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# General Average, Compulsory Contributions and Castilian Normative Practice in the Southern Low Countries (Sixteenth Century)

*Gijs Dreijer*

This essay focuses on the development of General Average (GA) and varieties of so-called maritime averages (hereafter simply Averages) during the sixteenth century in Bruges and Antwerp, the two major commercial cities

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of the Southern Low Countries.<sup>1</sup> Whereas historians have paid abundant attention to the development of marine insurance in the two cities, other tools of maritime risk management have been virtually neglected.<sup>2</sup> GA was nevertheless a major issue for both local and foreign merchants residing in the Low Countries and was widely used by these groups, as were other varieties of Averages. Resulting from a combination of technological change, more complex trading arrangements, the presence of foreign merchant communities (the so-called *nationes*) and increasing legislative activity by various governmental organisations in the Low Countries, normative rules on GA and other Averages underwent major changes during the sixteenth century. This essay builds on the literature on the history of commercial and maritime law by studying the development of GA and other Averages in the Southern Low Countries during

<sup>1</sup> See for syntheses of the economic history of Bruges and Antwerp: A. Brown and J. Dumolyn eds., *Medieval Bruges, c. 850–c. 1550* (Cambridge 2018); J. Puttevels, *Merchants and Trading in the Sixteenth Century: The Golden Age of Antwerp* (London 2015); Idem, P. Stabel and B. Verbist, 'Een eenduidig pad van modernisering van het handelsverkeer: van het liberale Brugge naar het geregeerde Antwerpen?', in B. Blondé ed., *Overheid en economie: geschiedenissen van een spanningsveld* (Antwerp 2014), 39–54.

<sup>2</sup> An exception is D. Heirbaut and D. De ruysscher, 'Belgium', in P. Hellwege ed., *Comparative History of Insurance Law in Europe: A Research Agenda* (Berlin 2018), 89–132, there 110–115. See for marine insurance: C. H. Reatz, 'Ordonnances du duc d'Albe sur les assurances maritimes de 1569, 1570, 1571, avec un précis de l'histoire du droit d'assurance maritime dans les Pays-Bas', *Compte-rendu des séances de la commission royale d'histoire*, Deuxième Série, 5 (1878): 41–118; C. Verlinden, 'De zeeverzekeringen der Spaanse kooplui in de Nederlanden gedurende de XVIe eeuw', *Bijdragen voor de Geschiedenis der Nederlanden*, 4 (1948): 191–216; P. Génard, 'Jean-Baptiste Ferruffini et les assurances maritimes à Anvers au XVIe siècle', *Bulletin de la Société de géographie d'Anvers*, 7 (1882): 193–268; L. Couvreur, 'Recht en zeeverzekeringspraktijk in de 17<sup>e</sup> en 18<sup>e</sup> eeuwen', *Tijdschrift voor Rechtsgeschiedenis*, 16, 2 (1939): 184–214; C. Wijffels, 'Een Antwerpse zeeverzekeringsspolis uit het jaar 1557', *Handelingen van de Koninklijke Commissie voor Geschiedenis*, 63, 1–2 (1948): 95–103; H. L. V. De Grootte, *De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw* (Antwerp 1975); J. P. Van Niekerk, *The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800* (two volumes) (Hilversum 1998); J. Puttevels and M. Deloof, 'Marketing and Pricing Risk in Marine Insurance in Sixteenth-Century Antwerp', *The Journal of Economic History*, 77/3 (2017): 796–837; D. De ruysscher, 'Antwerp 1490–1590: Insurance and Speculation', in A. P. Leonard ed., *Marine Insurance: Origins and Institutions* (Basingstoke 2016), 79–105; Idem, 'Van kade naar stadhuis: informatiewisseling, fraudebestrijding en gereglementeerde innovatie in Antwerpse zeeverzekeringen (ca. 1550–ca. 1700)', *Tijdschrift voor Geschiedenis*, 125/3 (2012): 366–383; Idem and J. Puttevels, 'The Art of Compromise: Legislative Deliberations on Marine Insurance Institutions in Antwerp (c. 1550–c. 1570)', *BMGN-Low Countries Historical Review* 130/3 (2015): 25–49.

