

The Modernization of Panama's Maritime Legislation

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The Government of the Republic of Panama, the private sector and the lawyers involved in the practice of maritime law, have been working from the second half of the year 2005 with the aim of modernizing the Panamanian legislation applicable to navigation and maritime commerce. The work done has resulted in four bills that have been submitted to the National Assembly. These bills aim not only at modernizing, but also at organizing the legislation in force, for example, it is necessary in the case of the regulations for ship registration, which are currently scattered throughout different regulatory documents. The first three bills are related to merchant navy, ports and the procedure applicable in judicial proceedings involving maritime affairs, respectively.

The main purpose of this article is to share with you the most important aspects of the fourth maritime bill. It seeks to reform Book II of the Code of Commerce of the Republic of Panama, a legal text that was drawn up at the beginning of the past century, in a sector of fast modernization and whose reality today is very different from that of the beginning of the 20th Century. This Book II contained the conclusions from the different international congresses aiming at unifying Maritime Law at that time (20th & 21st Centuries), especially that of Genova from 1892 and Paris from 1900.

The sub-committee in charge of preparing the Project to reform Book II of the Code of Commerce, named "Of Maritime Commerce", was installed in September 8th of 2005 and lawyers specialized in Maritime affairs and advisers from the Maritime Authority of Panama participated in it. The task was not easy, since the topics concerned were diverse with the particularity of taking into consideration the international scope of Maritime Law. Therefore, the quantity of agreements and laws from other countries that had to be modified was important; without it, it would not have been possible to modify the substantive law of Panama, since the activities of maritime navigation and commerce have always been regulated considering the possibility of controversies involving stakeholders from different countries. For this reason, it is not possible to legislate maritime matters without knowing the international conventions related to it, that have been the product of hard work in order to unify the criteria, applying the general principles, purposes and practices of maritime law to navigation.

The sub-committee mentioned above received advice from the renowned professor on maritime law from Tulane Law School, Louisiana, United States, Robert Force, who not only is the Director of Postgraduate Studies on Maritime Law at that university and a renowned expert on Maritime Law at the international level, but has also participated in the modernization of the substantive law on maritime matters in other countries and has been mentor to an important number of Panamanian lawyers. He was considered the best suitable adviser due to his close connection with Panama and his undoubtedly expertise in maritime affairs. His contribution, especially in contractual matters, was essential for the Project.

The debates that took place within the 58 meetings attended by the sub-committee in a period of approximately 14 months were very interesting and in many occasions, passionate. All this contributed to the final result of the work that was carried out, in a disinterested way, by the members of the sub-committee.

Regarding contractual matters, for the purposes of goods transportation by sea, the United States' Carriage of Goods by Sea Act from 1936 (COGSA), the Hague-Visby Rules and the draft on transportation law prepared by the United Nations Commission on International Trade Law

(UNCITRAL) were taken as basis, since they represent the rules most recognized and used at the international level. The Hamburg Rules, that constitute another international convention adopted by fewer countries, were used in a limited way and contributed to analyze the rules from another perspective.

With respect to affreightment contracts, it is the volition of the parties what prevails in the bill. The articles that have been included in this bill are supplementary, that is, they apply only when the parties have not reached an agreement on the controversial matter or have not chosen a contract format to which Panamanian laws are applicable

One of the main contributions of the bill to the current Panamanian regulation is the inclusion of articles to regulate the contract of multi-modal transportation, unavoidable topic due to the reality of goods transportation at the international level in today's world. Other special dispositions regarding the towing contract, non-existent in our current law, were also included, taking into consideration customs, common usage and practices in these matters.

Among the other laws and conventions that were used to generate the bill's text to modernize Book II of the Code of Commerce, we can mention:

The use of the most relevant international conventions at the international level and those adopted by a greater number of countries in order to draw up the bill, all related to the most important topics in the maritime field, such as collision, breakdowns, transport of passengers, limited responsibility of the ship-owner and salvage. The laws from other countries were taken into consideration, not with regard to the specific country that adopted them, but rather because they are modern and recent legislations that resulted from similar exercises to the ones carried out by the sub-committee mentioned above.

It is important to emphasize that Book II of the Code of Commerce was not modified completely. It contains dispositions that remain relevant for today's reality, due to the general principles that have always governed in Navigation Laws, as well as the usages and practices of maritime commerce since immemorial times. Also, the rules regarding the statute of limitation, maritime liens and maritime insurance were not practically modified, with the aim of maintaining legal certainty and accordance with the wealth of jurisprudence on this matter that exists in our country, as well as with the usage and local practices.

However, the terminology was updated all along Book II in order to make it uniform with the current trends. Additionally, dispositions completely outdated by today's reality were eliminated and articles to regulate matters not contemplated in our current regulation were included. The language of the project is technologically neutral, that is, the dispositions can be applied without difficulties, regardless of the present technological advances.

The Panama Canal expansion is one of the most important challenges that Panama faces as a nation. However, it seems incongruous to modernize the Canal thinking about the future and at the same time, having a legislation for navigation and maritime commerce that belongs to the past. Every maritime country must have a legislation in accordance with the current usages and practices of maritime commerce, as well as with the existing international rules regarding this matter. The Republic of Panama is imminently a maritime country and with the approval of the bill that modernizes Book II of the Code of Commerce, a huge step would be taken towards that direction.