© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

Institutional reforms in Lebanon's commercial ports: opportunities and challenges

M. Hadi Baaj
Department of Civil and Environmental Engineering,
The American University of Beirut, Lebanon.

Abstract

On December 31, 1990, the concession contract signed between the State and a private company for the Port of Beirut operation expired. The State (just coming out of a prolonged 15-year civil war) elected to take a "temporary" measure. It appointed a temporary commission to operate the port under the rules of the expiring concession. The legality of this measure, however, has since always been questioned, while the temporary commission underwent three major personnel changes which clearly prevented any long-term thinking or planning. In 1998, the temporary commission entered into a USD 200 Million 20-year joint venture for the establishment of a container terminal Thus, the need became urgent to develop a permanent institutional framework for the port of Beirut. Meanwhile, Lebanon's three other ports were inefficient public institutions and it was desirable that the model proposed for Beirut could also be applicable to them. This situation provided an opportunity for the Government to concurrently rethink its role in the maritime transport sector. There was a clear need to initiate institutional reforms that would ensure the clear separation of Government policy-making from economic and social regulation of the sector (while assessing the need for an independent regulator), and port operation and service delivery. This paper presents the port organization models that were investigated, the multiobjective decision making approach that guided the model selection, the institutional reforms, and the proposed implementation plan.

1 Introduction

Since 1887, the Port of Beirut had been operated by a single private company under a concession contract which awarded the company exclusive rights for

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

port management, operation, and development, subject to conditions and to royalty fees paid to the State. In 1960 (in the midst of a rising tide of nationalizations in the Middle East and following Government complaints that the concessionaire did not invest sufficiently in port expansion and upgrading), the State terminated the concession agreement. Thus, a 30-year contract management agreement was signed which provided for the private company to manage and operate the port on behalf of the State with a fee participation in the revenues arising. The contract downgraded the previous 1887 concession after a buy-out by the State of the Company's rights of exploitation and development, and of the majority interest previously held by the company in the revenues arising subject to a royalty fee for Government.

On December 31, 1990, the contract expired, and the State (just coming out of a prolonged 15-year civil war) elected to take a "temporary" measure. It appointed a temporary commission (Gestion et Exploitation de Port de Beirut, GEPB) to operate the port under the principle of continuity (i.e., under the rules of the expiring concession). The legality of this measure has since always been questioned, while GEPB underwent three major personnel changes which clearly prevented any long-term thinking or planning. In 1998, GEPB entered into a 20-year joint venture agreement with Dubai Port Authoruty, DPA of The United Arab Emirates. GEPB invested USD 150 million (100 million of which were obtained through a loan from the European Investment Bank, EIB) in the infrastructure for a new container terminal, while DPA was to invest about USD 50 million in the container terminal superstructure (including the purchase and installation of 3 gantry cranes). Thus, the need became urgent to end the temporary status of GEPB and develop the most suitable permanent institutional framework for the port.

To that end, The Ministry of Public Works and Transport contracted with High-Point Rendel, a specialized British firm, to propose a permanent institutional framework for the port of Beirut while studying its applicability to Lebanon's three other ports (that were functioning as public institutions, following Law # 4517). In addition the institutional reforms provided an opportunity for the Government to rethink its role in the maritime transport sector, ensuring the clear separation of its policy-making function from economic and social regulation (preferably through an independent regulator), and port operation and service delivery.

Section 2 presents the objectives of institutional reform in the Port of Beirut and identifies the stakeholders and their interests. Section 3 overviews the 9 port models that were proposed for evaluation, while section 4 presents the 16 attributes that these models were evaluated against, utilizing a multi-objective decision making approach to guide the model selection. Section 5 presents the preferred port model and the proposed institutional reforms for the maritime transport sector. Section 6 concludes with the proposed implementation plan.

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

2 Objectives of reform and the stakeholders' interests

The primary and overriding objectives of introducing institutional reforms in the Port of Beirut were to enable it to: 1) provide a safe haven for ships, 2) achieve cargo-handling efficiency, 3) satisfy customer requirements, 4) provide for the needs of the national economy, 5) achieve an adequate return on the assets committed and on capital investment, and 6) unlock the value of assets in terms of land, people, and capital [1].