this period.<sup>3</sup> This gives valuable insights into maritime risk management and forms a central principle in analyses of transnational maritime law.<sup>4</sup>

Given its reach throughout Europe, GA was what Ron Harris conceptualises as a ‘migratory institution’.<sup>5</sup> From a legal perspective, GA moreover serves as an excellent case study for the interplay between various legal cultures, as merchants from England, the Hanseatic cities, France and the Iberian and Italian Peninsulas were present in the Low Countries from the thirteenth century onwards.<sup>6</sup> Iberian, and particularly Castilian, merchants were especially influential in the development of GA and other varieties of Averages during this period in the Southern Low Countries.<sup>7</sup> This essay therefore investigates the extent to which Castilian merchants were able to influence the normative framework and legal practice of GA and other Averages. The essay does so by studying both formal written legal sources and evidence from legal practice. The formal sources include *Ordonnances* by the Habsburg sovereigns regarding maritime law (primarily those of 1551 and 1563), Quinten Weytsen’s 1564 legal treatise on GA, the *Hordenanzas* compiled by the Castilian *natio* in Bruges (1569), and Antwerp municipal law of 1608 (the so-called *Compilatae*).<sup>8</sup> The historical evidence from legal practice comes

<sup>3</sup> See for example: V. Piergiovanni ed., *From Lex Mercatoria to Commercial Law* (Berlin 2005). A more recent example: H. Pihlajamäki, A. Cordes, S. Dauchy and D. De ruysscher eds., *Understanding the Sources of Early Modern and Modern Commercial Law: Courts, Statutes, Contracts, and Legal Scholarship* (Leiden/Boston 2018).

<sup>4</sup> J. A. Kruit, ‘General Average—General Principle Plus Varying Practical Application equals Uniformity?’, *Journal of International Maritime Law*, 21 (2015): 190–202, there 201–202.

<sup>5</sup> See Ron Harris contribution in this volume.

<sup>6</sup> See for example: P. Stabel, ‘Kooplieden in de stad’, in A. Vandewalle ed., *Hanzekooplui en Medicibankiers: Brugge, wisselmarkt van Europese culturen* (Oostkamp 2002), 85–96; Puttevils, *Merchants and Trading*, 19–48.

<sup>7</sup> For the Iberian *nationes* in the Low Countries: J. Maréchal, ‘La colonie espagnole de Bruges du XIVe au XVIe siècle’, *Revue du Nord*, 35, 137 (1953): 5–40, there 7–11. For a general overview of foreign merchant communities in the Low Countries: B. Blondé, O. C. Gelderblom and P. Stabel, ‘Foreign Merchant Communities in Bruges, Antwerp and Amsterdam’, in D. Calabi and S. T. Christensen eds., *Cultural Exchange in Early Modern Europe*, Volume 2: *Cities and Cultural Exchange in Europe, 1400–1700* (Cambridge 2007), 154–174. See for the development of Averages in the Iberian context before 1550 see Ana Maria Rivera Medina contribution in this volume.

<sup>8</sup> See for the *Costuymen*: B. Van Hofstraeten, *Juridisch humanisme en costumiere acculturatie: Inhouds- en vormbepalende factoren van de Antwerpse Consuetudines Compilatae*

from the Castilian consular court, the Antwerp municipal court, the Great Council of Mechlin, the Superior Court (*Grote Raad*) of the Low Countries and notarial archives.<sup>9</sup> Although available sources are, indeed, somewhat skewed towards Castilian merchants, the evidence clearly points towards their enduring influence on the normative practice of both GA and other Averages in the Southern Low Countries.

