

THE REFORMS OF MEDITERRANEAN PORT ADMINISTRATION MODELS: STAKES AND LIMITS OF NEW PORT GOVERNANCE

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Abstract

Purpose

The world of port governance has seen major changes over the past twenty years. On an economic level, a specific model of harbour facility operation is taking shape for the 21st century: the «landlord port». On a structural level, faced with the withdrawal of government support, the increasing power of the public/private partnerships (PPP) and the more active involvement of private global operators these factors all constitute a new deal for the harbour industry. The Mediterranean has also been affected by this trend. It is currently confronted with a risk that is threefold: the liberalisation of Southern economies, the need to modernise port infrastructure and above all, it has to cope with the rapid growth in container traffic which following the example of all commercial ports has become the core strategic activity of the development of its harbour facilities. In response to these new challenges, most Mediterranean countries have begun statutory reforms of their ports, as well as liberalising certain harbour activities and adopting the operating methods of Northern European ports.

Objectives

This research paper aims to demonstrate the main stakes and limits of new governance of Mediterranean ports in highlighting their current key paradoxes. On the one hand, the reformed administration port models have promoted liberalisation and financial autonomy of port entities, a management similar in appearance to private companies with a clear reinforcement of boards' role, combined at the same time with a drastic reduction of harbour public services limited to kingly and statutory missions such as safety, security or environmental protection. On the other hand, one nevertheless observes a continuous direct and indirect public monitoring still in force in Mediterranean ports thereby slowing down their decision making, ability to react, and strategic development.

Findings

The movement towards the reform of Mediterranean port governance is from now on inevitable and is reaching its phase of maturity. Having started in the 1990s and going through to the beginning of the 21st century, the Spanish, Italian, Greek, French or Maghreb national port reforms prove that the process is long, sometimes even empirical requiring several legislative interventions to bring about the necessary standardising tools for the institutional and organisational advancements.

Key words: Mediterranean, port governance, harbour facilities, seaports, landlord port model, boards

1. Introduction:

The major transformations in the maritime industry at the end of the 20th century dramatically changed the status of commercial ports. Revitalised by the flourishing Chinese economy (Tourret & Lacoste, 2007), the Asian ports were at the forefront of the international scene, taking the lead in containerised tonnage. The Mediterranean ports, although more modest in their performance compared to their Asian counterparts, have nevertheless experienced major evolutions. Faced with specialisation, the increase in the size of ships (Wijnolst & Wergeland, 2009) and the development of containerized traffic and its multimodal impact, the maritime ports of the Mediterranean have continuously adapted in a context of increased competition destroying the advantages of their geographic situation in favour of the demands of logistical *supply chains*. Port managers had to and must still continue to develop their domain with a view to optimising operations; the “*terminalization*” of the port area (Slack, 2005), as well as improving security, in particular under the instigation of the ISPS Code¹ but also US and European regulations². Confronted *a fortiori* with the financial withdrawal of states, it has become essential to resort more to private funds for the long term development of these Mediterranean ports, notably those belonging to the MEDA countries associated with the European Union³.

Within the context of globalization, these States, notably those on the southern Mediterranean shores, are currently faced with a stake which is threefold: the liberalization of their economies, the need to modernize transport infrastructure and in particular to cope with the rapid growth of containerized traffic which has become, following the example of all the commercial ports, the strategic core activity of their development. To meet these new challenges, the majority of Mediterranean countries have begun statutory reforms tending towards the transposition of the operation methods of the “*landlord port*” from the north of Europe, in which the land and the infrastructures remain the port’s property but with equipment operations being operated by private companies. Their management was therefore progressively liberalized without necessarily being

1 ISPS Code (2002), Amendments to the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974 Chap. XI-2, Annex 2, International Ship and Port Facility Security Code (ISPS). OML.SOLAS/CONF.5/DC/1 12th December 2002.

2 Following the attacks of the 11th September 2001, the United States unilaterally imposed different regulations for the security of maritime freight, for example the “*CSI » Container Security Initiative, which imposed that ports working with the United States be equipped with scanners for the containers or the « AMS »: Automatized Manifest System which demands that the manifest be presented to American customs 24 hours before the cargo in question is to be unloaded in the foreign port. The European Union has taken over, in particular with the regulation CE 725/2004 of the European Parliament and the council of 31 March 2004 concerning the improvement of the safety of ships and port installations, which came into force on 1st of July. Official Journal EU. L n° 129 of 29th April 2004, p. 6.*

3 This concerns Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the Palestine Authority, Syria, Tunisia, and Turkey. Cf. Regulation (CE) n° 1488/96 of the Council of the 23rd July 1996 regarding the financial assistance measures and techniques (MEDA) for economic and social reforms in the framework of the Euro-Mediterranean partnership, OJEU, L 189 of 30th July 1996, p. 1–9.

totally privatized (I). New stakes of port governance have appeared clearly as much as their limits (II).

