunità Montana Val Susa and Val Sangone)

Witness hearings

1. 4. Substituting dialogue with repression

Speaker Paolo Mattone (Controsservatorio Valsusa)

Witness hearings and film projected

1:15 – 2:30 p.m. Working lunch

Friday 6 November, Turin – Fabbrica delle "E"

9 a.m. – 7 p.m. MEGAPROJECTS AND VIOLATIONS OF FUNDAMENTAL RIGHTS IN THE WORLD

1. The Italian context (in particular, Messina bridge, Orte-Mestre motorway, achievement of drillings, Florence railways station, regasification terminal in Livorno)

Speaker Tiziano Cardosi (Forum Against Unnecessary & Imposed Megaprojects)

Focus on:

Mose in Venice (Armando Danella and Cristiano Gasparetto)

Muos in Niscemi (Sebastiano Papandrea)

2. The European situation (in particular: Hs2, Lgv/Tav in both Basque Countries, Stuttgart 21, open-cast goldmine in Roşia Montană)

Speaker Sabine Bräutigam (Forum against Unnecessary Imposed Mega Projects)

Focus on:

Notre-Dame-des-Landes airport (Geneviève Coiffard-Grosdoy, Françoise Verchère, Thomas Dubreuil)

The public debate process in France (Daniel Ibanez)

3. The situation in Latin America

Speaker Andrés Barreda (College of Economics, Universidad Nacional Autónoma of México)

1:15 – 2:30 p.m. Working lunch

Saturday 7 November, Turin – Fabbrica delle "E"

9 a.m. – 11 a.m. Space for arguments and defence of those facing the charges

11 a.m. – 12:30 FINAL ARGUMENTS

Livio Pepino (Controsservatorio Valsusa)

12.30 Closing the public session

Sunday 8 November, Almese – Teatro Magnetto, 4 p.m.

PRESENTATION OF THE VERDICT

## Annex 2

LIST OF CHARGES – Livio Pepino

1. I have the task to summarize, on behalf of the Controsservatorio Valsusa, the reasons why we have turned to the Permanent Peoples' Tribunal. In the course of the process, we shall submit and prove those reasons with the help of documents, witnesses, videos and statements. We shall prove them borrowing the words of those who, for over 25 years, have been waiting for a chance to take the floor and who today have come here in great numbers from Valsusa and other places to say that, at long last, today is a beautiful day. We shall prove all these reasons, but today, at the initial stage of the Tribunal proceedings we must, first of all, briefly summarize them.

In our submission of 18 April of last year we requested two fundamental things of the Tribunal. First of all, we asked it to establish "that in the matter of the layout and the construction of the new railway line Turin-Lyon there have been grave and systematic violations of the fundamental rights of the Valsusa community". Secondly, we indicated, and requested consideration of the fact that the issues we have raised do not only concern a small Alpine valley, but that it is the tip of the iceberg of a general postcolonial situation (the term does not seem to be excessive here) in which "options regarding the livelihood and the future of whole communities are removed – also in the heart of Europe – from the population concerned and are appropriated by large economic and financial powers: a situation in which the violation of fundamental rights of individuals and peoples takes place in a less brutal manner than what has happened in other situations reviewed by the Tribunal, but represents the new frontier of rights against the attacks that endanger the very (ecologic and democratic) balance of the planet".

2. The defence of fundamental human rights has always enlisted, in parallel with and in support of the mobilization of the concerned populations (which is and remains the main instrument for their protection), the commitment of individuals as well as institutions. This applies also to the judicial field or (as in the present case) to fields that can somehow be equated to it.

There were times (even in old Rome) when it was possible for a single citizen (and a fortiori for a group of citizens) to start legal action in court against the government in order to safeguard the general interest. This is presently foreseen, to a different extent, by some Constitutions, such as in Brazil, Bolivia and Colombia. But this is not so in Italy where, on the contrary, formal and anachronistic administrative jurisprudence still refuses to recognize the standing of citizens without personal interests of an economic nature at stake. And this is not so in Europe, despite some timid overtures by the European Court of Human Rights. And it is also not so in the wide range of international organizations, given that even the International Criminal Court has excluded economic crimes from its jurisdiction – as was underlined by the Permanent Peoples' Tribunal in its judgment of 23 July 2008.

This is the reason why we – together with the communities of Notre-Dame-des-Landes, London, Birmingham and Manchester, Roșia Montană and Corna, Venice, Florence, Basilicata, Niscemi and so many other parts of Italy, Europe and the world, have applied to the PPT to obtain a reply to our unanswered request for justice.

We know that the Tribunal's judgment will be limited to matters pertaining to democracy and the participation of citizens in decisions that affect them. And we shall adhere to this approach while we will, nevertheless, continue asserting elsewhere – as we have been doing for 25 years – the many other valid reasons that we have. But the situation in Valsusa must be mentioned, if only for everyone to be clear on what we are talking about, and which are the rights, the goods and the expectations we would like to express and receive answers about.

The proposal of a new railway line between Turin and Lyon began at the end of the 80's of the last century. The initial plan was for a high-speed passenger rail. Thereafter, the proposal was changed into a rail line also for the transport of goods (in view of the sharp fall in demand for passenger transport on that line, which was admitted even by the proponents of the project). The current project foresees a 270 km long line, 144 of which on French soil, a 58-km-long cross-border tunnel and 68 km on Italian soil impacting on the middle and lower areas of Valsusa, with the

historic railway line, the A32 motorway (the construction of which was completed in 1994), two national roads and other minor roads crossing through it.

Ever since the presentation of the first project, strong opposition has developed in Valsusa with the involvement of the population, local administrators, university professors, and experts from various disciplines that have highlighted multiple critical aspects. The reasons for the opposition had and still have to do with the protection of the environment and the health of the population (considering inter alia that the mountain where the excavation must take place is rich in asbestos and uranium), the uselessness of the new line (given the fact that the historic one is used only at 20 per cent of its potential), the squandering of resources in a period of severe economic crisis (given that ten meters of TAV cost in excess of one and a half million Euros) and, especially, as has been stated above, the authoritarian character of the decision to implement the project, which was made disregarding the local population and institutions. Over time, an opposition movement has been structured around the above-mentioned content and demands that is presently known, both domestically and internationally as the "No TAV Movement" (Movimento No TAV), which is deeply rooted in the territory and capable of organizing demonstrations with tens of thousands of people. Nevertheless, that movement, in all its shapes and forms (including the institutional ones) has been systematically excluded from decisions that regard its life and future. Exactly as has happened, to refer to previous sessions of the Tribunal, in Amazonia and in Tibet, in Guatemala and in Zaire, and in countless other places around the globe. Exactly as is happening in various locations in France, the United Kingdom, Spain, Romania and Italy (just to mention situations having to do with the present session).