Stakeholders were divided in two groups: the first consisted of stakeholders with a "Higher Level" Interest, while the second group consisted of a different and lower level of interested stakeholders who may need to see their rights protected or to be compensated if these rights were to be removed in the interest of the higher level of stakeholders. The first group consisted of the State, the Lebanese people, the port community, the port customers, and the environment. The second group consisted of GEPB, the three Ministries of Transport, Economy, and Finance, Beirut Municipality, the existing private operators, shipping agents, and DPA [1].

3 Alternative port organization models

There are several organizational models for seaports, including a municipal model (common in Northern Europe), a state model (common in Southern Europe and South America), and a private model (common in countries with a British tradition) [2]. A thorough discussion of seaports' reform is provided by Trujillo and Nombela [3]. For Lebanon, the following 9 port organization models were evaluated: 1) "Stay Where We Are" or SWWA (Do-nothing), 2) Full Nationalization Model, 3) Full Privatization Model, 4) Public Institution Model (in accordance with Law # 4517, currently applicable to the ports of Tripoli, Sidon, and Tyre), 5) State-Owned Corporation Model, 6) State/Private Sector Joint Venture Model, 7) Concession Model (similar to the 1887 Beirut Port Concession Model), 8) Contract Management Model (similar to the 1960 Beirut Port Contract Management Model), and 9) Port Autonome Model [1]. The pros and cons of each model have been detailed in Baaj and Issa [4]. Following is a brief overview of each model, as adapted from High-Point Rendel [1].

"Stay Where We Are" or SWWA Model: describes the current situation of GEPB which has been operating on the principle of continuity, as if it were the immediate successor to the previous company which operated under the 1960 concession contract and all those powers remained in place. GEPB has been operating without clear legal powers other than those granted under successive governments since December 31, 1990, as temporary expedients. GEPB's Chairman who is also the General Manager reports directly to the Minister of Public Works and Transport. GEPB has private sector employees and carries out its activities through subcontracting to private operators. It is substantially self-financing and its annual financial surplus is drawn down by the Government. It carries out the planning and development of the port and has established consultative procedures with its principal port users. However by its very status

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

as a "temporary" body it cannot continue to exist, and to make it permanent would require a new law.

Full Nationalization Model: is where the State not only owns, but also carries out all the planning and development of the port and all the port operation and maintenance activities. In effect the port is under the direction and full control of the State and there is no private sector activity.

Full Privatization Model: is where the ownership of the port and the conduct of all activities within the port lie in private hands. The system is driven by a desire to make profit from such ownership.

Decree 4517 Public Institution: is a public sector entity established primarily to manage, operate, and develop a State-owned public utility within the context of proscribed procedures as not financial authorities and freedoms to act independently. It has a Board appointed by the sector Minister in accordance with a statutory constitution. Its employees are not considered as civil servants however their employment is monitored by the Civil Service Council and approved by the Tutorship Minister. Currently, Lebanon's three other ports of Tripoli, Sidon, and Tyre, operate as public institutions subject to the 4517 decree. There was a clear desire on the part of all Board members of these ports to reform their own ports, along the model proposed for the port of Beirut.

State-Owned Corporation: is a public corporation established in the first instance by the Government which owns the majority of its shares. It is largely subject to the laws, rules and disciplines of companies. Initially, but not necessarily, the State holds 100% of the shares in the company but it may sell some or all of these at a timing of its choosing. Government may hold a "golden share" to prevent the sale to and ultimate control by other parties if there is an overwhelming issue of national interest at stake.

A State/Private Sector Joint Venture: whereby a state sector entity (typically a 100% state corporation) and a private sector company form a joint venture for a specific purpose and for a fixed and renewable term (if the parties agree). In ports it is particularly effective in the development of major port projects such as container terminals. The state sector often develops the terminal's infrastructure while the private sector provides equipment, know-how and sources of private capital and finance. It is normal for this to be either a 50%/50% shareholding or with one party (normally the state sector company) having nominal control under a 51%/49% shareholding structure. A shareholder's agreement can settle powers of decision and dispute procedures, and provisions concerning sale of shares and pre-emption and valuation rules. A management contract for the entire operation is often awarded to the private sector partner. This structure has been used to great effect in China. A joint venture company could be granted a Beirut style concession over land owned or leased by the State or the state sector entity.

The 1887 Beirut Port Concession Model: From 1887 to 1960 a single concession holder enjoyed exclusive rights of management, operation and development subject to conditions and to royalty fees paid to the Government. This was almost like the modern BOT agreements. The detail and duration of the agreement was remarkably robust and worked well. The concession was let by the State and supported by a series of statutes. The operation was wholly

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

within the private sector and the finance for development was raised without reliance on State funds. There therefore remains open a major opportunity to let a new long-term concession or contract to manage and develop the Port of Beirut through a modern revival of the original model dating back to 1887.

