

PRESENT AND EXPECTATIONS OF THE AVDM

José Alfredo Sabatino Pizzolante
President of the AVDM

Dr. Humberto Romero-Muci, President of the Academy of Political and Social Sciences.

Past-Presidents and other members of the Venezuelan Association of Maritime Law.

Members of the Executive Committee of the AVDM for the period 2019-2022.

All invited.

We wish to begin by thanking Dr. Humberto Romero-Muci, President of this Academy, and Dr. Luis Cova Arria, distinguished maritime lawyer and member of the same, for the kind diligences in order to allow us to use their beautiful and historic building, to celebrate this modest but solemn act.

Almost two decades have passed since our old aquatic legislation was subject to revision and updating, a task in which many of those present here participated with great enthusiasm, always with the intention of giving our modest contribution to this important goal. What was achieved, if not perfect, was a great step that opened the doors for the development of a sector that although fundamental for the international trade of the republic, had not received the attention of the previous administrations. The Venezuelan Association of Maritime Law (AVDM), represented by many of its members and with its own name was present in all that process of the years 2000/2001, so it proudly could and can claim of having been one of

its main promoters. It is no coincidence that we celebrated the first decade since that significant milestone, with the publication of a wonderful work entitled *Commemorative Book X Years of Venezuelan Aquatic Legislation*. Editorial LEGIS, 2011, in which we address in a critical and constructive way this process of legislative update and its achievements up to that date.

Regrettably, the economic policies implemented throughout all these years and, especially, the political swings we have faced have not allowed the full application of many of these provisions, nor have they created the conditions for the harmonious and uniform development of a maritime law, at the service of the international trade on which we depend so much. And this is because one thing is to have an advanced legislation to promote a sector, in our case the aquatic, and quite another is to have the conditions of prosperity, economic freedom and legal certainty, essential for its application and promotion.

Difficult task, by reason of time, would be to list the obstacles that we face, so we will limit ourselves to mention only some of them.

- The exchange control regime introduced in 2003, its many variations and the extraordinary confusions and distortions that were created between the official exchange rates and those in the parallel market, as well as the law against illicit exchange rates, quickly became a dissuasive element to pursue maritime/port claims before maritime courts, especially from the perspective of foreign claimants. Thus, recoveries lost attractiveness, and many claims ended up being

settled out of courts. It is no coincidence that we have never heard of general average cases in our maritime courts, apart from seeing the "arrest" of ships in our country diminished. Even today, when the exchange rate seems to stabilize against the dollar, no one in their right mind could recommend to a foreign client to claim in Venezuela, given the uncertainty of what could happen with the foreign exchange issue in such a volatile environment.

- The lack of a true State policy aimed at realizing the benefits of the Reactivation Law of the National Merchant Marine (2000), deprived us of the possibility of having an important ocean-going fleet. It pointed to the fiscal incentives in the belief that these alone were decisive for the increase in registration tonnage, but nothing was done to modify, for example, labor and customs legislation that have such an impact on the registry of ships.
- The expropriations of Lake Maracaibo occurred in 2009, leaving aside the legality of those, would be a clear warning for investors about the risks of flagging vessels in Venezuela, highlighting the little legal security that exists to protect important investments in Venezuelan territory. This mistaken policy in the lake, together with the process of reversion in the public ports of commercial use, would end up impacting insurance coverage, as Venezuela it was included as a conditional area for the application of war premiums.

- The lack of legal security is also felt in the port area when, in mid-2009, the process of port re-centralization began, in clear contravention of the constitutional provisions, and in execution of a curious ruling of the Constitutional Chamber of the TSJ (2008). The private sector saw their assets occupied without compensation of any kind and, in some cases, returned years later in the form of scrap metal.
- The most recent customs legislative reforms (2014), do not reflect the accumulated experience, giving rise, instead, to punitive and even worse, ambiguous legislation in relation to the shipping sector, always open to the interpretation and discretion of the officials concerned to the application of sanctions.
- More recently, the decentralization of the maritime courts that took place in 2017 represented a real setback since, although it facilitated access to justice in geographical terms, it does not guarantee serious and fair decisions in any way, given the inexperience of the judges who are now handling these cases.
- To all the above, the failed attempt (2018), but always in the air, to demand in "Petros" some tariffs payable by foreign flagged vessels, in addition to the sanctions applied by the United States to said mechanism of payment, to which are added the most recent OFAC sanctions directed to PDVSA.

As we said, time does not allow us to expand on other obstacles that, nowadays, constitute barriers or adverse factors to the development and growth of our sector, but it is enough to keep in mind those previously enumerated to warn and understand how very reduced our national merchant fleet is and, of course, how severely affected our ports and marine terminals are.

Despite the legislation initially introduced in 2000 and the subsequent package of aquatic laws, of which we are so proud, the national fleet -both public and private- leaves much to be desired today. In fact, it is difficult to know to date which ships make it and what its true tonnage, for lack of official statistics available to the public and scholars of the subject. Where are the shipping companies? Where are the shipowners? Today, just like in the past, our shipments continue to be transported mainly by foreign shipowners. We have not even been able to promote cabotage services that guarantee periodic and reliable calls, as it is a fact that the cabotage of oil and related products are currently carried by vessels, mostly of foreign flag, chartered by PDVSA.