## AVERAGES IN THE LOW COUNTRIES: TYPES AND VARIETIES

In the sixteenth-century Low Countries, merchants had various opportunities to deal with risks and costs within the interest community that underlay a maritime venture (see Fig. 1 and Table 1).<sup>10</sup> First, merchants could deal with risks, the *anticipated*, foreseeable hazards that could befall a maritime venture.<sup>11</sup> They could do so by transferring risk to a third party via insurance before the venture on an individual basis, or by sharing the damages after a voyage by means of GA.<sup>12</sup> Antwerp also allowed merchants to recover GA losses from insurers from the 1540s onwards.<sup>13</sup>

(1608) *en het Gelderse Land- en Stadrecht* (1620) *van het Roermondse Overkwartier* (Maastricht 2008); G. De Longé, *Coutumes du Pays et Duché de Brabant. Quartier d'Anvers, Coutumes de la ville d'Anvers* (Vols. 3&4) (Brussels 1870–1874). For the *Ordonnances*: J.-M. Pardessus, *Collection de lois, maritimes antérieures au XVIIIe siècle* (Tomé IV) (Paris 1828). For the *Hordenanzas*: C. Verlinden, 'Código de seguros marítimos según la costumbre de Amberes: promulgado por le Consulado Español de Brujas en 1569', in *Sección Española del Instituto de Investigaciones Históricas* (Buenos Aires 1947), 146–193. See for Weytsen: Q. Weytsen, *Een Tractaet van Avarien* (Harlingen: L. Vlasboem 1646).

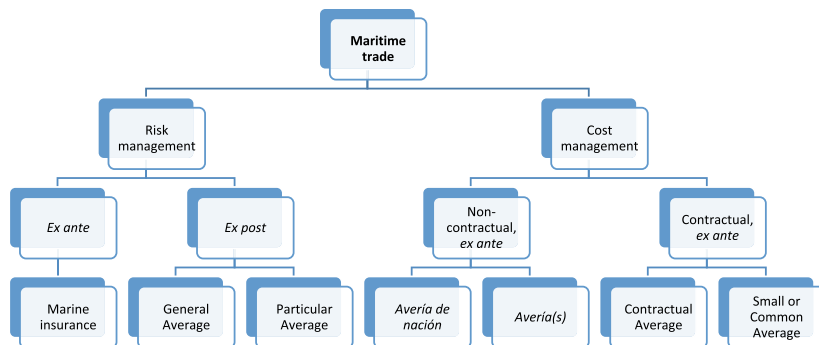
<sup>9</sup> For the Castilian consular court: Municipal Archives of Bruges (hereafter BE-SAB), Oud Archief, Spaanse Natie, inv. 304, V. A., *Libro de pleytos ordinarios*. For the Great Council: Belgian State Archives, Brussels (hereafter BE-ARB), Grote Raad der Nederlanden te Mechelen, *Processen in eerste aanleg*, inv. T 138 & *Registers*, inv. T 107. For the Antwerp court cases: Municipal Archives of Antwerp (hereafter BE-SAA), Vonnisboeken, inv. V#1241–#1256. For notarial archives: BE-SAA, Notariaat Streyt, inv. N#1232 & N#1233; Notariaat's-Hertoghen, inv. N#2070–N#2078.

<sup>10</sup> The interest community is the 'specific community of loss and risk that existed between the various interests on the same ship, engaged in the same common venture', in Van Niekerk, *The Development*, 61–62.

<sup>11</sup> Following Frank Knight's distinction between risk and uncertainty: F. H. Knight, *Risk, Uncertainty, and Profit* (Boston/New York 1921), 247–253.

<sup>12</sup> Van Niekerk, *The Development*, 63 and 76–80.

<sup>13</sup> See: BE-SAA, *Judgement Books*, V1241, fol. 283r–v, for the first known case where this principle was held up.