The 1960 Beirut Port Contract Management Model: In the 1970's and 1980's many ports in the Arab World were managed under contract by specially formed international port management companies such as Gray Mackenzie at the Dubai Port Authority and at Jeddah. The 1960 Beirut Port contract provided for a private company to manage and operate the port on behalf of the State with a fee participation in the revenues arising. The contract downgraded the previous 1887 concession after a buy-out by the State of the Company's rights of exploitation and development, and of the majority interest previously held by the company in the revenues arising subject to a royalty fee for Government. The Commission Provisoire has managed the Port of Beirut as if the former management contract made with the original concession company in 1960 were still in effect. It has used the "principle of continuity" to do this. In effect the State's interest in this contract has been managed with the State collecting all the dividends. Many of the pros and cons of the 1960 contract model are similar to those of the concession model described above. However some of the points pro are conspicuously absent in the contract model.

The Port Autonome Model: is seen in part in the major French ports and provides for the management and development of State-owned ports on a substantially autonomous basis. Chairmen and Board Members are appointed for a fixed term by the Minister in accordance with a statutory constitution after first considering the representations from the interested parties of the port business activities and from wider sections of the community. The model envisaged here would also draw on the provisions seen in the Law for the Central Bank of Lebanon that was established in 1963 for the regulation of the commercial banking sector. The law has been effective for this purpose and has endured with only one or two amendments since that date. The model replicates substantially the internationally accepted models of the USA/German/French/and British central banking systems which have afforded substantial financial and administrative independence within a high-caliber ethical system operated on commercial lines rather than within a civil service structure or culture.

4 Attributes of the alternative models

A set of 16 key attributes was developed for the evaluation of the 9 alternative models. The score of each attribute was on a scale of 1 to 10 (low to high). It was desirable that the preferred model should score well overall, with consistent scores of at least 5 for each of the attributes. The goal was to maximize a multiobjective function of the 16 attributes expressed as the summation of the product of the score of each attribute by the weight of the attribute. Assuming equal weighting for all attributes, the model's final score was obtained by summing the scores of its attributes. The attributes were the following [1]:

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

1) Degree of freedom from Government interference (with rights to subcontract)
2) Ability to buy, sell and lease, and rent lands and enjoy property title
3) Degree of financial independence to borrow and lend and be self-financing without reliance on the Government
4) Ability to be commercially pro-active and responsive to market forces and to develop and project a favorable public image
5) Ability to carry out and engineer development works within its port limits and to appoint all necessary consultants and advisors for this purpose
6) Ability to set independent administrative procedures both at the Board level and for the conduct of the day-to-day business of the entity
7) Degree of freedom in determining its own recruitment and other personnel policies (with complete freedom to hire and fire, carry out training and establish pay and conditions of service on the basis of merit)
8) Ability to achieve bankability through the ability to pledge and assign the assets and revenues of the port without recourse to sovereign guarantee
9) Degree of accountability
10) Probability of timely legal implementation
11) Degree of being in tune with the Lebanese Free Enterprise Spirit
12) Degree of being in tune with global trends
13) Degree of compatibility with previous models applied in Lebanon
14) Ability to reduce the end user costs
15) Ability to reflect the national interest
16) Ability to retain inherent asset value

Note that the higher stakeholders' interests were represented through attributes 14, 15, and 16 (end user costs, national interest, and retention of inherent asset value). It was clear that the alternative institutional models would differ substantially in their ability to achieve high scores on all attributes. However, as the attributes were seen as desirable goals, the preferred model would be one which would enhance and achieve the points pro while eliminating, protecting from, or diminishing the influence of the points cons. There would naturally be preferences exercisable according to the standpoint of each accredited assessor. There would also be a political preference to be exercised towards the end of the evaluation process. The evaluation of the 9 models against the 16 attributes (which was meant as a guiding tool in the selection of the preferred option) have been detailed in High-Point Rendel [1].

