

# PORT TERMINALS, CONTAINER TERMINAL... *NEW PORT NOTIONS*

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**Abstract :**

*“Providing all shipping trade operations”, this expression can has a hidden meaning such as an investment project that the governments cannot afford its budgetary expenses alone, especially those of the developing word. This fact led them to involve the private sector in order to finance and manage this type of project. However and view the plurality of shipping trade operations, the funding were intended most often to cover only one of these activities, the fact that led to divide the port into several specialists field, known under the name of "port terminal", that changed the concept of the "port" so it is becoming a group of port terminals, each one is specialized in one*

*of the maritime and port activities : container traffic, grain traffic,.... This changing in the notion of the port had introduced a strong paradox between the practical side and the legal side, the last one did not embrace neither the term "terminal" nor the expression "port terminals", even that these notions are becoming much of discussion in the jurisprudence and the doctrine. This contributes to enhance the port Encyclopedia especially when it comes to the container terminal since it is the traffic that dominates the most.*

**Keywords: Port, Harbour, terminal, container.**

### الملخص:

إنّ عبارة "تأمين جميع عمليات التجارة البحرية" تعتبر في حدّ ذاتها مشروعا استثماريا والتزاما لا تستطيع الدول لوحدها وخاصة النامية منها التكفل به، لما يحتاجه من رؤوس أموال ضخمة، الأمر الذي دفع بها إلى اللجوء إلى القطاع الخاص لتمويل وإدارة هذه الاستثمارات. لكن أمام تعدد الأنشطة التجارية البحرية، فإن هذه التمويلات خصّت في أغلب الأحيان أحد هذه الأنشطة فقط، الأمر الذي قسّم الميناء إلى مجموعة أراضي يتخصص كلّ منها في نشاط تجاري مُعين: إما الحاويات، إما الحبوب،... إلخ ، عُرفت ب'النهائيات المينائية'، والتي غيرت مفهوم الميناء من الناحية المادية ليصبح مجموعة من النهائيات المينائية المتخصصة ، الأمر الذي خلق مفارقة بين المفهوم المادي وبين القانون الذي لم يتضمن عبارة مماثلة. لتصبح بذلك هذه عبارة محلا لعدة نقاشات قانونية تزيد في إثراء رصيد القانون المينائي. ولعل النهائي الذي استحوذ على أهمية أكبر هو 'نهائي الحاويات' لما لنشاط الحاويات من أهمية كبرى تظعى على باقي الأنشطة في مختلف دول العالم.

**الكلمات المفتاحية: الميناء، الموانئ المحورية، النهائي، الحاويات.**

## **Introduction:**

The port is legally known as a point from coast, equipped to receive and house ships and provide all shipping trade operations...”. This final expression can have a hidden meaning such as an investment project that the governments cannot afford its budgetary expenses alone, especially those of the developing world. This fact led them to involve the private sector in order to finance and manage this type of project.

Financing such projects by the private sector could be either a total project-funding or a partial project-funding. If it is the first type of funding (a total one) it takes the contract form of what we call “BOT”: Build, Operate & Transfer. If it is the second one, it takes the contract form of a joint-venture.

As to the BOT, it refers to the initial concession by a public entity such as a local government to a private firm to both build and operate the project in question. After a set time frame, typically two or three decades, control over the project is returned to the public entity<sup>1</sup>.

While the joint-venture (JV) is a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity. In a JV, each of the participants is responsible

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<sup>1</sup> Adam HAYES, Build-Operate-Transfer contract, Investopedia, <https://www.investopedia.com/terms/b/botcontract.asp>

for profits, losses, and costs associated with it. However, the venture is its own entity, separate from the participants' other business interests<sup>2</sup>.

And view the plurality of shipping trade operations, the funding were intended most often to cover only one of these activities whatever was its form (BOT or JV), the fact that led to divide the port into several specialists field, known under the name of "port terminal", that changed the concept of the " port" so it is becoming a group of port terminals, each of which is specialized in one of the maritime and port activities: container traffic, grain traffic... . This changing in the notion of the port had introduced a strong paradox between the practical side and the legal side, this last one that did not embrace neither the term "terminal" nor the expression "port terminals", even that these notions are becoming much of discussion in the jurisprudence and the doctrine. This contributes to enhance the port Encyclopedia especially when it comes to the container terminal since it is the traffic that dominates the most.

### **I- The concept of “Port terminals”:**

We should take a look on the view of legislation first, then the doctrine and jurisprudence.

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<sup>2</sup> Marshal HARGRAVE, joint venture (JV), Investopedia, [https://www.investopedia.com/terms/j/jointventure.asp#:~:text=A%20joint%20venture%20\(JV\)%20is,or%20any%20other%20business%20activity](https://www.investopedia.com/terms/j/jointventure.asp#:~:text=A%20joint%20venture%20(JV)%20is,or%20any%20other%20business%20activity).