**Fig. 1** Varieties of Averages in the Low Countries (fifteenth–sixteenth centuries)

Another option was that a loss fell to the merchant himself, in which there was Particular Average (PA), which simply denoted damages borne by the interested party itself, a distinction with GA made particularly for insurers as they had to distinguish between the two to determine their contribution to damages, clarifying liability.<sup>14</sup>

Second, there were various cost management tools, which in the Low Countries itself often took the form of a contractual obligation for merchants to contribute *pro rata* to the operational costs of the venture, such as ordinary pilotage and port duties, to be paid upon safe arrival as the costs could vary.<sup>15</sup> The Castilian and Biscayer merchants in the Low Countries also developed two cost management tools, the so-called *avería de nación* and the *avería(s)*, both non-contractual compulsory contributions for maritime protection costs, which in turn also lowered risk.<sup>16</sup> The former also covered the common costs of the *natio* such as political

<sup>14</sup> Van Niekerk, *The Development*, 64.

<sup>15</sup> This included Small or Common Average (SA) and Contractual Average (CA). Both were contractual obligations to contribute, on this Van Niekerk, *The Development*, 63–65. Moreover, it contained the Castilian and Biscayer *flete y averías*, which was administered by the *natio*. On this see: R. Fagel, *De Hispano-Vlaamse wereld: de contacten tussen Spanjaarden en Nederlanders 1496–1555* (Nijmegen 1996), 129–138 and 484. This differed slightly from SA and CA in that it was used to drive down costs for the entire *natio* rather than for one venture.

<sup>16</sup> Gilliodts-Van Severen, *Espagne*, 595–596; Fagel, *De Hispano-Vlaamse wereld*, 419.

**Table 1** Definitions of varieties of Averages in the Low Countries (sixteenth century)

<i>Variety</i>	<i>Definition</i>	<i>Source(s)</i>
General Average	Deliberate damage for the common benefit, shared by all in the interest community	1551 <i>Ordonnance</i> ; Van Niekerk, <i>The Development</i> , 63
Small or Common Average	Ordinary operational costs of the venture (e.g. pilotage)	1551 <i>Ordonnance</i> ; Van Niekerk, <i>The Development</i> , 63
Particular Average	Accidental damage, borne by the particular interest involved	1608 <i>Compilatae</i> ; Van Niekerk, <i>The Development</i> , 63–64
Contractual Average	Division of payment of Averages (SA & PA) in freight contract	Van Niekerk, <i>The Development</i> , 64–65
<i>Avería de nación</i>	Membership fee and non-contractual, <i>ex ante</i> compulsory contribution of the <i>natio</i> , partly used for maritime protection costs (artillery & convoy ships). False friends: <i>massaria</i> (Genoese) & <i>direito da nação</i> (Portuguese)	Gilliodts-Van Severen, <i>Espagne</i> , 595–596; Goris, <i>Étude</i> , 171–172; Guiard y Laurauri, <i>Historia</i> , 86
<i>Avería(s)</i>	Non-contractual, <i>ex ante</i> compulsory contribution for protection costs on the Castile-Low Countries route, probably levied from around 1553 onwards	Fagel, <i>De Hispano-Vlaamse wereld</i> , 419; Basas Fernández, <i>El Consulado</i> , 168–171; Céspedes del Castillo, ‘La avería’, 524; Talavan, ‘La avería’, 133 & 142; García Garralón, ‘The Nautical Republic’, 10–11

representation costs and devotional expenses, whilst the latter was specifically established for the Bruges-Low Countries trade. It is important note that this differed from the other Southern European *nationes* such as the Genoese, who did levy a compulsory contribution for common expenses but not for maritime protection costs, a distinction that has not yet been made in the sparse literature.<sup>17</sup>

<sup>17</sup> See Gilliodts-Van Severen, *Espagne*, 595–596; Goris, *Étude*, 171–172. See Section IV for more details.