5 The proposed reforms

Based on the results reported in High-Point Rendel [1], the State Corporation Model emerged as the highest scoring followed by the Concession Model as a close second. In all of its attributes, the State Corporation Model scored consistently above the halfway mark and had no difficult low scores (as can be seen in the Nationalization Model and also in so far as the inability to achieve timely implementation in the Full Privatization model). Thus it was

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

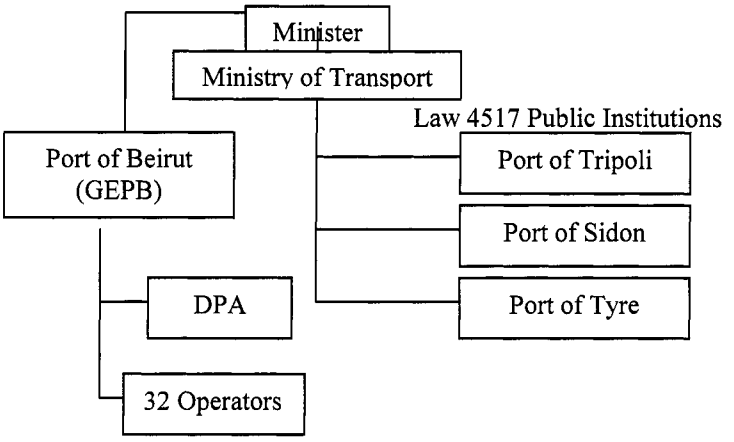
recommended that a 100% State-owned commercial corporation (Beirut Port Corporation, BPC) be set up, which would lease from the State all port premises and equipment for 99 years (State retains ownership of all assets). BPC would immediately seek to sell about 25% of its shares to a strategic partner. The strategic partner would be the management contractor, a private firm specialized in port operation and management, which would operate under a contract with BPC. The remaining 75% shares would be progressively sold by the State in tranches over a 10-year period, thus completing the eventual full privatization of BPC. There would still be a provision for the State to keep a "golden share" to protect the national interests, similar to the U.K. privatization models [5]. Lebanon's three other inefficient commercial ports would also corporatize, in a manner similar to the Port of Beirut (with the possibility of eventual privatization).

With any shift to increased freedom of ports to set their own tariffs and to enable the introduction of market forces, there occurs a need for independent regulation. Thus, a National Maritime Council (NMC) is proposed to be set up to carry out economic and social (safety, health, and environmental) regulation in addition to strategic planning. NMC would be a light-handed regulator with the main desirable characteristics of: 1) independence with a reasonable amount of discretionary power, 2) autonomy and expertise, and 3) accountability [2]. NMC would be in charge of the following functions [1]:

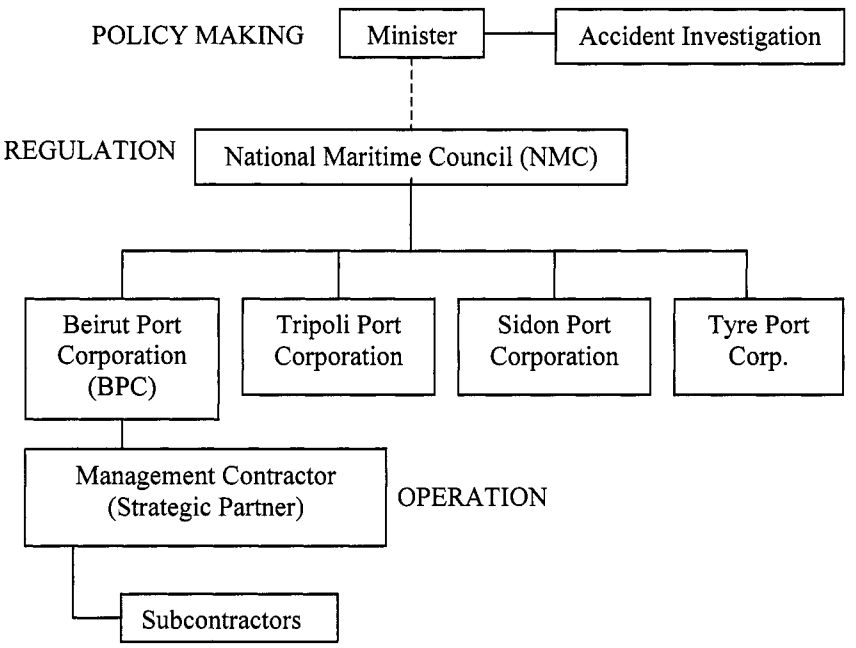
1) Review the nature and level of port charges, hear representations, and hold such inquiries in respect of these charges (so as to ensure their fairness and competitiveness).
2) Advise the Minister of Public Works and Transport on matters of strategic investment planning (generally for all projects having a value in excess of USD 50 million).
3) Facilitate the coordination and integration of maritime transport within the total transport chain.
4) Ensure that the Ports of Lebanon make adequate plans for investment to accommodate the demands of shipping and cargo, thus avoiding unnecessary congestion costs to the national economy.
5) Prepare, establish, and administer the scheme for compensation and the provision and management of pensions of the former personnel of the GEPB when the provisions of vesting date for the BPC come into force.
6) Carry out each three years a performance audit of the activities of BPC and its appointed management contractor.
7) Recover the costs of independent regulation of the ports sector through a scheme or schemes imposed on the ports and the traffics passing through the ports.