I. The new operating conditions and governance of Mediterranean Ports

In view of the investments made by ship owners and handling operators, the strategic role of the Mediterranean ports no longer needs to be proven (Musso, 2005). The provisional flows of maritime traffic are set to double between now and 2020. The creation of the Union for the Mediterranean⁴ (COM, 2008) should act as an accelerator for these exchanges. And yet, the Mediterranean ports of both north and south banks, due to their inferior dimensions, their lack of reliability and competitiveness, have not always been very reassuring to investors, quite the contrary. In the Nineties, certain Southern European governments, such as Italy or Spain, began a decentralization movement along with institutional reforms in order to compensate for these shortcomings. The recent French port reform (Rézenthel, 2008b), likewise the new Code of maritime ports in Tunisia, testify to a liberalization and a reinforced autonomy of port bodies whose missions are redefined (A). With a reduced sphere of operation of port public service (B), we notice that the port governance model is transitional with a hybrid framework (C).

A. The new port regimes: liberalization and reinforced autonomy for redefined missions

Classified by the World Bank into four models (World Bank Port Reform Toolkit), the typology of the government of commercial ports varies, with a pointer that swings between centralized, decentralized or private management. The choice of operational model is wide, going from the *service port model*, under public control for land and commercial operations, to the *tool port service*, mainly public, but with some private operators for certain port services, to the *landlord port model*, where the plots of land belong to the port authority but whose equipment operations are carried out by private operators, to lastly the *private service port*, operated and managed by private companies for regalian as well as commercial operations. The objective of these reforms is clearly aimed at responding to the developments in business and international maritime transport, whose exponential growth has caused major upheavals, more notably in the levels of the diverse merchandise and passenger sector. The increase in volumes handled, supported by the gigantism of the container and cruise ships, has greatly altered the dimensions of reception infrastructure. It is in this context of adaptation to new maritime industry standards that a real dynamic of decentralization of port management has come about.

One has to underline the strengthening of autonomy of the port authorities. Although administrative autonomy already existed in certain states such as France with its *autonomous ports – ports autonomes* - or Italy with its *port consortium*, it was necessary to recreate or reinforce it for others, notably from a budgetary and financial point of view. In certain countries, this autonomy

4 Communication from the Commission to the European Parliament and the Council: "Barcelona Process: Union for the Mediterranean", COM(2008), 319 (Final), Brussels, 20th May 2008.

goes hand in hand correlatively with the contractualization of relations between the state and its ports: concession contracts for the Greek port authorities (Pallis, 2007), long term contract and strategic plan for the French “*major maritime ports*” – *grand ports maritimes* -, three year plan for the Italian ports (Valleri et al, 2007), five year investment plan for the Spanish (Vaello, 2008) or Turkish ports (Oral et al, 2007), the action framework and strategic development of maritime ports are defined in a autonomous manner beforehand but approved by a superior authority.

Concerning the port authorities’ new missions, these consist of a clear separation between the regalian and commercial activities. Imposed *de facto* by economic constraints linked to the withdrawal of public finances and the growing need for investments, this dividing line has been formalized by the legislator. To summarize, the port managers remain public operators but concentrate on playing the role of infrastructure developer, of promoter and regulator. The financing and the commercial operations of the superstructure – equipment, terminals – is dedicated to private operators who play a significant part in the port’s development. The aligning of the Mediterranean ports with those of Northern Europe is indisputable.

Beyond the liberalization and the demonopolization of port services like stevedoring, or the relaxing of the regulations for state administered property, these new operations models of the Mediterranean ports allow the port establishments more flexibility and entrepreneurial freedom, thus enabling them to become fully-fledged economic actors. Their financial function is reinforced as they can create subsidiaries or joint-ventures (Nemouchi, 2007), purchase shares in private companies, allocate dedicated terminals (Cappocaccia, 2007; Rézenthel, 2008a; Fedi and Rézenthel, 2007)... but their risk taking is therefore correlatively more important. The public-private partners have become *a conditio sine qua non* for the future of port facilities (Rézenthel, 2007).