## GENERAL AVERAGE IN THE LOW COUNTRIES AND CASTILIAN NORMATIVE PRACTICE

Both the legal development and mercantile use of GA and other varieties of Averages accelerated during the sixteenth century. Based on the sources, it may come as no surprise that GA has attracted most attention, as most sources of law (e.g. royal legislation and Antwerp municipal law) dealt primarily with it. Roman law and medieval compilations of maritime law, such as the *Rôles d'Oléron* (c. 1220), primarily contained jettison and mast cutting as the causes for a GA contribution. Edda Frankot has already concluded that local customs regarding GA varied significantly in the North Sea area, for example, regarding the liability of the shipmaster.<sup>18</sup> The principle behind GA was known from a limited number of sources, primarily Roman law and medieval compilations such as the *Rôles d'Oléron*, various Italian municipal laws and the Valencian-Barcelonan *Consolat de Mar* (c. 1435).<sup>19</sup> A fourteenth-century Dutch translation of the *Rôles* used in Bruges was known as the *Vonnisse van Damme*, although different translations existed throughout the Low Countries.<sup>20</sup> In the northern Low Countries, the so-called *Ordonnantie* was published in the early fifteenth century to regulate maritime trade in the Zuiderzee area around Amsterdam, concerning some new rules including extraordinary pilotage as a cause for GA.<sup>21</sup>

<sup>18</sup> E. Frankot, *'Of Laws of Ships and Shipmen': Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh 2012), 108–109.

<sup>19</sup> For the *Consolat de Mar* and the Italian compilations see: O. A. Constable, 'The Problem of Jettison in Medieval Mediterranean Maritime Law', *Journal of Medieval History*, 20/3 (1994): 207–220; K.-F. Krieger, 'Die Entwicklung des Seerechts im Mittelmeerraum von der Antike bis zum Consolat de Mar', *German Yearbook of International Law*, 16 (1973): 179–208. For the *Rôles d'Oléron* see T. Kiesselbach, 'Der Ursprung der rôles d'Oléron und des Seerechts von Damme', *Hansische Geschichtsblätter*, 12 (1906): 1–60; K.-F. Krieger, *Ursprung und Wurzeln der Rôles d'Oléron* (Cologne/Vienna 1970).

<sup>20</sup> D. Van den Aauweele, 'Zeerecht', in G. Asaert et al., *Maritieme Geschiedenis der Nederlanden*, 4 vols. (Bussum 1976–1978) 1: 220–226, there 221–223; Idem, 'Het Brugse zeerecht, schakel in een supranationaal geheel', in V. Vermeersch ed., *Brugge en de zee: van Bryggia tot Zeebrugge* (Antwerp 1982), 145–155, there 147–150.

<sup>21</sup> G. Landwehr, 'Seerecht im Hanseraum im 15. Jahrhundert: die Hanzerezesse, die Vonnisse von Damme und die Ordinancie der Zuidersee im Flandrischen Copiar Nr.9', in C. Jahnke ed., *Seerecht im Hanseraum des 15. Jahrhunderts. Edition und Kommentar zur Flandrischen Copiar Nr. 9* (Lübeck 2003), 95–117, there 106–108.

In the sixteenth-century Low Countries, a combination of the *Vonnisse*, the *Ordonnantie* and Lübeck municipal law known as the Wisby Laws, compiled by Hanseatic merchants in the Low Countries, became especially influential as the ‘customary’ maritime law of the region.<sup>22</sup> The most important development in these new compilations was that some costs to prevent greater damages were included as a cause for a GA contribution (e.g. extraordinary pilotage or voluntarily running aground, known as *strangen*), rather than only direct damages.<sup>23</sup>

In the sixteenth-century Low Countries, various influences and traditions on GA incentivised its development.<sup>24</sup> Since various sources of legal norms (e.g. customs, compilations of maritime law, municipal law and royal legislation) overlapped and existed next to each other, this was not necessarily a smooth process. Indeed, this legal-pluralistic nature of legal norms initiated lengthy negotiations and full-scale harmonisation was never attained. Yet the central government was remarkably successful in synthesising existing normative frameworks into a set of rules on GA during this period.<sup>25</sup> Whereas the medieval compilations primarily included rules of thumb (e.g. ‘jettison leads to a GA contribution’), Charles V’s 1551 *Ordonnance* and Antwerp municipal law, particularly its *Compilatae* of 1608, provided proper definitions of the instrument, providing legal security.<sup>26</sup> Moreover, the increased use of insurance also

<sup>22</sup> Frankot, ‘*Of Laws of Ships*’, 86–88; G. Landwehr, *Das Seerecht der Hanse (1365–1614): vom Schiffordnungsrecht zum Seehandelsrecht* (Hamburg 2003).