Figure 1 shows the current and proposed institutional arrangements. The reforms, when successfully implemented, imply the separation of policy-making (kept with the Minister), regulation and planning (kept with the NMC), and operation (kept with the contract management/strategic partner). The Ministry of

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2



a) Current



b) Proposed

Figure 1 : Current and proposed institutional arrangements

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

Public Works and Transport has approved of the proposed reforms, as broadly consistent with the philosophy for reforming other transport sub-sectors [4, 6]. Such philosophy is based on the separation of policymaking (kept with the Minister), operation and service delivery (by the private sector only, where possible, otherwise via corporatized State Enterprises) and economic and social regulation (by an independent authority). A Steering Committee has been formed and entrusted with preparing the Draft Law establishing the BPC and the NMC, so as to proceed to the next step that involves seeking the approval of the Council of Ministers then the Parliament.

6 Implementation plan for the sector's reforms

The proposed implementation plan for the sector's reforms integrates two major elements: the establishment of the overall legal framework and the implementation of the institutional framework. The implementation of the institutional reforms is a major multi-year program of work that will require a significant level of resources. The work plan consists of four major work streams:

1) Program Management and Oversight. This work stream is concerned with the management of the overall program, ensuring that all program elements are performed in a coherent manner, noting the interdependencies that will occur, and reporting progress to the Minister of Public Works and Transport, the Council of Ministers, and Parliament.

2) Establishing the Overall Legal Framework. This work stream is concerned with establishing the legal framework necessary to implement the overall reforms. The activities include the drafting of the primary legislation, the secondary legislation, and the repeal and amendment of existing legislation.

3) Establishing the Institutional Framework. This work stream covers all activities that will result in the creation of the two separate entities: the Beirut Port Corporation (BPC) and the National Maritime Council (NMC).

4) Awarding of the Port Management Contract. This work stream covers all activities that will result in BPC's successful awarding of a port management contract to a professional contractor.

Acknowledgement

The author would like to acknowledge the International Bank for Reconstruction and Development (IBRD) for providing the Administrative Reform Loan to Lebanon, which was used to fund the development of the reform plan.

© 2002 WIT Press, Ashurst Lodge, Southampton, SO40 7AA, UK. All rights reserved.
Web: www.witpress.com Email witpress@witpress.com
Paper from: *Maritime Engineering and Ports III*, CA Brebbia & G Sciutto (Editors).
ISBN 1-85312-923-2

References

[1] High-Point Rendel, *Port of Beirut Institutional Reform Study*. Final Report submitted to the Ministry of Public Works and Transport, Beirut, Lebanon, 2001.

[2] Estache A. and De Rus G., (eds). *Privatization and Regulation of Transport Infrastructure: Guidelines for Policymakers and Regulators*. World Bank Institute publication, The World Bank, Washington, D.C., 2000.

[3] Trujillo L. and Nombela G., *Privatization and Regulation of the Seaport Industry*. Policy Research Working Paper no. 2181, World Bank, Washington, D.C., 1999.

[4] Baaj M. Hadi and Issa, J., Institutional Reform in Ports of Developing Countries: the Case of Lebanon - Part I: The Plan. *Maritime Policy and Management*, Vol. 28, No. 4, pp. 393 – 407, 2001.

[5] Guislain, P., *The Privatization Challenge: A Strategic, Legal, and Institutional Analysis of International Experience*. World Bank Regional and Sectoral Studies, The World Bank, Washington, D.C., 1997.

[6] Baaj, M. Hadi, The Land Public Transport Sector in Lebanon: From Chaos to Sustainable Reform and Organization, Part I: the Plan. *Journal of Public Transportation*, Vol. 3, No. 3: pp. 87 – 108, 2000.