Port governance and security

M. A. Valleri

Dionisia Cazzaniga Francesetti

Abstract

This work aims at realising how the present governance process in the ports blends and clashes with centralisation and decentralisation processes both from an Italian and international point of view. The carrying out of market liberalisation, fulfilled through the deregulation, privatisation and new regulation phases, has become possible thanks to the idea that social-economic development could be achieved through a bottom-up planning rather than through a top-down one. We will briefly deal with port governance forms and we will define the kind of governance present in Italy. Then we will focus on difficulties about security and the contrasts between liberalism and pricing rules (particularly in Italy and Spain) and we will consider the reasons for governance uncertainty in the present situation above all because of the insufficient UE guidance. The conclusions stress how the uncertainty that regulates the relationships between institutions and powers, on an international level, seems to be reflected in the different national and European power hierarchies.

Keywords: port, governance, security, policy, competitiveness.

1 Introduction

This paper analyses how the present Governance process in ports blends and clashes with the actual process of devolution both from an Italian and an international point of view. The idea that social-economic development could be achieved through a bottom-up planning rather than through a top-down one has allowed the carrying out of market liberalisation. Port governance forms will be considered in order to define the kind of governance present in Italy.

Then we will pay attention to difficulties about security and the contrasts between liberalism and pricing rules (particularly in Italy and Spain) and we will highlight the reasons for governance uncertainty in the present situation above all because of the insufficient UE guidance.
2 Port governance and its forms in Europe

Because of the European Union White Book of 2001, the principles in favour of governance are, essentially, those about transparency of governance activities, citizen’s participation, institutions responsibility, effectiveness as regards the fixed aims and coherence with other politics and activities.

Referring to the European Union, the forms of port governance are above all three and they coincide with those of “port history”. The Hanseatic form, in which the port is managed by an organ derived from the Local Organisation (Municipal-governed port). The Latin Mediterranean form refers to the ports of public property and governed by subjects of state origin (State-governed ports). Finally, the Anglo-Saxon form in which ports are more and more governed by private people (Self-governed ports). In all these three cases the institutional subject at the head of the governance, public or private, has to organise the infrastructures and the areas (landlord) or to direct the works (comprehensive port Authority).

3 Port governance in Italy

Also in Italy port governance can be interpreted by the contingency theory. In particular, this paragraph deals with the theme of the passing of competencies from the public to the private, delineated by national port system reform (law n.84, 1994), which caused a reorganisation of the organic cadres, aimed at regaining system competitiveness. This law pushed Italian ports toward terminal privatisation, giving them the possibility to improve their competitiveness and that of the enterprises within the port influence area, in an international framework of deep structural and organisation changes. After the application of the port reform Port Authorities, where present, have undertaken some of the offices which previously belonged to Shipping Authorities and they have carried on an activity “not previously considered” in the Italian ports: that of promoting local development.

There has also been the necessity to elaborate new plans aimed, on one hand, at increasing the amount of port traffics through the proposal of innovative solutions and infrastructures, the use of technology, the reduction of costs and, in general, by giving the best service and on the other at creating new work possibilities. In fact, Port Authorities, which have the role to regulate port market, and each Shipping Authority where the Port Authority is not present, must develop their port widening process, in accordance with general and specific programming tools.

The Port Authorities present in the main Italian ports have three functions in order to encourage a) port privatisation (of terminals) increasing efficiency and competitiveness, b) decision and financial autonomy, c) infrastructure renewal, occupation and co-ordinated development of integrated port systems. But as we will see, Port Authorities have not always preferred general aims to more immediate and precise ones. In these negative cases, the lack of fiscal decentralisation has been a further obstacle to long-term strategies. It can be
stated that if on one hand, the privatisation of terminal areas has done a good work compared to the profits of their service, on the hand of Port Authorities, which are still public, port economic effects have not been so efficient in many cases.

4 Emerging problems of port governance in Italy

The Italian ports organising system, introduced by law n. 84/1994 refers above all to the first model (landlord) even if, during its first pursuance, there have been some “misunderstandings” in the operation management, also forbidden by the law. On the other hand, even if the jurists know very well the idea of regulatory organisations, the other categories of shipping field advisers and operators do not know this concept so well, too. Law 84/94 has been the first stone of a new legal order which has unified the very different previous forms of Italian port management\textsuperscript{viii}. The terminal privatisation process, encouraged by this law, has produced a remarkable development of shipping activities in Italy\textsuperscript{ix}.