**a- The concept of “port terminals” in the different legislations:**

Starting with Brussels convention on civil liability for damage for oil pollution, November 29<sup>th</sup> 1969<sup>3</sup>, that described the terminal in Article 7 as an off-site infrastructure.

Brussels convention on establishment of an international fund for compensation for oil pollution damage of December 18<sup>th</sup>, 1971, defined the port terminal in Article 1 as follows: “*each large-volume storage site, that allows the reception of fuels moving by sea (seaborne fuels) including the offshore installations*”. Even if this definition was established specifically for hydrocarbon field.

As to the ILO convention No. 152, on safety and health in port handling operations, of June 25<sup>th</sup>, 1979<sup>4</sup>, it noted that port terminals are the most port installations specialized in port handling operations.

These terminological inconsistencies persisted until the issuance of the IMO handbook about loading and unloading bulk cargo<sup>5</sup> by giving the follow definition: “*terminal means any fixed or floating or moving facility equipped and intended for loading and unloading*

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<sup>3</sup> Convention de Bruxelles du 29/11/1969 sur la responsabilité civile pour les dommages dus à la pollution par hydrocarbures, disponible sur : <http://www.admin.ch/opc/fr/classified-compilation/19690222/20031101>.

<sup>4</sup> Pour plus d’information, faite retour à l’annexe au procès-verbal de la séance sénat N°218, du 2avril1965, sur le projet de loi autorisant l’approbation de la convention internationale du travail N°152 concernant la sécurité et l’hygiène du travail dans les manutentions portuaires, disponible sur : [http://www.senat.fr/leg/1984-1985/i1984\\_1985\\_0218.pdf](http://www.senat.fr/leg/1984-1985/i1984_1985_0218.pdf)

<sup>5</sup> Manuel sur le chargement et le déchargement des cargaisons solides en vrac à l’intention des représentants des terminaux, comité de la sécurité maritime, Sous-comité des MD, CSC 9<sup>ème</sup> session 11/10/2004 l’OMI.

*bulk. This term refers in particular to a part of submarine, the quay of the harbour or any other similar structure where the ship can dock”.*

That was the same view as the World Maritime Organization (IMO) Code of Shipping and Unloading Bulk Cargo 2002 adopted by European union under the provisions of instruction No./96/2001 UE establishing harmonized requirements and procedures for the safe loading and unloading of bulk carriers<sup>6</sup>.

As to the national legislations, despite the economic importance of the port terminals, However, it rarely benefited from a clear legal definition, except some that only listed the main components of these facilities<sup>7</sup>.

First, we have the example of the French seaports law<sup>8</sup> which mentioned in Article R105-2 that: *“the construction of a port terminal includes the tools and required arrangements for embarkation and disembarkation, handling and storage ship-related...”*. We can have also the example of the Moroccan Act No. 15-02 relative to ports<sup>9</sup>, in

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<sup>6</sup> Directive n° 2001/96/CE du parlement européen et du conseil du 04/12/2001, établissant des exigences et des procédures harmonisées pour le chargement et le déchargement sûrs des vraquiers, J.O.C.E n° L13/11 du 16/01/2002. Disponible sur : <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32001L0096&from=FR>.

<sup>7</sup> Robert RZENTHEL, le régime d'exploitation des terminaux portuaires, études de droit maritime à l'aube du XXIème siècle, mélanges offerts à Pierre BONASSIES, 2001 éditions Moreux, p291.

<sup>8</sup> Code des ports maritimes français, version consolidée du code au 6/12/2014, édition : 2015-03-08, disponible sur : [http://www.codes.droit.org/code/ports\\_maritimes.pdf](http://www.codes.droit.org/code/ports_maritimes.pdf)

<sup>9</sup> ظهير شريف رقم 01-05-146، صادر في 20 شوال 1426 (2005/11/23) بتنفيذ القانون رقم 15.02 المتعلق بالموانئ و بإحداث الوكالة الوطنية للموانئ و شركة استغلال الموانئ، الجريدة الرسمية رقم 5375، 3

its Art 19 that states: “*port exploitation includes: ....2- exploitation of port terminal which is a part of the port that consists of quays, flatlands...*”.

Some other national legislation went to give such a legal definition to the port terminal just like the Tunisian one, which states that: port station/terminal is a part of the port station: Part of the port is devoted to shipping, unloading and storing a certain type of cargo, containers or to receiving passengers or tourists.

The terminal includes one or more docks equipped with the necessary port equipment and areas adjacent to the pier designed to perform all operations prior to or following the shipment, unloading, boarding and disembarking of cargo, containers and passengers and cars<sup>10</sup>.