B. The new area of port public service

Through similar consequences the port public service of Mediterranean ports tends to notably shrink away. Justifications are simple and concerns *de jure* and *de facto* the two shores of Mediterranean. The first reason is linked to European law which has had a profound impact on Mediterranean port legislations. Complex, arbitrary and discretionary, “*derogatory mechanism to civil law*” (Rézenthel, 2009), the “*public service*” is a marginal notion inside the European legal framework. Culturally anchored in Southern Europe especially, this notion is totally ignored by Northern European countries. Preferring fair and free competition, free movement of goods and services, and recognizing “*services of general economic interest*” or “*universal service*”, public service is a regime of exception strictly considered and controlled by jurisprudence with regards its condition of creation. Concerning the service of Spanish islands, the European Court of Justice affirmed that prior to the creation of public service constraints, the relevant authorities had to record the market failure, that is to say the insufficiency of companies positioned in the field of activity, and on the other hand, the real need of public service had to be demonstrated. The

hegemony which has been developed in certain states such as France with the “*virtual public service*” theory belongs to the past now. With the exception of safety or environmental protection, few port activities are considered as service of general economic interest and handling operations are excluded. One has to keep in mind the initial project of directive on access to harbour services market where the latter were defined as services with commercial value usually provided against payment. Notwithstanding the failure of this regulation, the industrial and commercial concept of harbour services is clearly affirmed.

The second main justification deals with the model chosen by port authorities. In implementing the “*landlord port model*”, the part of public service missions historically carried out by Mediterranean port bodies has decreased in favour of stronger involvement of the private sector. Most ports outsource handling operations, storage and more widely operations of equipment and terminals. In this respect, the French “*grands ports maritimes*” resulting from law n°2008-660 are not authorized to do loading and unloading of ships, except in exceptional circumstances. Generally speaking, although they are not perfectly transposable to all ports, the distribution of competencies is simple: the public sector focuses on its functions of developer-contractor, property and environment manager, of planning and regulating, of promoting its port area and the private sector finances and ensures the equipment operations of the terminals. In other words, the new area of harbour public service limits itself to regalian missions such as safety, security and environment protection.

C. A port governance model in transition

“Governance” is generally defined as the “*system by which the firm is managed and controlled. The governance structure defines the allocation of rights and responsibilities amongst the different actors of the firm*” (OECD, 1999). Literature traditionally opposes the *shareholding model* in which capital market plays a key role to the *stakeholding model* for which stakeholders are a central element (Le Joly and Moingeon, 2001). “Port governance” is the “*process of coordinating private and public actors who run the different port functions at all the levels of this port game*” (Debie and Gouvernal, 2008). Port governance borrows from the characteristics of corporate governance, both the *stakeholder governance* and the *shareholder governance*. In actual fact port governance is close to corporate governance even if the port in its legal form is not a private company, it operates as such and has governance structures which are increasingly similar.

The governance of a port is therefore complex (Newman and Walder, 2003) as many actors are involved; their different interests and expectations, although less corporatist than in the past, remain specific to this sector of activity. Consequently, the port governance must be adapted to the needs of maritime and logistic operators who use the port space, whilst taking into consideration the demands of local and regional political bodies. Faced with these constraints, achieving a balance is not easy considering that the governance structure must be representative of these various interests in the port sector and at the same time must not be too complex. Among those stakeholders, the State plays a key role by its policy of grants, loans and taxations (Brooks and Pallis,

2011) and considers harbour facilities as logistic interfaces for which immobilization of goods and passengers has an economic value. It confirms that port governance can integrate financial issues close to the shareholder model. Ports are then perceived by states as an industry creating revenues at local, regional and national level. Following the example of law n°48/2003 of 26 November 2003 dealing with Spanish ports of national interest, harbour facilities are considered as companies with profitability targets.

To conclude, it would appear that the framework of port governance is currently hybrid, borrowing from the characteristics of companies with a stakeholder and shareholder model. The implementation of the landlord port model in Mediterranean countries where State regulatory functions are a historical legacy and a strong part of government political culture justify that specific situation.

II- The stakes and limits of the new Mediterranean port governance model

While they are open doors to the world, privileged exchange zones, Mediterranean ports have long been reduced to a function of regulation, control of exchanges, toll or administration facing public service users. A deep change of governance model has been implemented whose bureaucratic character has been lessened in favour of a real mercantile culture with an economic and a competitive approach.