In Valsusa, this systematic exclusion has become apparent in various forms, but most particularly through:

a) the lack of procedures for information, consultation and negotiation (or the adoption of purely superficial consultation processes);

b) the dissemination of misleading information and forecasts without any serious scientific basis, in order to influence and condition public opinion and political decision-making;

c) the failure to reply to requests, appeals, demands and statements from institutions and numerous technical experts, while at the same time trying to turn the issue about the TAV into a public order issue.

4. From 1989 to date there has not been any genuine process of consultation, participation and dialogue, although this is expressly established as binding by article 6 of the Aarhus Convention of 25 June 1988 and, above all, this is the "abc" of democracy (that is either about participation or is not real democracy). The forms may have changed, but not the substance:

- Initially, and until the end of 2001 (a period in which the intergovernmental agreement between France and Italy on 29 January 2001 came about inter alia, which continues to be the fundamental reference point for the project) the very existence of local communities was completely ignored. Nobody cared to inform them and to listen to them, and not even "façade" consultations were initiated, like the ones foreseen by the procedure of the National Commission for Public Debate ("Commission nationale du débat public"), established in France by law 95-101 of 2 February 1995, or by law 69/2007 from the Tuscany Region regarding the "promotion of participation in the elaboration of regional and local policies". There was no consultation whatsoever;

- Subsequently, at the end of December 2001, the so called "target law" (legge obiettivo) was adopted through which the previous de facto situation became a legal norm and the local administrations (and the communities represented by them) were also completely excluded from the decision-making process concerning projects that were considered strategic for the country. In short, the "target law" has ensured that every major decision regarding environmental compatibility, territorial planning and the public utility of large projects be transferred to the Italian Prime Minister (and the Interministerial Committee for Economic Planning) thus appropriating any permissions, authorizations and approvals within the competence of state or local authorities. What until that moment was a de

facto exclusion became a de iure exclusion;

- Between December 2005 and December 2006, a change of course seemed to have taken place, but it soon became clear that it was all about the Lampedusan approach of "changing everything so that noting changes". Sandro Plano, who played a leading role in that phase will speak about it. I will therefore confine myself to making only one consideration: the governmental decision – as a consequence of the large demonstrations in December 2005 – to bring the railway line Turin-Lyon back within the area of "ordinary procedure" (setting aside the "target law") and to establish an Observatory with the aim of "carrying out a dialogue between the interested bodies and analyzing the problems related to the project and the solutions to be submitted to the political and institutional decision-makers") was just a "flash in the pan" or, more exactly, a hoax to curb conflict in the valley. In fact, nothing has changed in the administrative procedures and the Observatory has proven to be impermeable to any real discussion about the actual appropriateness of the project. Finally, in 2010, that mask also came off, and the Government decided to "redefine local representation within the Observatory", accepting "only those municipalities that had expressly declared that they were willing to take part in the best possible implementation of the project";

- The renewed applicability of the "target law" and the assumption by the president of the Observatory of the parallel office as head of the Italian delegation to the Italy-France Intergovernmental Conference for the completion of the project gave the final seal of approval for the total exclusion of local communities from decisions regarding the project.

However, this exclusion also took place through the dissemination of misleading information and forecasts without any serious scientific basis, in order to influence and condition public opinion and political decision-makers. We shall provide ample proof of it in the course of the session, but for now we would like to emphasize that the entire information strategy of the project sponsors was ultimately geared towards demonstrating that the historic line would very soon be near saturation – though, on the contrary, it is presently utilized only at 20 per cent of its potential – and there would be a foreseeable increase of traffic according to the guidelines in question (which is contradicted by the most reliable forecasts and, above all, by the studies carried out in the meantime that have determined a constant decrease in traffic).

This is not a coincidence, for it is the result of a precise plan. In fact, the agreement of 29 January 2001 between Italy and France, that remains the key normative act regarding the Turin-Lyon line, expressly subordinates, in article 1, the implementation of the new line to the saturation of the historic line, as it was also reiterated in the parliamentary debate that preceded the ratification of the Agreement by the French Parliament, in which it was expressly stressed that "the saturation of the existing line was an indispensable precondition".

The dissemination, in support of the decision to implement the project, of misleading and fanciful data and scientifically unattainable forecasts, that have been taken over and amplified by the most important media organizations (the management boards of which include, more often than not, representatives of groups interested in the project) has expropriated citizens of their right to dialogue, has violated their right to information (the nature of a fundamental right which is becoming increasingly apparent at the beginning of this millennium) and has exposed the blending of interests of political decision-makers and economic and financial operators that undermines substantive democracy.

6. Having been expelled from decision-making bodies and lacking reliable information, the community of Valsusa, its local authorities and the experts and intellectuals close to it, have produced dozens of requests, appeals, proposals and complaints related to specific aspects regarding the illegality of the project before all Italian and European institutions without ever obtaining a debate on the substance, or even receiving a reply to the arguments and the criticism put forward by them. On the contrary, there has been a conspicuous refusal by governmental institutions and the enterprises charged with the execution of the project to reply to the questions, the objections and the criticism from the "No TAV Movement" and the experts (with the sole exception of the Monti Government that, on 9 March 2012, published on its institutional website the reasons in favour of the project in form of a list encompassing 14

items, thus opening a dialogue that, on the other hand, was discontinued after the submission of counter-arguments by experts from the Valsusa community).

Moreover, in order to further condition national public opinion in which, despite everything, the consensus in favour of the No TAV claims continued to grow and, according to the latest survey carried out by ISPO Mannheimer for Il Corriere della Sera in 2012, had reached 44 per cent of the Italian population, a new phase began: that of turning the movement into a public enemy. Laws were enacted (in 2011 and 2013) according to which the construction site of La Maddalena was transformed into a "location of strategic interest" (with the prohibition – facing criminal sanction – of obstructionist behaviour, photographic reproduction and so forth) and the territory of the Valley has been literally militarized, including through the use of military forces engaged in wartime missions abroad. This has been accompanied by firm judicial repression, a state of affairs that is well known from a global perspective and was recently reviewed by the Inter-American Human Rights Court which, in its judgment of 29 May 2014 (regarding representatives of the Mapuche people against the State of Chile), expressly criticizes institutional intervention aiming at creating "fear in other community members that are involved in social protest activities or claims concerning their territorial rights or that may eventually want to take part in them".

7. The present state of affairs in Valsusa raises – as we had forewarned – critical questions concerning democracy and respect for fundamental rights that are increasingly more widespread throughout the world and were already the subject of review by the Tribunal (most recently in the case concerning the "Policies of Transnational Corporations in Colombia", which concluded with the judgment of 23 July 2008). These are issues that converge in the definition of a mode that is critical in contemporary times: that of the claim to autonomy by the economy (and through it, by political decision-makers, enterprises and large financial groups) with regard to any tie or restriction, including those consistent with the respect for the fundamental rights of individuals and real people.