Finishing with the Algerian law, especially Algerian maritime code and complementary laws that did not contain neither the expression “*port terminal*” nor “*port station*”, except in article 7 from the Executive Decree No. 02-01 of 6 January 2002 establishing general regulations for the operation and security of ports, which lays down in particular conditions for the entry and exit of vessels. This article had considered that the port stations (terminals) are essential facilities specialized in cargo handling. And other than that,

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ذو القعدة 1426 (5ديسمبر2005)، متوفر على الموقع التالي:

<http://www.adala.justice.gov.ma/AR/Recherche.aspx>

<sup>10</sup> القانون عدد 48 لسنة 2009، مؤرخ في 08 جويلية 2009 يتعلق بإصدار مجلة الموانئ البحرية، الفصل 6، ص7.

the Algerian law did not have the slightest indication to the port terminals.

**b- The concept of “port terminals” in the doctrine:**

Only the French doctrine could save the situation by giving the port terminals several of clearly definitions, that come all on one meaning that the port terminal is a port space equipped with handling and storage equipment, assigned to one specialized operator, as well as a technical concept intended for a range of structures (docks, flatlands,...) And other equipment (forklift...) In a specific commercial area (containers, cereals, burns,...)<sup>11</sup>.

**II- Container terminals :**

Considering that the containerization is one of the most important commercial activities practiced on port, the container terminal became one of the important port terminals as well. Within this framework, we are going to talk first about the content of the container terminals, then about the different similar platforms.

**A- The concept of container terminal:**

The container terminal did not receive a clear legal definition, especially in the international agreements that only mentioned it as an example on the port terminals, however, some national laws, gave it a definition whether that was directly or indirectly. We can take here the

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<sup>11</sup> Axelle JOUVE, les terminaux à conteneurs portuaires, mémoire de Master 2 de droit maritime et des transports, université de Paul Cézanne, Aix-Marseille 3, 2007/2008, page 14.



Algerian law as an example, which did not include neither the expression “*container terminal*” nor “*container station*” but in article 07 of the decree n°02-01 establishing the general regime for the exploitation and security of ports<sup>12</sup>, which states:

*“...The priority of residence in fenced areas shall be: ... specialized facilities necessary for the handling of goods, such as warehouses, liquor cellars and container terminals,...”*

So, even if it is implicit, it's understood that the container terminal is every facility that specialized in container handling.

For the other national laws, they did not any clear definition to the container terminal except referring if as an example of the port terminals.

As for the jurisprudence, the container terminals got enough of clear definitions that all agree on one concept. As for example, the definition given by Dr. Aymen ENNAHRAOUI, as follows: “*An organization that provides a range of activities to handle and control the flow of container from ship to road, rail and inland water transport, and vice versa to achieve the best services for maritime and land transport at a minimum cost*”<sup>13</sup>.

We have also the definition of Dr. Abdelkader Hassen EL ATIR, as follow : “*These stations have become an extension of the idea of a traditional port. They have even weakened the idea, because the*

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<sup>12</sup> المرسوم التنفيذي رقم 01/02، المؤرخ في 22 شوال 1422، الموافق ل 6 يناير 2002، يحدد النظام العام لاستغلال الموانئ وأمنها، الجريدة الرسمية رقم 01، الصادرة في 6 يناير 2002، ص3.

<sup>13</sup> د.أيمن النحراوي، موانئ الحاويات الدولية، دار الفكر الجامعي، الطبعة الأولى، الاسكندرية، 2009، ص4.

*seafront port has come to mark only a water-land divide, but is simply a link in an integrated chain formed by the movement of goods from their source to their estuary or the transit centre of the container's movement from inland assembly centres. (Container terminals) as sending points to inland centres in importing countries as receiving points*<sup>14</sup>. And other definitions that followed the same path.

As for the western jurisprudence, the hole definitions given to the container terminals had all agree that this terminal is a port facility designed to provide an integrated use of berthing facilities for containership and harbour transport system for containers and their contents<sup>15</sup>.

#### **B- Distinction of container terminal from the similar facilities:**

It's true that the container terminal is an integral part of the port that specializes in container handling, however there is some similar facilities that share the same mission, especially in front the fact that the containerization was introduced about 50 years ago<sup>16</sup> exactly in 1956 by the American Malcom Mclean<sup>17</sup>, on the contrary of the container terminals that did not shown up except on August 15, 1962 when the port authority of New York and New Jersey opened the world's first

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<sup>14</sup> د. عبد القادر حسين العطير، الحاويات وأثرها في تنفيذ عقد النقل البحري، الدار الجامعية 1983، ص 105.