To satisfy the requirements of this new environment which calls for more anticipation in the decision making process and more competitiveness in its economic performance, the role of port managers has become more decisive than in the past. The composition and functions of port governing boards are progressively modelled on private companies (A), nevertheless with a management autonomy limited by a close control of public authorities whose right of access is still applied directly or indirectly (B).

A. Port governance nearing that of private companies: the increasing role of Governing boards

Whereas the doctrine accurately identifies both the new issues at stake in port governance (Verhoeven, 2009) and the performance indicators inherent to this sector (Brooks and Pallis, 2008), as far as the authors know, no research has been carried out on the composition of the governing boards of ports.

Literature recognizes the different roles of the governing board (Pignatell, 2007): controlling, binding or one of encouragement inciting the CEOs to be highly competitive, the governing board is the guarantor of the transparency necessary for obtaining the investor trust. According to Prof. Coulson-Thomas: *"The governing board must be the heart and the soul of the company, the source of its ambition and its conduct. The fact that a company wins and is competitive, succeeds and remains competitive generally depends on its governing board. Without a defined objective, an alleged strategy and the desire to succeed, well-established groups can decline and die"*. This concept of governing board originally specific for private companies is now transposable to maritime ports.

The analysis of the different reforms of the Mediterranean ports does however

allow us to identify several trends. The first being the fact that the port governing boards are more open to economic actors in the sector but also to local public authorities (municipality, territorial or regional council). As can be seen in Morocco (Rézenthel, 2008c), France or Spain, the objective is to create a synergy of dynamics around the port authority and a development strategy that is shared by the local actors. Secondly, the reduction of the number of directors is also a prominent tendency; this is the case in France where a regulation dictates the number of directors for each port⁵. The alignment of the governance of port authorities with that of large firms must also be highlighted. Within the framework of the French port reform, a supervisory board and a board of directors have systematically substituted for one governing board in order to dissociate the mission of control and that of management. These two bodies, characteristic of Stock Exchange listed companies recommended by the NRE and LSF laws, demonstrate the appropriation of the rules of good governance by the port sector. In addition, the administration of a "*grand port maritime*" is supported in its development by a *Development Committee* which openly brings together the different stakeholders of the port area – from professional, social, associative, and territorial authority backgrounds – but whose role however remains advisory. This form of wider governance can be found in Italy where the *Port Authority* is administered by a *Port Committee* comprised of 14 members - representatives of local authorities, trade union organizations, port users and port firms – which defines the central strategy of the port backed by an *Audit Committee* which controls the management of the port committee (Valleri et al, 2007).

In order to make this industrial instrument competitive, priority must be given to recentralizing its governance on missions that are less wide than in the past, whilst however using a more systemic approach. Although port managers are concentrating on their new strategic functions – development of the port area, promotion – and regalian functions – security, safety – they are now involved in issues that go beyond just maritime infrastructure. They participate directly in the dimensioning and the quality of road transport and rail networks, intermodal connections, logistics platforms, dry ports (Debry and Ruby, 2009)...as everything that is upstream or downstream to the passage in the port has a direct impact on the port's performance. Finally, this governance must be proactive, supporting the evolutions in the transport and logistics markets (Martin-Puerta et al, 2009). The need for reactivity is more important than in the last century due to the rapidity of the changes in these markets. Bearing in mind the perspectives for economic development in the Mediterranean zone, these sectors' needs are forever on the increase.

B. ... but remain under close control of public authorities

A port authority cannot be considered classed as a standard company. Notwithstanding key relaxations, the management of public harbour land and the accomplishment of public service missions which characterize historically

5 There were 26 directors before the reform Art. L. 102-1 and following the French Maritime Ports' Code: Supervisory board: 17 members and board of directors: 3 or 4 members depending on the decree in force.

Mediterranean ports have required a stringent legal framework which limits port managers' sphere of action.

It is necessary to highlight the fact that the majority of decision making bodies of the Mediterranean ports remain, directly or indirectly, under the control of public authority, they are more numerous than in the rest of the world, and institutional pressure is stronger than elsewhere (Lazzeri and Moustier, 2010). Therefore, the Mediterranean port governance model remains hybrid nevertheless it is notably characterized by the stakeholders.

Firstly, the appointment of presidents or directors of port authorities remains the responsibility of the executive power. In France, this is the case of the president of the board of directors, after assent of the supervisory committee, the president of the port committee in Italy or the president of the governing board of public interest ports in Spain. Public representation and intervention within the governing bodies of the port is still high (Valleo, 2005) and often controlling. An example of this is Greece, where even though the major ports have been transformed into public companies, and indeed Pirea and Thessaloniki having been quoted on the Athens stock exchange (Vaggelas, 2007), public intervention remains high. In the same way, the directors' field of action is strictly limited, particularly when the occupation of the public port zone is at stake.