The complete and systematic exclusion of the local population and territorial institutions has to do with the minimum rules and standards of democracy. When even quarries and landfills are declared "strategic sites of national interest", and they are assimilated to military facilities and are actively defended by troops – the army in times of peace! – the citizens feel their rights violated and are convinced that the State has declared war on them. Nor can there be any justification in an alleged power of the majority to which the minority should submit for the sake of the "general interest". Regarding the relationship between majority and minority, it should be pointed out – recalling the teachings of a distinguished constitutionalist – that:

"in democracy, no vote (except for one regarding the constitutive or constitutional norms of democracy itself) puts a definite end to a match. Both players [the majority and the minority, editor's note] are waiting, preparing the ground for the next challenge in the return match using the good arguments that can be submitted. […] The dictum vox populi, vox dei purports only to legitimize the violence that the more numerous ones exert over those who are fewer in numbers. It is only apparently democratic because it negates the freedom of those who are in the minority, whose opinion, by opposition, could be described as vox diaboli and therefore deserving to be smashed to prevent that it can rise again. At most, this would be an absolutist or terroristic democracy, rather than a democracy based on the freedom of all". (G. Zagrebelsky, Imparare la democrazia, Einaudi, 2007);

8. There can be no doubt that the rights that have been infringed upon are fundamental rights. Let us just consider the right that is deemed to have been violated: the right to participate, to take part in decisions that affect one's own habitat, one's own life and one's own health, as well as the health and the life of future generations.

The character of "fundamental rights" of such subjective situations results clearly from the "Universal Declaration of Human Rights", adopted by the General Assembly of the United Nations on 10 December 1948. In that Declaration, considering that "it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion…that human rights should be protected by the rule of law", it is expressly stated inter alia that "everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental rights granted him by the constitution or by the law" (article 8) and that "everyone has the right to take part in the government of his country,

directly or through freely chosen representatives" (art. 21, point 1).

The violations referred to so far have been clearly identified by the Permanent Peoples' Tribunal in its judgment of 23 July 2008 regarding the "Policies of Transnational Corporations in Colombia", in a passage that seems specially written with Valsusa and Europe in mind, in which it asserts and denounces a widespread infringement of the "right to participate", that has occurred:

"although all the reference standard-setting texts recognize the right of populations to participate in decision-making processes concerning the issues that affect their rights, in particular the right to be consulted to obtain a free, prior and informed consent before adopting and implementing legislative or administrative measures to their detriment, before adopting any project that may affect their land or territories or other resources, especially with regard to the development, the use and the enjoyment of mineral, water and other resources, and before using their land or territories for military operations."

9. In light of all of the above, we submit our demand for justice to the Peoples' Permanent Tribunal. We are aware that, in Valsusa and all over the world, megaprojects, and the practices that accompany them, do not only take their toll in the construction of mega-bridges, the excavation of mountain tunnels or the felling of forests but – as experiences in recent years shows us – also have an effect on the general mechanisms required for the functioning of institutions and democracy itself.

We ask the PPT to declare that, besides the classic colonialism that is exercised over countries that are far away from Europe, there is – the term does not appear to be excessive – a European internal colonialism that mortifies people and their rights by drawing railway lines and megaprojects on the map just as in earlier times when the borders of new States were traced with a line (thus creating the premises for wars and all kinds of atrocities). We request that the PPT, with full regard for its prerogatives, but with equal resolve, bring back to the aggrieved communities the conviction that participation and democracy can indeed be a reality and are not just words that are instrumentally used to cover up the exploitation of individuals and peoples by the powerful.

We shall offer the Tribunal our full cooperation. We hope that the sponsors of the project will agree to adversarial proceedings, the kind of proceedings that have been denied to us. Others – not us – are afraid of confronting arguments.

With these wishes, with these commitments, with these hopes, we submit our contribution to the opening of the session of the Tribunal.

*Turin, March 14th 2015*

## Annex 3

FINAL STATEMENTS

Livio Pepino

1. President, judges,

It falls upon me to sum up these two days and address our requests to you on behalf of the applicants. I cannot deny that it is a very emotional task. After more than 40 years in the judiciary, I have often had to sum up complex and sensitive court cases. But today is different. As the proceedings continued, something unprecedented happened: it is as though the applicants vanished and the stage was taken over by a massive people's movement which, with strength and determination, has called for justice. It is a movement behind which the people of Val Susa are, in some way, the driving force. A movement which, since the end of the second millennium, has stood up for Italy and for Europe (as emerged in detail yesterday), taking inspiration from what has been happening for over a century in the countries of the South, in Africa, Asia and Latin America, in the form of dozens of struggles in defence of land and peoples' rights (as outlined in several of your judgments, starting from the first, that of 11 November 1979 on the Western Sahara, and later those on East Timor, the Brazilian Amazon, Colombia and so forth, until the most recent, handed down just one year ago on 'free trade, violence, impunity and peoples' rights in Mexico'). That movement has indeed been the key protagonist over the last two days.

Over the course of these two days, you have been given a glimpse of a reality which speaks volumes. You have seen the faces and heard the voices of informed, responsible and determined women and men: the young people of Bussoleno (who have spoken to you of their motivations and of the fears that the TAV [HST] lobby is seeking to stir up), the pensioners of Borgone (who, for the past 10 years, on every God-given day on Earth, have occupied their "presidio" [permanent protest meeting site – editor's note] in defence of the valley), the Chiomonte municipal councillor (who, although initially in favour of the TAV, resigned in tears in the face of the devastation of the Maddalena), the university professors (who for decades have been decrying the folly of the project and who have been ignored by our institutions and politicians), Emilio, the Bussoleno fishmonger (who – as he proudly told you – had never set eyes on a judge before becoming involved in the TAV protests and who is making his plea for the sake of his daughter's long-term good health, the good health which he and his wife no longer have), Luca (who never talks about himself or his fall from the hydro-electric tower, but only about the future of the Earth and of the mountains) and many others. You have not seen or listened to unreasonable Luddites, to Asterix- and Obelix-like figures beyond time and history, and certainly not to dangerous terrorists (as they have been presented and treated). I know full well that this still does not necessarily mean that the movement, those men and women, are right. But it does mean that they deserve respect, attention and a hearing, all the things that they have been denied in recent years by the institutions and by the megaprojects lobby (an economic, political and media lobby that dominates this region and this country, a domination which has only been threatened, on a few rare occasions, by investigations and arrests for corruption and shady activities).

Over the past two days you have seen and heard fragments of reality. Not the distorted versions disseminated by the media, by politicians with influence or by segments of the judiciary. Not the glorious scenarios outlined in glossy brochures and propaganda videos; not the spectacular descriptions published by newspapers belonging to companies on whose boards the proponents of the project and the would-be contractors sit; not the campaign ads for ministers who, as telephone tapping has revealed, cannot tell a motorway from a railway and for mayors who confuse Kiev (the planned terminus of the rail corridor of which the Turin-Lyon line forms a part) with Moscow or Beijing. In the face of the ironclad media and advertising campaigns, the protest movement seems to be a tiny David engaged in an unequal struggle against Goliath. But the game is not over yet, and the No TAV movement is determined to win, and determined to continue using the tools of politics, words, arguments and reason. This is also why we have turned to you, an international and independent court, in the knowledge that this is only one step, but

convinced that it is an important one for Val Susa and for all the communities that face similar situations.