<sup>15</sup> Definitions of terms, available on <https://www.ppa.com.ph/sites/default/files/Definition%20of%20Terms.pdf>

<sup>16</sup> C; Bert KRUK, Michel DONNER, Freight transport for development toolkit: port & waterborne freight, word bank document, available on: <https://documents1.worldbank.org/curated/pt/874431468331826338/pdf/579670WP0Ports10Box353787B01PUBLIC1.pdf>

<sup>17</sup> Ben THOMPSON, the history of the shipping container created in 1956, available on <https://incodocs.com/blog/history-of-shipping-container-1956-world-trade/>

container port, **Elizabeth Marine Terminal**<sup>18</sup>. The question then is where the containers were handled? At first, they were handled inside the ports in areas that were named warehouse containers. Then, some other solutions had been created by port authorities such as customs warehousing and dry ports.

**1- Distinguishing container terminal from the warehouse container:**

At first, containers were received, handled and stored in bulk cargo hangar, however, the equipment and machinery there, were not adapted to the container's characteristics. That is why, an area in every port had been provided to this mission<sup>19</sup> as a solution. That area is the "warehouse container".

We can say then, that the warehouse containers is an area in port, located beside the quay of the harbour, designated for the handling and the storage of containers, both for freight or blank containers until their delivery. Comprising: a cargo area, a stowage area and area for machinery responsible for the transfer of containers.

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<sup>18</sup> Sea history, available on <https://www.panynj.gov/port/en/our-port/history.html>

<sup>19</sup> (for container's handling and storage)

## 2- Distinguishing container terminal from customs warehouse:

Customs warehouse are customs procedure under which imported goods are stored under customs control in a designated place without payment of import duties and taxes<sup>20</sup>.

The customs warehousing system has been adopted in Algeria by the Act No.98/10<sup>21</sup>. This Act amended the article 115 from the Act No. 79/07 containing the Algerian customs code<sup>22</sup>, plus the articles from 129 to 173 in which the customs warehousing system was explained in detail.

As to the difference between the container terminal and the customs warehouse, it is shown in several points as follow:

- The customs warehouse are reserved to all manner of good as for the container terminals, they reserved only for receiving containers destined for export or import.
- Regarding to the dependence, the customs warehouses are under the directorate of customs, while the containers terminals are dependent to the port authority.
- Finally, the customs warehouses are small and simple areas comparing to the container terminals that are moderns and fitted

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<sup>20</sup> Customs warehousing, available on <https://unstats.un.org/unsd/tradekb/Knowledgebase/50134/Definition-Customs-warehousing>

<sup>21</sup> القانون رقم 10/98 المؤرخ في 29 ربيع الثاني 1419 الموافق ل 22 أوت 1998، المعدل و المتمم للقانون رقم 07/79 المؤرخ في 26 شعبان 1399 الموافق ل 21 يوليو 1979 المتضمن قانون الجمارك الجزائرية، الجريدة الرسمية، العدد 61، الصادرة في 23 أوت 1998، ص 6.

<sup>22</sup> للقانون رقم 07/79 المؤرخ في 26 شعبان 1399 الموافق ل 21 يوليو 1979 المتضمن قانون الجمارك الجزائرية.

with heavy machinery and equipment, some might characterize it by “modern port”<sup>23</sup>.

### 3- Distinguishing container terminal from dry ports:

Dry ports are terminals where cargo brought over on ships is transshipped. These inland ports often include storage facilities for a massive quantity of goods and are used for customs clearance of those goods<sup>24</sup>.

The dry ports system has been adopted in Algeria by the Act No.02/11 of December 24<sup>th</sup>,2002, that amended the Act No. 79/07 containing the Algerian customs code, by means of article 67 which states: “*dry ports can be created either by port authority or by freight forwarders*”.

Regarding to dry ports organization, they are subject of the decision of Marsh 27<sup>th</sup>, 2011<sup>25</sup> stated in article 2 that the dry port is a temporary warehouse out of the harbour.

although that the dry ports are likewise reserved also for containers storage, the difference between them and the container terminals is shown in several points as follow:

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<sup>23</sup> أيمن النحراوي، المرجع السابق. ص 4.

<sup>24</sup> How dry ports shape the global supply chain, shipping process, January 3<sup>rd</sup>,2020, available on <https://container-xchange.com/blog/dry-ports/#:~:text=Dry%20ports%20help%20with%20the,the%20entire%20global%20supply%20chain>.

<sup>25</sup> مقرر مؤرخ في 22 ربيع الثاني 1432، الموافق ل 27 مارس 2011، يتعلق بالموانئ الجافة، الجريدة الرسمية، العدد 33، الصادرة في 2011/06/12.

- The container terminal is a port facility, as to the dry port, it is installed out of the port.
- Regarding to the dependence, the dry ports are under the directorate of customs, while the containers terminals are dependent to the port authority.

**Conclusion:**

To conclude, it is possible to state that both of port terminals and container terminals as new port notions had changed the exoskeleton structure of the port as well as its organization, that's why it must have in theory with some attention in the form of legal provision that will clear, govern and regulate all operations and activities enshrined in these facilities, and fixe its rules of procedure.

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