The necessity to complete and partially revise the law was more and more growing among the different operating parts in the field of shipping transportation and of port operators. At the same time, some forms managed with difficulty were arising; they caused both compromises and clashes among people delegated to govern the ports (presidents), Local Organisations and above all the Regions. These conflicts still nowadays risk to distort the original ratio of the law. This problem is evidently related to a problem of particular interest, i.e. the decisional autonomy of Port Authorities. Some perplexities are about the Authority president’s appointment, in case of contrast among the people delegated to the choice. Article 8 of law 84/1994, recently modified by law 27/07/2004, n. 84\textsuperscript{x}, states that the Authority president appointment is decided choosing among some candidates proposed by Local Organisations - Town Council and District and by the Chamber of Commerce. The Secretary considers the proposal and appoints the President by decree. The autonomy is not wanting in influences from the different institutions, just because of the appointment procedure.

The appointment procedure has been on many occasions object of debate among Secretary, Regions and Local Organisations\textsuperscript{xi}. After some legislative proposals port reorganisation law has been recently modified by the already cited law 186/2004, thanks to which a strong power has been given to regional presidents in a devolution period. In fact, with the modification of article V of Italian Constitution\textsuperscript{xii}, the new article 117 of the same Constitution\textsuperscript{xiii} states that the problems about “civil ports and airports” are of concurrent normative, so the Region is competent to adopt the law in this field always respecting government guidelines. The situation is still obscure in this contrast between central and regional powers. It has been stated that even if there is not a single rule of good-governance, the relationship with the region where the port is located is important in order to achieve it. The lack of national and /or regional involvement is important in checking the carrying into effects of the town plan directions (Transports General Plan) for the port area. A tool to control the port
performances could lead to sustain corporate governance actions. On one hand the regions, in a situation of power decentralisation, have not always taken the opportunity to propose regional plans involving the reference port systems and controlling their results. On the other hand, port infrastructure funds are controlled by central technical organisations with important competencies in terms of security which privilege this one rather than strategic investments. It follows that funds are divided into a series of contributions for all ports. There is not a push factor importance for the best-performed and most innovative ports.

The lack of port financial autonomy is an element of inability of Port Authority to create long term strategies and of clash among powers because it has not been stated who governs the fiscal aspect (Town Council, Province or Region…). The described difficulties are discussed in the contingency theory in the Matching Framework, thanks to the different approaches and tools it offers. The same theory does not always offer an efficient solution. In Italy there has always been a port policy at a ministerial level with the pre-eminence of central powers on peripheral ones. For this reason, nowadays, Port Authorities, also stating to pursue the aims of international competitiveness of the law and suggested by the White Book of 2001, do not carry out the right strategies to reach these purposes, but, on the contrary, they often prefer part aims. Enterprise improvement proposed by the contingency theory gets even with a difficult problem, in the short-medium period, because of a cultural sphere not prepared for structures and strategies innovation. It follows that decisions are not taken in a far-sighted way and they look for immediate interests.

5 Security and terrorist threat

After the events of 11th September 2001, that involved all the strategic points of transportation, Security (for port defence) has had a pre- eminent role with the coming into force of precise dispositions from 1st July 2004.

At present, ports situation and above all ships situation is controlled by IMO. According to the International Ship and Port Security Code (ISPS), each port must adopt the right measures to avoid or reduce the risk of attempts.

This work requires considerable financial resources because the Code has precise and compulsory directions that must be respected to assure security. ISPS Code follows, on an international level, the Maritime Transport Security Act (MTSA) of 2002. It presents U.S.A. security rules after the New York Twin Towers disaster. It has 16 prescriptions about ports, ships, port services and programs. It also includes identification automatic systems, rules connected with previous acts, penalties for people who do not respect rules, professional courses etc.

The most part of international governments wants to face international security because they are sure of the impending danger of terrorism and because they are afraid of losing traffic with the U.S.A.