2. On 20 September 2014, in declaring our appeal admissible, the Presidency of the Court clarified the scope and the limits of this judgment that concerns – to use your own words – 'the effectiveness of the procedures for consulting the people affected and their impact on the democratic process', in a context marked by the use of 'tactics ‑ as repeatedly observed in the PPT sessions as well – that call into question and jeopardise the effectiveness and the meaningfulness of consultations and the equal dignity of all the groups making up the communities concerned'.

This, therefore, is what we have mainly been talking about over the past two days: the rights of individuals and communities, and participation. About democracy, one might say if the term were not increasingly being used as a cover for decisions that represent a step in the opposite direction and arrangements that are anything but democratic. More specifically, we have been talking about the relationship between fundamental rights and the procedures for reaching (and the limits of) political and economic decisions which concern megaprojects that will have an irreversible impact on the environment, the economy and the health of tens of thousands of people. Just like the megaprojects we have spoken about over the past two days: the TAV in Val Susa (but also in Florence, the United Kingdom and the Basque Country), the Mose dams in Venice, the Messina bridge (which, incredibly, has been back in the news recently), the Notre-Dame-des-Landes airport in France and many others. We have widened the discussion to include other projects which damage the environment and which reflect the same type of thinking, such as the Roșia Montană open-cast gold mine in Romania (whose sinister images remind us of similar mines in Peru and Chile), gas and oil exploration in various parts of Italy, intensive marble mining in the Apuan Alps and the MUOS in Niscemi.

Our starting point was the TAV in Val Susa: a massive, devastating project (the construction site that some of you saw last Wednesday is for an exploratory tunnel and therefore provides only a small preview of what is planned), with a huge environmental impact, pointless in transport terms and unsustainable in public expenditure terms. At the same time, it is a project – and this is the first point to be emphasised in this session – approved in an authoritarian manner, on the basis of the systematic exclusion of any real debate with the local community.

Exactly – and this is the second point to be emphasised – the same as what happened in the design or construction phase of all the major projects examined in recent days. And exactly the same as has been established – this is the third point to be emphasised – in previous sessions of this Court, such as those concerning the Amazon, Guatemala, Canada and countless other regions of the globe.

We are dealing with a system which, with very minor differences, is employed in the context of all the pointless megaprojects conducted around the world and which falls into three key phases:

a) systematic exclusion of the communities affected from decision-making and supervision of the project, by shutting down, either in de facto terms and/or by means of ad hoc legislative and administrative measures, every information, consultation and discussion procedure and/or by employing consultation procedures that are nothing more than a sham and/or by disregarding the outcome of the consultations being carried out;

b) influencing and misrepresentation of the views expressed by the communities concerned, by the general public and sometimes by the political decision-makers themselves through the manipulation of data concerning the usefulness and the impact of the project, as well as the compilation and widespread dissemination of false data and forecasts devoid of any serious scientific basis (hyped by a press that is often controlled by stakeholders in the project);

c) total disregard from the outset for the requests, appeals, submissions and petitions made by local authorities, citizens' committees, experts and intellectuals and, in parallel, the handling of protests and opposition as public order issues, sometimes on the basis of specific legislative provisions, military supervision of the area and the mass

deployment of police officers and soldiers (significantly restricting citizens' constitutionally guaranteed rights).

3. As it is impossible to describe exactly how this system was employed in the individual cases examined here, I will confine myself to considering what has happened in Val Susa (with some brief references to other situations).

I will start with the absence of genuine consultation, involvement and cooperation procedures. It is worth remembering that procedures of this kind are now explicitly provided for in international law, starting with the Aarhus Convention of 25 June 1998 (referred to very effectively yesterday by Tiziano Cardosi and Sabine Bräutigam), which states that 'when a decision-making process is started that affects the environment, the public concerned is to be informed in an appropriate, effective and timely manner from the outset' so that 'it prepares itself and participates effectively in the works throughout the decision-making process'. More fundamentally, however, procedures such as these go to the very heart of democracy (is the public properly involved or not).

This is what happened in Val Susa:

a) From the early 1990s until the end of 2001 (a crucial period in which the Italy-France Intergovernmental Agreement of 29 January 2001, which constitutes the legal basis for the project, was concluded), the very existence of the local communities was ignored. Nobody bothered to inform them or listen to them (as Ezio Bertok, Claudio Giorno and Gianfranco Chiocchia documented in their analysis);

b) Then, at the end of December 2001, the so-called Objective Law (still in force today) was passed, making what had been a de facto situation a de jure situation. By means of this law – as has been shown by Luca Giunti and Massimo Bongiovanni – local government was totally excluded from the decision-making process for a project regarded as strategically important for the country, with every important decision to be taken by the Prime Minister (and the Inter-ministerial Committee for Economic Planning). It was thus established by law that, for the TAV (and for similar projects), the involvement of and scrutiny by the communities actually affected are a pointless waste of time! Needless to say, the principle has become firmly entrenched, to the extent that – as Advocate Bongiovanni again documented – in the brief period during which the TAV was not covered by the Objective Law procedure, the developers simply continued, in practice, to act as though nothing had changed;

c) A new approach to public involvement was announced in 2006. Mass demonstrations forced the centre-left government, followed in May 2006 by the Berlusconi government, to set up an Observatory to 'encourage debate between the relevant stakeholders and to analyse the critical features of the project and the solutions to be submitted to the political and institutional decision-makers'. However, it soon became clear that this was a Gattopardesque system of 'changing everything so that nothing changes'. Mayors and experts (Sandro Plano, Loredana Bellone, Angelo Tartaglia and Luca Giunti) who took part in the first phase of the Observatory's work, or who were involved in discussions with it over time, have talked about it here. I will limit myself to three summary findings, because this is a telling sequence of events:

- The setting-up of the Observatory was, upon closer inspection, a trick to cool tempers in the valley. In fact, it soon demonstrated that it was not prepared to engage in any real discussion on the suitability of the project until, in 2010, the mask slipped and the government decided to 'reorganise the local representation within the Observatory', admitting only municipalities that explicitly declared their willingness to contribute to the successful completion of the project';

- In practice, the Observatory proved to be purely a propaganda machine, unscrupulously run by its chair, the architect Mario Virano. A textbook example of this is provided by the so-called Pracatinat Agreement of June 2008, repeatedly cited in Italy and in Europe in the wake of architect Virano's assurances, as proof of local institutions' involvement and participation. In reality, it was not an agreement, but a document signed only by the chair (and I must confess that never, in a 40-year judicial career, have I seen an agreement which was signed by only one of the

parties…). Regarding that agreement, the statement made to you by one of the administrators involved, Barbara De Bernardi (who was mayor of Condove at the time and was also among those who had been prepared to accept the Observatory's role), in the second part of this session's inaugural meeting on 14 March 2016 at Bussoleno (and which you can read in the Counter-Observatory's Booklet No 3) is enlightening:

'This brings us to 28 June 2008, when the chair of the Observatory convened a final meeting at Pracatinat. That afternoon I received a phone call from a journalist from a national newspaper who asked me to make a statement about my signing of the Pracatinat Agreement. I was amazed, in particular because I was 1 000 km away in Puglia. I obviously had not signed anything, nor had I authorised somebody else to do so in my place. I phoned some colleagues: they had not gone to Pracatinat either and they had not signed any agreement either. And yet, this is what the newspaper headlines said on 29 June: 'Agreement reached. Mayors-Government train path agreement signed' (Corriere della Sera). […]

I close, therefore, with a question to which unfortunately I have already given an answer: what is worse than a State that does not listen to its citizens and their freely and democratically elected representatives? The answer is, a State that lies. Lies about what it is doing and what others are doing, using signatures never put to documents, agreements never signed and an obliging media which, rather than searching for the truth, is happy to be the sounding-board for a lie: almost as if a lie, if repeated often enough, can become the truth. There has often been talk in recent years of the violence employed by the No TAV movement. Let us ask ourselves once again who the truly 'violent ones' in this story are.

- However, as they say, truth is the daughter of time and the true purpose of the Observatory operation has been revealed over the years. Its Chair first took on the parallel post of Head of the Italian delegation to the Italy-France Intergovernmental Conference upon the implementation of the project, and then, without being replaced, that of director of the company responsible for carrying out the work. To use football terminology: he has never been a neutral referee in a clean and honest match, but only a player in more than one of the teams on the pitch;

d) Finally – and this is today's story – the new Turin-Lyon railway line has been brought back within the scope of the Objective Law, which has been strengthened, if possible, by a new legislative measure (the 'Unblock Italy Decree' of September 2014). This new instrument, whose stated purpose is to 'overcome bureaucracy, revitalise the economy and boost private initiative', has formalised the principle that, with reference to medium- to large-scale infrastructure projects, there is no need to listen to the communities affected.

So far I have spoken about Val Susa, but the same refusal to engage in consultation has characterised, for example, the Orte-Mestre motorway project (even the mayors concerned have no knowledge of its existence), the Notre-Dame-des-Landes airport project (which sidestepped any need for consultation because the relevant decision was taken 10 days prior to the approval of the law on public debate) or the railway line between London and Birmingham.

4. The second constant feature of the 'megaprojects system' lies – as discussed – is in the compilation and dissemination of false data and forecasts that are devoid of any serious scientific basis, in order to secure acceptance of the project by the communities concerned, by the general public and, sometimes, by political decision-makers themselves. It is also a constant in other fields. You only have to look at the Volkswagen scandal (which, when compared to what has happened and is happening in connection with the Turin-Lyon TAV, seems to be the work of ham-fisted amateurs).

In the case of Val Susa, the method takes on 'benchmark' status, so to speak. Many have documented it, from Tartaglia to Ponti, from Cancelli to Franchino, from Clerico to Tomalino. I will therefore not repeat things said and demonstrated in a far more effective manner than I am able to do. I would simply point out that all the forecasts made with reference to deadlines which have already passed were resoundingly disproved by the real data and let's recall, with regard to the forecasts, that – as Professor Cancelli told you – those made by the proponents of the project are based on models, calculations and graphs that are so fanciful that, if presented by a second-year student

in any science faculty, they would result in his or her immediate ejection from the university. One was so far-fetched as to be put online by physics faculty students with the eloquent title: 'The Mad Hatter's Graph'. None of this – and this is the key point – has anything to do with chance, superficiality or ignorance. It has everything to do with the urgent need to justify projects that are in reality unsustainable and unnecessary.

The fact is that, in an unusual outbreak of rationality and common sense, the agreement of 29 January 2001 between Italy and France, which is still the legal basis for the Turin-Lyon line project, made the construction of the new line contingent on the saturation of the historic one. This was reiterated, for example, during the debate that preceded the ratification of the agreement by the French Parliament, in which it was explicitly noted that 'the saturation of the existing line is a necessary precondition' for the construction of the new line. Now, with this in mind, the so-called calculation errors and the scientific non-sustainability of the many forecasts issued by developers, the chair of the Observatory, ministries, mayors and embedded journalists are in reality nothing more than untruthful conjecture, deliberately intended to deceive local communities, public opinion, the (few) national and international policy-makers acting in good faith, and to convince them that the historic line is nearly saturated. This is all happening while the line is being used at only 20 % of its full capacity, and in a context where the volume of traffic on the line in question, far from increasing, is actually plummeting (as confirmed by information which has come to light in the meantime).

The impact is obvious. The publication of these forecasts and data, picked up on and amplified by a friendly press (that is, by all the most important news outlets), has multiplied the influence of the major economic and financial lobbies, severely restricted local and national communities' right to information, and deprived citizens of the right to participate and communicate, undermining the very foundations of democracy.

Doesn't it feel like you're hearing the same story all over again, the same lies that you heard in connection with the Venice Mose project, the Stuttgart railway station, or for the Roșia Montană open cast mine?

5. We thus come to the third constant that characterises the system of major infrastructure projects: the substitution of discussion with conflict, and the systematic portrayal of opponents as enemies of society to be isolated, neutralised and repressed.

Having been expelled from the decision-making bodies and deprived of reliable information, the community of Val Susa, its citizens, its local authorities and its experts – with intellectuals, trade unionists, men of culture and of faith, and citizens from across Italy at their side – have produced dozens of requests, appeals, proposals and charges concerning the specific unlawful aspects of this project and submitted them to all the Italian and European institutions, without ever receiving a substantive analysis of the points raised and, a fortiori, without ever receiving a response to their criticisms, arguments and proposals (which have been referred to here, among others, by Paolo Mattone and Paolo Prieri, and have been documented in Counter-Observatory's Q2, included in the supporting material). Instead of dialogue there has been a brazen refusal on the part of the governing institutions and the companies tasked with bringing the project to fruition to provide answers to the questions, objections, and criticisms put forward by the No TAV Movement and by experts (with the sole exception of the Monti government, which, on 9 March 2012, published 14 arguments in favour of the project on its own official webpage, thus initiating a debate that was shut down when the experts from Val Susa put forward counter-arguments). Furthermore, the requests to suspend the work and open a roundtable discussion with independent foreign experts on the fundamental issues arising in connection with the project, the conclusions of which would govern the continuation of the work, have quite simply been disregarded. This is happening despite the fact that, less than a year ago, the latest scandal and high-profile arrests in connection with megaprojects led to the Minister of Infrastructure, who had also remained completely silent on the substantive requests coming from Val Susa, being replaced.

You have further proof of this through the failure of the project's supporters, the contractors and the political decision-making institutions to respond to the Tribunal's invitation to hold a discussion with us in this chamber,

and indeed through the contractor's refusal to allow your delegation to visit the Maddalena construction site accompanied by experts appointed by the Counter-observatory, in order to obtain further information regarding the scope of the work, the environmental risks and all other relevant aspects.