Despite a reinforced autonomy of the port authorities as well as a more flexible legal framework for the concession regime applicable to port operations, the development projects require the authorization of one or several state authorities. As can be seen by French regulations, public investments also remain closely supervised (Rézenthel, 2008). *A fortiori*, the public bodies in charge of the Maghreb ports, following the example of the *National Ports' Agency* of Morocco or Algeria, the *Office of the Merchant Navy and Ports* of Tunisia of the *Ente Pùblico Puertos del Estado* in Spain, of the *General Directorate for the Construction of Railways, Ports and Airports* in Turkey ..., clearly illustrate that the port sector remains a strategic sector of public interest requiring a certain level of monitoring. The qualification of the major Spanish ports as "*general interest ports*" reveals the influence of this strategic function. However, in order to be efficient and reactive faced with future challenges, the authors believe that these ports must be managed in a more autonomous manner without the intervention of public hierarchy in the decision making process. As in the cases of the sole shareholding of the Algerian government in *Sogeports* – (Société de gestion des participations de l'État Ports - *The Company for the Management of the Participations of State Ports*) – or the Moroccan government in the company *Société d'opérations des ports* (The Port Operations Company), progress needs to be made in the liberalization and the transparency of port management (Rézenthel, 2008). At the same time, the fact that certain private operators are judge and jury, continuing to sit on the decision making bodies of certain ports, must not be ignored (Demangeon, 2008).

Nevertheless, the ad-hoc governing board alone cannot be the guarantor of the success of the port. The "environment" will play a role, as can be seen by the

integrative model by Pearce and Zahra (1989). Several key success factors will promote the attractiveness of a port area, from the legal and financial framework, the legal security which will result from this, the richness of the hinterland, the transport services and infrastructure surrounding the port or the maritime operator's supply chain... .

2. Conclusion:

The movement towards the reform of Mediterranean port governance is from now on inevitable and is reaching its phase of maturity. Having started in the Nineties and lasting through to the beginning of the 21st century, the Spanish, Italian, Greek, French or Maghreb port reforms prove that the process is often long, sometimes even empirical (Pallis, 2007), requiring several legislative interventions to bring about the necessary standardizing tools for the institutional and organizational advancements.

Following the example of the North African countries, this wave of reform is very strong, with the aim of modernizing and developing infrastructures in order to offer more efficient services. The stakeholder model applied to port governance does support the major port construction sites such as the deep water terminal of Tanger-Med in Morocco, Enfidha in Tunisia, in Algeria with Djen Djen the port of Alger, or even Fos 2/3XL in France. It is important to note that although in general, the majority of these dedicated terminals in Mediterranean ports are managed by private operators, very few are totally privatized. Mediterranean ports have remained statutorily public entities, under state supervision or local, regional authority supervision but with growing contributions from private sector. Their management has been liberalized without being privatized. Finally the corporate governance model is applied to Mediterranean ports which are still very specific.

Taking into consideration the reforms that are underway and those in the process of finalization, it is too early to assess their consequences. Consequently the Mediterranean port governance model is transitional. Without envisaging the replacement of the landlord port scheme by the implementation of the private port model in the medium term, the future of port authorities is obviously further autonomy for a better performance of the current framework. Many specialists indeed agree that the succession of reforms still does not give enough managerial and operational autonomy to port managers, who are still subjected to as much bureaucratic complexity due to the structures of the state authorities as well as political interference (Valleri, 2007). These constraints slow down the decision making process and reactivity and therefore the strategic development of the port. Criticism of this situation is particularly strong in Italy, Greece and Turkey. The lack of coherence between the ports' individual strategies has made it necessary to introduce a superior regulatory body. In this particular case, the French *Inter-Port Coordination Committee* or the *National Center for Port Development* in Greece (Pallis, 2007) both serve as models.

Dr. Robert Rézenthel (1996) has perfectly demonstrated that the choice of port model depends on State goodwill and there does not exist an "*ideal legal regime for the management of ports, otherwise we would know about it*".

However if the port governance regimes continue to vary from one Mediterranean State to another with local specificities, the strong tendency towards the recentralization of the port missions that no longer involve themselves, with the occasional exception, in equipment operations, to the advantage of private operators. The future of public-private partnerships seems brilliant although their economic performance will depend on initiatives and innovation.

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