The funds for security have sometimes been given by government (for example in Spain), sometimes by private people (for example in Italy).
Although many ship-owners and shipping agents are assuring themselves by certifying societies in the different countries, when ships arrive in American ports, Authorities do not rely on their certification documents. So U.S.A. Coast Guard controls again the ships\textsuperscript{xvii}. Moreover, for further defence of commercial traffics, ports must agree with U.S.A. Customs, if they do not want to be excluded from the traffics with the U.S.A. So, ships are controlled in the origin ports\textsuperscript{xviii}. This attitude is not the most suitable to assure the principle of liberalisation and of autonomous governance that should be more and more pursued.

6 Uncertainty and governance

The contrast between local and central power about port governance involves geo-political problems that must not be undervalued. Globalisation, seems to have some difficulties nowadays because on one hand it increases exchanges regulation according to codified juridical-commercial forms, while on the other already tested rules and common places for legal department fail. Observing that as parts of national sovereignty pass to over-national institutions, and the E.U. is the clearest and most important example of a worldwide trend, it seems reasonable that local powers get stronger. In other words through decentralisation, national competencies are delegated to Local Organisations even if the relationship among Town Council, Province and Region, as it has been seen in the Italian case, is not good. However, there are at least two points about which things do not work out. Port and shipping transportation governance has seemed to be inclined towards a self-government of the field operators, companies, shipping agents and Local Organisations, creating an example of the so-called “international regime”.

But the decision of the U.S. to be directly included in the security control points out some governance problems. Laying down the laws about goods control for security reasons and laying them on all the world, the U.S. risk to cause a crisis in the rising self-government of ports and of shipping transportation. A country such as the U.S. that imposes to IMO and to EU security rules for its own interests causes sovereignty\textsuperscript{xx} problems and governance autonomy problems. The uncertainty that regulates the relationships among strong powers, institutions and factual powers (source of the so called material constitution) on an international level seems to be reflected in the different national and European power hierarchies.

After Euro introduction, the attempts to define a common fiscal policy in the EU have stranded on the objection that in a competitive market system, also a different fiscal pressure is a legitimate instrument of competitive struggle: Ireland and Middle-eastern countries which have recently entered the EU are an example of this situation. If we are inclined towards a port governance managed by local operators and organisations, why should they not have the right to manage competitive pricing politics? In fact taxation financial aspects, different in each country, have an important role in port competitiveness, affecting global port costs in different ways. The European Union has tried to unify the pricing
conditions of its countries [21], the differences of which have persisted and raised since the entrance of other Countries on 1st May 2004.

On one hand, it seems impossible not to meet the stronger and changing pressures of the international market without new instruments of flexibility and decentralisation, on the other the contrast about sovereignty among EU, National State and Regional puts local powers in a situation of uncertainty. It seems that the doctrine and the interpretative theories have some difficulties to be applied to a new worldwide reality.

7 Conclusions

We can conclude by stating that some problems still stand, related to port governance in Italy. The liberalisation of markets, the privatisation of businesses and the decentralisation of competences brought about some changes in the management of government policies. In Italy, port competences in the ambit of an international, European and national framework of reference, have been delegated to Regional Governments, Local Organisations and/or competent Authorities. As far as port policies are concerned, the 1994 reform Law attributed port competences to Port Authorities in the ports where the latter have been created and to Maritime Authorities in the remaining ports.

The main role of Port Authorities is to promote the port through both transportation activities and other port functions, thus acting as a push factor on the economic activities interrelated to the port, that give impulse to the local economy. The power of Port Authorities is enforced in compliance with international and European laws and in the respect of the national objectives of the General Plan for Transport and Infrastructure.

In order to achieve the results deriving by their governance action, Port Authorities should have both financial and decision-making autonomy. It may also be invalidated by a competence-related problem. A question arises, whether decision-making autonomy in port planning is invalidated only at a decentralised level and whether it is better to adopt a top-down (centralised), rather than a bottom-up (delegated) management. The observation of facts makes us reflect on the behavioural modes adopted at a central level. We can state that the decisions taken on that occasion do not actually privilege an economically efficient choice vis-à-vis what is at stake. On the other hand, not all the Regional Governments have issued organised plans about the objectives of their own ports and related financing. A question arises whether the rationale is: all together untidily?

As to financial autonomy, Port Authorities are known to need support from the programmes that, in turn, are submitted at both a national and a non-national level. How to make long-time plans? Even if Port Authorities were completely detached by the rationale of power, they do not have sufficient resources to achieve all the objectives proposed in the various Master Plans.