Nonetheless, national public support for the No TAV movement's claims has continued to grow, with 44 % of Italians in favour in 2012 according to the most recent significant poll carried out on behalf of one of Italy's biggest newspapers, Il Corriere della Sera.

This is also why a new phase has begun: the transformation of the movement into a public enemy. Thus, in 2011 and 2013, two laws were passed under which the Maddalena site was declared a 'site of strategic interest', and the valley was literally militarised, with members of the armed forces already deployed abroad being used in some cases (as shown by, among others, Paolo Mattone, Alessandra Algostino, Alberto Perino and Guido Fissore). This was followed by very harsh judicial repression, which – as the lawyer Novaro has shown here and as is documented in the Val Susa Counter-Observatory's first workbook – has seen hundreds of trials held involving over a thousand defendants indicted on very minor charges, prolonged and repeated precautionary measures, extensive use of the charge of conspiracy, the revival of crimes of opinion (including the indictment of the writer Erri De Luca for incitement for having claimed, with reference to cable cutting at the Chiomonte site, that 'sabotage' is lawful), and even allegations of terrorism (dismissed by magistrates and by the Court of Appeal, but which earned some young people long periods of solitary confinement).

This step also seems to be consistent, given the photos of clashes, the number of arrests, the duration of trials, the unequal treatment and the contested allegations, with what happened at Notre Dame-des-Landes, at Niscemi, at Stuttgart, in the Basque countries, in Roşia Montană and so on and so forth. And this is part of a recurrent strategy (going beyond megaprojects) that makes decision-making inflexible and increasingly limits the constitutional rights of citizens. It is the 'criminal law of the enemy' gambit, the effects of which have most recently been described and criticised by the Inter-American Court of Human Rights, in its judgment of 29 May 2014 (on members of the Mapuche people against the State of Chile), because it is also designed to instil 'fear in other members of the community involved in social protest and in the process of claiming their territorial rights, or those who might want to participate in that process'.

6. So, what happened and is happening in Val Susa has happened and is happening in numerous other places in the same, or at least similar, ways.

In other words, we are dealing here with a method, a system.

Yesterday, the President asked why this system exists. Why do we continue to insist on carrying out megaprojects when they are a source of major environmental risks and are clearly worthless from an economic perspective? This highly relevant question brings us to the heart of the matter. The apparently incomprehensible obsession with large-scale projects can be explained by a combination of elements. Three of them are: the underlying existence of major economic and financial interests, the survival of a pro-development culture (or a culture that supports the idea of development), which is as anachronistic as it is enduring, and the desperation of a political system that is unable to provide rational solutions to the crisis:

a) Yesterday, Tiziano Cardosi reminded us of Salvatore Settis' analysis: 'megaprojects aren't useful in themselves, but it is useful to carry them out', as is shown by the fact they are often finished years or even decades after the scheduled completion date, or indeed are never really finished. Isn't this paradoxical? All the projects we have spoken about over the last few days have involved billions of euros. Enormous sums of money are quoted, and the final calculation will see these sums multiplied several times over. We've spoken here of the doubling or tripling of costs. This is not accurate. It's much worse. Let me give just one example. For the high-speed rail line between Turin and Milan (which is entirely flat, with no hills to climb and just two rivers to cross), the 1991 forecast was the equivalent of

EUR 1.74 billion, but by the time the work was completed in 2010, the actual cost was EUR 8.3 billion. These are hefty sums in times of crisis… Especially if you consider that we are dealing almost entirely with public money, paid in advance by banks that guarantee themselves huge, secure interest payments for decades to come. Is that rational? No, of course it's not! But were the subprime loans rational? The ones that triggered the biggest financial crisis of the new millennium, which caused huge damage to savers and zero damage to the banks bailed out by States? This is the 'development model' that protects the major economic and financial powers;

b) "Developmentalist" culture is one that, despite reality, continues to envisage a world with constant economic growth, and the investment and infrastructure to support and encourage it. It is a culture that allows supporters of major projects to commit acts of pure faith, for example, to sustain that the decline in transport will be halted and reversed by the construction of a railway;

c) Finally, there is the desperation of the politicians, who are unable to propose credible ways out of the crisis. Sometimes political decision-makers are aware of the fact that this system cannot survive, but know that its collapse will completely and irreversibly destroy their credibility, which is already at an all-time low.

Furthermore, all of this leads to a serious situation, not only for the economy but also for ethics and culture, as emphasised most recently in an extremely authoritative document. I'm referring to the papal encyclical entitled 'Laudato si', which states, among other things, that:

'56. In the meantime, economic powers continue to justify the current global system where priority tends to be given to speculation and the pursuit of financial gain, which fail to take the context into account, let alone the effects on human dignity and the natural environment. Here we see how environmental deterioration and human and ethical degradation are closely linked'.

'183 … The participation entails being fully informed about such projects and their different risks and possibilities; this includes not just preliminary decisions but also various follow-up activities and continued monitoring. Honesty and truth are needed in scientific and political discussions; these should not be limited to the issue of whether or not a particular project is permitted by law'.

This system, therefore, brings to the fore political issues which hark back to the idea of freeing the economy (companies, major financial groups and political decision-makers) from constraints, such as the relationship with communities and individuals affected by megaprojects, and the respect for their health and rights. All of this is clearly linked to the minimum rules and principles of democracy. And when, in order to make that idea a reality, we end up declaring construction sites 'sites of strategic national interest', treating them like military zones and defending them with soldiers – the army in peacetime! – it follows that citizens feel defrauded of their rights and are convinced that the State has declared war on them.

It goes without saying that this kind of system cannot be justified by the so-called power of the majority to which a minority must submit in accordance with the 'general interest'.

The Permanent Peoples' Tribunal has on many occasions – most recently and particularly effectively in its ruling of 23 July 2008 on transnational policies in Colombia – warned against the ever-present danger of a 'tyranny of the majority' based on contingent electoral consensus, emphasising that 'democracy does not consist only of an electoral process, but also involves public debate open to all members of society and to every citizen, guaranteeing them the free exercise of all their rights. This is the only way to build and constitute the 'public reason' which justifies the protection of the common interest'.

All of this, for that matter, reflects the thinking of the fathers of liberal thought, beginning with French aristocrat Alexis de Tocqueville who, returning from a long stay in America in 1831-32, where he was studying the sources and forms of democracy, wrote:

'When I feel the hand of power lie heavy on my brow [...] I am not the more willing to wear the yoke because it is held out to me by the arms of a million men. [...] If democratic people replaced all the different powers that impede or delay the progress of human reason with the absolute power of the majority, only the nature of the evil will have changed'.