The general cargo ports and other terminals exhibit a worrying obsolescence, especially in the Orinoco. It is unfortunate to see unfinished, abandoned projects, such as the container terminal that in Puerto Cabello the Chinese would build; meanwhile, the terminal of La Guaira suffers the worst tragedy that a terminal of its type can experience, that is, the lack of containers.

It is difficult to know exactly the decline in maritime traffic currently affecting our ports -again it is not easy to locate reliable statistics- but there is the presumption that it might be at least 60% to 70%, compared to previous years. By just looking at our ports we are inclined to believe in the accuracy of these figures. In 2008, Puerto Cabello handled 809,454 TEUs. Today it is estimated, and we must have this figure as a merely referential, which this port handled in 2018, less than 100,000 TEUs. In fact, other statistical figures reveal that in the best years public ports as a whole handled 1,200,000 TEUs, against 300,441 TEUs in 2018! This, of course, responds to economic variables whose control escape the port managers, here it would be worth saying that the ports are mere victims, but the truth is that very little attention has been paid to foreign cargoes to face the drastic fall of the domestic, to the point that the legal uncertainty and the lack of adequate customs rules, caused the containers of transshipment to disappear from our ports, after which in the best of years (1999) they handled 145,000 TEUs.

To all the above we must add a disturbing rotation of staff in different public offices, and sometimes the use of curious criteria, which makes it difficult the increase of the business. Procedures that should be routine can become real complications, because as in the past many people in our sector (and I mean those who work in the public and private sector alike) live on the inefficiencies of the system.

By way of illustration, customs still debate if the movement of import containers (non-nationalized) between Venezuela ports is a cabotage or a

transit because the customs legislation qualifies the movement between national ports of national or nationalized goods as cabotage, regardless of what the Organic Law of Aquatic Spaces prescribes in this regard, preventing this from promoting cabotage; still the regional maritime courts continue to treat equally the contract of carriage and the charter parties, ignoring in some cases the clauses of foreign law and jurisdiction applicable and agreed in the latter. Events as normal as, for example, the contact between a ship and a shore crane can become an act of such complexity that they end up causing an incomprehensible delay in the departure of the ship, when these are totally normal events, for which there are insurers and guarantees.

In short, we have not learned from experience, nor do we have the necessary conditions for trade to flow for the benefit of all. In other words, our maritime law today is reduced to dealing with basic problems, with the risk of being placed now in the hands of an inexperienced domestic court, which explains why many issues end up being resolved outside the courts, or in another jurisdiction.

And what are the expectations of the AVDM? We live complex and at the same time interesting times, nobody knows clearly where this will end, but there is a generalized feeling that the changes will come, because things as they are do not guarantee reversing the difficult economic conditions we are living, much less the degree of political confrontation in which we find ourselves immersed. Maritime transport and ports will be fundamental whatever the new model be which, as expected, generates

the economic reactivation capable of setting in motion the internal production, the importation of the goods that are fundamental and the export in any of its manifestations. But we do not refer to maritime transport and ports as we know them, as we suffer them, but as those capable of offering quality services, services that can be developed within the framework of modern legislation and procedures according to such legislation, capable of guaranteeing the long-awaited security that fosters large investments. This is where the AVDM plays an important role, contributing with ideas, meeting with the different actors in the sector and proposing solutions.

However, we take the command of the AVDM in times of difficult navigation. Communication with different entities is not easy, nor is communication between ourselves. The last two Executive Committee that preceded us corresponded to important steps, which included the review of membership, organizing seminars aimed at the dissemination of this discipline, as well as publishing specialized literature, hoping we could contribute to the consolidation of the Association in the institutional, organizational and academic areas.

Enemy as we have always been of what we call the "personification of the institution", in which the latter is used to promote personal achievements, fortunately we have an Executive Committee made up of valuable and, above all, talented young professionals who in their respective areas of work, such as those of Maritime Legislation, Insurance

Affairs, Shipping Issues, Port and Customs Affairs and Publications and Events, we are sure they will give the best of themselves.

This Executive Committee 2019-2022 assumes its responsibilities in an emblematic year, as we celebrate now 200 years since the first tribunal of the Admiralty was established in our territory (1819), whose Presidency corresponded to Dr. Francisco Javier Yanes, who without doubt we can recognize him as the pioneer of maritime law studies in Venezuela. For this reason, we have proposed the creation of an Order that bears the name of that distinguished jurist, aimed at honoring all those whose contributions have helped to the development of maritime law and maritime-port business in general. On the basis of this Order "Francisco Javier Yanes" will work a commission that we have designated.

Our term also coincides with the presence of one of our associates and past president, Dr. Aurelio Fernández Concheso, in the International Maritime Committee (CMI) currently forming part of its Executive Committee, and the significant fact that the President in office of the CMI is Dr. Christopher Davis, an American lawyer but of Latin blood and friend of many of those present here, which we are sure will allow us to strengthen ties with that centenary institution. Likewise, we can say the same of the Ibero-American Institute of Maritime Law (IIDM), whose Vice-President for the Venezuelan Branch, Dr. María Grazia Blanco, is also our Director of Maritime Legislation.

These circumstances guarantee the projection of the Association not only in the country and for the country, but also in the international arena, as we wish to happen. Hope to have then promising times, as we have the conviction we will have, and let's be ready to give the best of us to the maritime law, in the pursuit of optimal services in the aquatic and port field, contributing to the better performance of our water trade.

That is our sincere commitment, and that of those who accompany us.

Thank you.

Palace of the Academies (Caracas), March 21, 2019.