From what already stated, it follows that there are:
1) ambiguities between centralisation and decentralisation of power;
2) possible rivalries among Italian ports for the choices made by Authorities;
3) possible preferences of local policies complying with the objectives of local, rather than global development;
4) reproduction of the cultural limitations that bind the port to the status of some Presidents, rather than to efficient strategies to succeed in international competition.

In conclusion, we can state that ports often have an ambiguous and limited governance vis-à-vis the aim to achieve. This derives from either the political and cultural limitations of managers, or from existing competence conflicts among different Organisations, or from the lack of overall financial independence. On the other hand, governance at an international level presently poses some problems also in terms of security.

On the one hand, there is the ISPS code, acknowledged by IMO inspired by the USA, enforced since July 2004, divided into sections—where Section A is compulsory and Section B is not—about passenger ships and merchant ships exceeding 500 tons, whose enforcement is viable for 60000 ships and 20000 port areas in the world. On the other hand, there are the USA regulations for containers and mixed ships.

The regulations on security, as developed by Robert Bonnard, the chief of the USA Customs is strongly recommended for ships—particularly container ships—to enter transport maritime relations to and from the USA. On the basis of the agreements signed by many Countries, the permanence in ports of a team of US officers is entailed at an international level. These officers must compulsorily apply also Section B of ISPS to ships and ports having business relations with the USA. It is legitimate to pose a number of questions which do not have an immediate answer, such as: is there governance autonomy? What is the sovereignty of individual Countries vis-à-vis the USA? What role, and what governance are given to the European Union? What are the limits of decision-making decentralisation? Are the US customs that actually exercise full control?

On a European level, after accepting the pro-export ISPS regulations, the will arises to produce—more rapidly than the IMO-OIL work group—a security Code, binding for all EU Countries. The regulations and directive to implement the contents of the ISPS code are about to be issued. But is it really this the road to follow? So far, we can state that we sense we are flooded by an overdose of regulations that do not facilitate the Italian, sometimes conflicting relationships among Port Authorities and Port Offices.

What’s more, Europe sustains the right liberal principle of pricing to boost competition among ports. In some Countries, such as Spain and Portugal, it is the State that pays to establish security. In other Countries, such as, for instance, Italy, over-costs for security are directly paid by port users, with an increase in the cost of goods manipulation. Waiting for a regulation and directive on safety and security, which is in progress at the moment, only brings about difficulties at the level of competition. From the European point of view, there is a lack of coordination on the various aspects exposed so far. As a consequence: which criteria for centralisation and decentralisation of powers? Which governance?
We can say that each Country is adopting the form of governance that best responds to its own needs. The only fear is that ports will pay the consequences of this, in presence of a distorting competition.

The doubts and uncertainties governing the transition phase we are living through, following liberalisation and the terrorist attempts started in 2001, may lead us to conclude with some general remarks. Port Authorities have not the possibility to choose a kind of governance in front of the rules and procedures of the USA, received by IMO and controlled by American customs. Nor do the central authorities of each State have a true freedom of governance compared to the worldwide trends. On the contrary in Europe, where the main position is the liberal one, each country is free to make contrasting choices.

As we have seen Port Authorities do not have, at present, a real possibility of choice as concerns central government decisions about security funds. Central government can decide to provide itself money for security, interpreting the idea of service as public good (i.e. offered by the State) or to consider that tariff a port utility competing to Port Authorities. In this last case, the exceeding costs are at consumers’ expense.

In the certainty that a methodological approach such as the Matching Framework is more and more necessary to compare the various port situations in the world, we think that further research is necessary to systematise the puzzle of the existing situations.

References


[13] Leuschner C.(2003), Cooperative:Between Corporate and Cooperative Governance,“15th International Conference of Cooperative Economy


Notes


ii Port governance forms have been studied in the last years and research has interested many authors, cf. Talley [18]; Tricker [17]; Davies [9].

iii A form of port governance, present in some port systemic realities, not included here, is the Corporate governance; its strength lies in a structure strongly oriented to the market, in a strongly co-operative organisation (corporate body), in a good management of control and book-keeping forms and
in a wide financial autonomy, while the main weak point is the presence of a strong political representation and of the Local Organisations in the Board of Directors. On this subject cf.: OECD [16]; Leuschner [13].