The meaning of this statement – and of many other similar ones – is clearly still relevant. Democracy cannot be equated solely with the principle of the majority, which is certainly one of its cardinal promises, but not the only one. By means of its vote, the majority decides who is to govern, and political decisions are made using the same system. These decisions are, moreover, the result of mandatory processes and discussions and must comply with certain restrictions as to their substance (to the extent that some constitutions give citizens the right/duty to resist if they are faced with political decisions that violate rights and fundamental principles). Rendering the principle of the majority absolute implies abandoning the democratic model in which different functions are governed by different principles. Take the example of decisions made by judges who are appointed on the basis of pre-established rules and criteria, and not the wishes of the majority, or the checks on the constitutionality of laws which are carried out by the Constitutional Court on the basis of interpretative assessments that can lead to the repeal of laws which have been approved by the majority, or even by the entire Parliament).

So, the violation of individuals' and communities' fundamental rights cannot be legitimised by the vote of a majority. What is more, as we stated in our introductory appeal, as renowned constitutionalist Gustavo Zagrebelsky stated: 'in a democracy, no vote (except for those regarding the constructional or constitutional rules of democracy itself) closes a debate for good. [...] The maxim of vox populi, vox dei just legitimises the violence that the majority exercises over the few. This is democracy in appearance only, since it denies the freedom of those in the minority, whose opinion deserves to be crushed and extinguished for good. If anything, this would be absolutist or terrorist democracy, not democracy based on the freedom of all'.

7. To summarise: denying citizens and the local community the right to challenge decisions on high-speed trains and similar megaprojects, systematic disinformation or misinformation regarding the basis for and proposed outcomes of the projects, the attempt to eliminate every form of opposition by means of ad hoc legal arguments, the militarisation of whole areas and a disproportionate judicial clampdown, are conditions proven beyond any reasonable doubt. As has been ascertained, given the omnipresence of these features, we are faced not with accidental and coincidental occurrences, but with a method, a fully fledged system of government for this sector of public life and the economy.

On the other hand, the ability to challenge decisions concerning one's own environment, life and health, and those of future generations, is enshrined as a fundamental right of citizens and communities in the Universal Declaration of Human Rights, approved by the United Nations General Assembly on 10 December 1948. Given that 'it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law', this document explicitly states, among other things, that 'everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law' (Article 8), and that 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives' (Article 21(1)).

This has been established unequivocally by the Permanent Peoples' Tribunal, for instance in its ruling of 23 July 2008 on 'Transnational corporation policies in Colombia', in which, in an excerpt that could have been written for Val Susa and Europe, it affirms: 'the right of men and women to be consulted in order to obtain free, prior and informed consent before adopting and applying legislative and administrative measures that damage them, before adopting any project that compromises their lands or territories or other resources'.

8. One serious problem remains to be settled, and it is one that has been raised over the past few months and that we ourselves considered when we submitted our appeal (and that we also referred to in a subsequent brief presented on 1 July 2014).

The issue is the following: do the transgressions, the unlawfulness, the abuses of power regarding the TAV in Val Susa and other megaprojects examined in this session constitute a serious and systematic violation of the fundamental rights of peoples and minorities and/or the rights and freedoms of individuals which (alongside crimes against peace and humanity) legitimises the intervention of the Permanent Peoples' Tribunal pursuant to Article 2 of its statute? Or, whilst serious, do they fall short of that threshold, in a world where we see one serious crime committed after another on a daily basis (from the daily slaughter of migrants on our coasts, in our seas and even on dry land, to the very real attempts at annihilating populations in Syria, Kurdistan, the Middle East and the heart of Africa)?

This is not a rhetorical question but a real one, and one we have asked ourselves – as I mentioned – because we are witnesses to these dramas, these tragedies that have actually become part of Val Susa's own struggle (the most recent example being the twinning and aid project that joined the municipality of San Didero – whose mayor, Loredana Bellone, has spoken to you recently – with the city of Kobane and the Rojava region in Syrian Kurdistan). It is therefore a valid question, whose implications we do not underestimate, but which we sincerely believe must be answered positively.

We said this in the opening of our introductory appeal. In our case (in European cases) 'the violation of fundamental rights of people and populations takes place in a less brutal way than in other cases examined by the Tribunal, above all in the first decades of its work', but the case of Val Susa and other similar cases 'represent – at a local and regional level – the new rights frontier, in the face of attacks that endanger the very (ecological and democratic) balance of the planet. It is therefore fully eligible for analysis and judgment by the PPT. Indeed, on the one hand, Article 1(2) of the Tribunal's statute states that it is competent to rule, among other things, on 'serious and systematic violations of individuals' rights and freedoms' without additional conditions; on the other, under current law, the scope of the Tribunal's interventions has gradually been extended to cover situations involving violations of the rights of individuals and communities within single States that are very similar to the one being considered here. For example – besides the decisions cited in the appeal – consider the judgment of 21 May 1999 (Examen de la plainte déposée par le collectif "ELF ne doit pas faire la loi en Afrique" contre l'entreprise ELF-Aquitaine) which states the following:

'the work of the session of the Permanent Peoples' Tribunal on ELF is based on the Universal Declaration of the Rights of Peoples, which proclaims the right of peoples to political self-determination and cites their economic rights, in particular the right to control their natural resources and the right to respect their environment. The ELF case has revealed practices that block the exercise of these rights. [...]

Rethinking the role of the Permanent Peoples' Tribunal in a way that reflects its original mandate means paying attention to the following problems:

- the way in which the foundations of imperialist legislation – equating 'order' with the protection of private property – can be questioned and curbed formalises liberation from economic tyranny;

- the way in which procedures for 'speaking' and 'listening' should be updated to give priority to the voices of those who suffer, with a view to creating a form of social justice to counter the economic crimes of transnational corporations.

9. The Permanent Peoples' Tribunal's approach – your approach – is clear and leaves no room for doubt. But – I want to emphasise this – it is an approach validated by numerous other elements

The first comes not from environmental fundamentalism, but from the Pope in the encyclical 'Laudato si', which we have already cited and which in paragraph 95 reads:

'95. The natural environment is a collective good, the patrimony of all humanity and the responsibility of everyone. If we make something our own, it is only to administer it for the good of all. If we do not, we burden our consciences with the weight of having denied the existence of others. That is why the New Zealand bishops asked what the

commandment "Thou shall not kill" means when "20% of the world's population consumes resources at a rate that robs the poor nations and future generations of what they need to survive".

Pay close attention to the words I use, which have obviously been chosen for a reason! Irreversible damage to the environment which threatens the lives and health of current and future generations is actually forbidden by none other than the following commandments: 'Thou shalt not kill!' and 'Thou shalt not steal!'. It, therefore, follows that excluding communities when making decisions that affect them is quite clearly a violation of collective fundamental rights.