This office was first part of the Ministry of Transport and Communication, subsequently it was changed, together with the Ministry of Works, into the present ministry of Transport and Infrastructure. After the port reform, it organised the decentralisation by the constitution of Shipping Authorities on the analogy of Port Authorities, each one with precise duties.

Port Authority was first of all instituted in the ports of Ancona, Bari, Brindisi, Cagliari, Catania, Civitavecchia, Genova, La Spezia, Livorno, Marina di Carrara, Messina, Napoli, Palermo, Ravenna, Savona, Taranto, Trieste and Venezia and then in Piombino, decree 20th March 1996, Salerno, 23rd June 2000, Olbia e Golfo Aranci, decree 29th December 2000.

Financial-economic programme document (the present PEF documents are those of the period 2001-2004 and 2002-2006) Transport and Logistic General Plan, Transport Regional Plans and European documents that port Authorities must take into account to write their Triennial Operative Plan and, where necessary, the Port Plan. These ones should be in accordance with the urban instruments with which they act, such as those of the reference area administration, Town Councils, and those of the State district.

The functions are: a orientation and programme, co-ordination, promotion and control and port and commercial operations; b routine and extra maintenance (infra-structural investments); c management of public area and allocation of areas to private operators and terminal possessors (landlord function). On this subject cf. Valleri, Papa and Lamonarca, Panama, 2002.

Previously, ports were organised in categories and classes and, according to their role, they were divided in ports of defence and refuge, commercial and industrial ports, tourist and fishing ports. With law n. 84 of 28th January 1994, there has been a port re-organisation, revising categories and classes. The functions have not been modified even if nowadays there are some functions which were not previously considered as regards technologic and computer innovation.

A first result on the port reform effects in Italy was presented in Panama in 2002, on the occasion of the meeting Port governance network, by the Italian group represented by M. Valleri, M. Lamonarca, P. Papa and G. Sgargi with the paper “Economics of Port Governance: the Italian case”.

The law of 27/07/2004, converting the decree of 28/05/2004, n. 136, modified law n. 84 of 28/01/1994. Article 8 of law 186/2004 states that comma 1-bis must be added to article 8 of law 28/01/1994, n. 84, comma 1: “1-bis. Taken all necessary steps of comma 1, if within 30 days there is not an agreement with the interested region, the Secretary of transport and Infrastructures decides among a tern given by the Regional Council president, taking into consideration the suggestions of Local organisations and of the Chamber of Commerce, Industry and Agriculture interested. If the Regional Council President does not take a
decision within this 30 days, the Secretary of Transport and Infrastructures asks to the Cabinet President to submit the problem to the Cabinet, which provides by alleged deliberation”.

xi We specify that behind ports, there are the Region, the Districts and the Municipality. This problem, as the others, is common to many world ports. For example, on June 25, 2002, as part of the Metropolitan Governance Series, World Bank transport specialist Marc Juhel provided an overview of the evolution of governance arrangements between ports and cities. He provided examples from Rotterdam, Sydney, and Le Havre that have addressed city-port issues successfully.

xii The change was introduced by constitutional law of 18/10/2001 n.3.

xiii Article 117, paragraph 2, states that: “The subjects of concurrent legislation are those about: territorial government; civil ports and airports; big transportation and navigation networks; communication disposition. For concurrent legislation subjects, Regions have the legislative power, except for the determination of fundamental principles, reserved to State legislation”.

xiv IMO measures, working in Italy from 1st July 2004, were prepared by IMO Diplomatic Conference in December 2002.

xv Part A of the Code, part B, not compulsory, includes application laws regarding part A.

xvi Some researchers have considered that many port costs will be charged to private people, even if security is part of public goods, and they wish these costs are not higher than the 50% of the expenses that must be sustained. About U.S. ports see: Kumar and Vellega [12].

xvii In many cases, ships controlled again have not been admitted to charge and discharge operations, but they have waited in order to define their position as regular or they have been sequestrated.

xviii For this purpose, in Italy, the Customs and Customs Officers have stipulated an operative protocol to create the integrated offices of risk analysis in the customs districts of Genova, Livorno, La Spezia, Gioia Tauro and Napoli. They aim at making more efficient the security measures for the sea transportation of goods to the U.S.A.. The agreement is part of the Container Security Initiative.

xix Cazzaniga Francesetti [7].