Secondly, the authoritarian logic applied when making decisions in matters that are so important and have such irreversible consequences is, for all intents and purposes, a colonial type of logic, the kind that led to most of this Tribunal's interventions. What was, and indeed is, the essence of colonialism if not the domination by the West of the resources of other peoples, imposed forcefully by the colonisers on the basis of a sense of ethical and cultural superiority (the same sense of superiority which led Sir Thomas Watt, once British Secretary for the Interior in South Africa, to say: 'no ethical considerations such as the rights of man will be allowed to stand in the way of white rule')? But these are not the arguments – obviously with the necessary adaptations (mutatis mutandis, as legal experts say) – used when it comes to opponents of the TAV (Italian high-speed rail network) and other megaprojects of this kind, who are instead seen as ignorant enemies of progress who are only interested in protecting 'their own back yard' and who may even become violent, thereby legitimising the use of force (instead of dialogue) to silence them? Obviously I'm talking about reasoning and underlying culture, not actual events. And this is what links the decision you are called upon to hand down today with the Tribunal's decisions from decades past, regarding, for example, the Sahara (1979), East Timor (1981), Zaire (1982), and Guatemala (1983). Throughout its history – as we well know – the PPT has always examined cases of violations of human rights in countries outside the European Union, with the sole exceptions of the former Yugoslavia and Chernobyl (judgments of 20 February and 11 December 1995 and judgment of 15 April 1996). This is not a coincidence, but reflects the Tribunal's origins, which are rooted in the experience of colonialism (as expressly stated in the Algiers Declaration, published as long ago as 4 July 1976). In the new millennium, moreover, conventional colonialism is accompanied by other forms of exploitation and expropriation of the rights of people and citizens stemming from the absolute and unbridled power of force and wealth. It is, therefore, understandable and logical that the Tribunal should extend its reach to cover such matters, as it did, after all, when it investigated the International Monetary Fund and the World Bank (1988-1994), industrial risks and human rights (1994), the rights of children and minors (1995) and the rights of workers in the clothing sector (1998).

And there's a third point to be kept in mind. Violations of the rights we're looking at today are certainly less glaring than others, but they should be seen as an omen. In modern-day societies, which are characterised by unfair and authoritarian decision-making processes, the centre is increasingly often blind to a truth perceivable only from the margins regarding matters that concern only specific sections of society and herald more widespread phenomena. As research has shown, including the now classic studies by Enzo Traverso on Nazism and its origins, the failure to perceive and analyse a number of ominous signs of things that could have been so easily avoided is what led to the unspeakable sorrows and disasters of the 20th century. It is up to the PPT, which has always been ahead of its time, to play its part in changing the prevailing short-sighted and inappropriate outlook and, in denouncing and condemning the violations of the fundamental rights of small groups, preventing this from becoming the standard method of governing society.

10. It is in light of all of the above that we submit our requests to the Permanent Peoples' Tribunal.

The impact of megaprojects and the related practices, in Val Susa, in Italy and in Europe, is not limited to the construction of a dam or mega-bridge, the destruction of a forest or the hollowing-out of a mountain (which is sometimes enough in itself to cause terrible events, as was the case with the Vajont Dam tragedy of 1963 in Italy, which killed 1,917 people and which is no longer cited in the debate on megaprojects), but also affect – as

recent experience has taught us – the complex mechanisms that keep institutions and democracy itself functioning. This is why we – together with the communities of Notre-Dame-des-Landes, London, Birmingham, Manchester, Roșia Montană, Corna, the Basque communities in France and Spain, Stuttgart, Venice, Florence, Basilicata and the Italian regions affected by drilling projects, Messina, Niscemi, and many other places in Italy and Europe – ask the Permanent Peoples' Tribunal to rule, with the authority vested in it by its history, composition and independence:

- that in Val Susa, the fundamental rights of residents and the local community to be properly informed and involved directly or through their institutional representatives in decisions regarding the planning and construction of the new Lyon-Turin railway line (TAV), decisions that have a crucial impact on natural resources, the environment, health and the very life expectancy of present and future generations, have been infringed;

- that this infringement was the result of deliberate acts of omission (in particular failure to involve the local community and its institutional representatives in decisions concerning the new railway line, failure to introduce effective consultation and decision-making procedures, failure to make proper provision for legal appeals against exclusion from decision making in the context of the project); and acts of commission (in particular the manipulation of data relating to the need for and impact of the works, the compilation and repeated dissemination of inaccurate and/or scientifically unfounded information, forecasts and data regarding the nature of, need for and impact of the project; the adoption of legislative measures designed to prevent public involvement and criminalise protests; the use of administrative and law-enforcement practices and measures for the same purpose, up to and including the large-scale deployment of the military to establish control over the area in a disproportionate show of force against protesters and demonstrators, in some cases in combination with the adoption of specific legislative measures, the cumulative effect being to significantly restrict guaranteed constitutional rights;

- that among those responsible for these infringements were the organisations behind the project, the companies responsible for carrying it out and successive national governments over the last two decades (both directly and through officials seconded to key coordinating bodies such as the Lyon-Turin Observatory); furthermore, the EU institutions responsible (Commissioner appointed to coordinate TEN-T Priority Project 6 and the European Parliament's Committee on Petitions) condoned or facilitated these infringements through their uncritical acceptance of projects submitted without appropriate checks and with complete disregard for representation by the Val Susa local authorities and their designated experts;

- that the situation in Val Susa is the result of a neo-colonial approach to regional government and social issues guided solely by the interests of national and supranational economic and financial lobby groups and their institutional allies, which have been given unlimited and unsupervised access to regional resources, regardless of the concerns of the people affected (regarded as the expression of specifically local interests, and therefore irrelevant);

- that this approach is now widely employed in Italy and Europe, as shown by the management of many of the projects discussed at this meeting, in particular Notre-Dame-des-Landes airport in France, the Roșia Montană open-cast mine in Romania, the 'Basque Y' rail network in Spain, the Messina Bridge, the Mose dam project in Venice and hydrocarbon exploration boreholes in various parts of Italy;

- that this approach stands in stark contrast to the requirements laid down in numerous international agreements and other instruments (such as the Aarhus Convention of 25 June 1998, which stipulates the provision of 'adequate, timely and effective' information and effective 'public participation' throughout the 'decision-making process' on an environmental level and requires that the competent authorities must 'take due account of public concerns'), undermines the foundations of participatory democracy (enshrined in the provisions of most western constitutions in the concept of 'sovereignty of the people') and, in the very heart of Europe, jeopardises the fundamental principles enshrined in the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948.

I have now concluded my arguments. In referring this matter to the People's Permanent Tribunal, I can only acknowledge the inadequacy of my words to describe the seriousness of the situation arising from the infringement of fundamental rights in the context of megaprojects and the damage which is caused (and which is even more likely to be caused in future) by the way society is run and by the relationship between major economic and financial powers and the public.

I derive consolation from the belief that my failure to express this fully will be offset by the message transmitted through the apprehension, the intelligence, the passion and the uncompromising commitment that you have observed in the small community with which you have become acquainted over the past few days.

*Turin, November 7th 2015*


*Produced for the GUE NGL hearing of 26/10/2016 on "Unsustainable Useless Large Infrastructure Projects" and the judgement of the "Permanent People's Tribunal" to the European Parliament.*

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