<sup>23</sup> Frankot, ‘*Of Laws of Ships*’, 30–32.

<sup>24</sup> For example, the Castilian tradition and the Hanseatic tradition, for the latter: G. Landwehr, *Die Haverei in den mittelalterlichen deutschen Seerechtsquellen* (Hamburg 1985).

<sup>25</sup> In marked contrast to the negotiations over the use of marine insurance, on this see: De ruysscher & Puttevils, ‘The Art of Compromise’. For the negotiations over the 1550 and 1551 *Ordonnances*: L. H. J. Sicking, ‘Les marchands espagnols et portugais aux Pays-Bas et la navigation à l’époque de Charles Quint: gestion des risques et législation’, *Publications du Centre Européen d’Etudes Bourguignonnes*, 51 (2011): 253–274; Idem, ‘Los grupos de intereses marítimos de la Península Ibérica en la ciudad de Amberes: la gestión de riesgos y la navegación en el siglo XVI’, in J. A. S. Telechea, M. Bochacha and A. A. Andrade eds., *Gentes de mar en la ciudad Atlántica medieval* (Logroño 2012), 167–199.

<sup>26</sup> D. De ruysscher, ‘Maxims, Principles and Legal Change: Maritime Law in Merchant and Legal Culture (Low Countries, 16th Century)’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung*, 138, 1 (2021): 260–275.

needed to be reflected in formal law, especially as Southern European financiers dominated the insurance industry in Antwerp around 1550.<sup>27</sup>

GA played a major role in larger questions over the protection of the important Iberian-Low Countries trade, and hence also concerned the other Iberian merchant communities. Around 1550, threats from French and Scottish pirates obliged the Habsburg ruler Charles V to act. He issued two *Ordonnances* on the subject in 1550 and 1551.<sup>28</sup> Charles V and his civil servant Cornelis de Schepper preferred better-equipped ships to insurance to combat pirate attacks, seeing insurance as a speculative tool that did nothing to protect ships. De Schepper made various proposals to that goal, such as obligatory artillery and a tax to pay for convoy ships.<sup>29</sup> The 1551 *Ordonnance* was the first time GA (*grootte avarye*) was actually defined. Article 41 of the *Ordonnance* stated that GA could be declared when damages were incurred to save ship and cargo, shared by means of the ‘customs of the sea’ (*costuymen vander zee*).<sup>30</sup> SA (*gemeyne avarye*) was also defined in this *Ordonnance* as the common operational expenses associated with the venture.<sup>31</sup> Relentless lobbying by Castilian and Portuguese merchants, who preferred the use of insurance and GA as a solution over forced taxes, led to the inclusion of costs associated with fighting off pirate attacks in GA, for example costs associated with fighting off pirates were allowed in GA, such as the costs for treating a wounded seaman.<sup>32</sup> Since Roman law already allowed ransoms paid to pirates to save the voyage as a cause for a contribution by all merchants involved in the venture, this made it easier for the central government to accept this premise.<sup>33</sup> Moreover, the costs arising from pirate attacks

<sup>27</sup> Van Niekerk, *The Development*, 76–80; Puttevels and Deloof, ‘Marketing and Pricing Risk’.

<sup>28</sup> L. H. J. Sicking, *Neptune and the Netherlands: State, Economy, and War at Sea in the Renaissance* (Leiden/Boston 2004), 242–279.

<sup>29</sup> *Ibidem*, 247–253.

<sup>30</sup> 1551 *Ordonnance*, Art. 41. The 1551 *Ordonnance* can be found in J. Lameere ed., *Recueil des ordonnances des Pays-Bas. Deuxième série, 1506–1700* (Vol. 6) (Brussels 1922), 163–177; see also: Kruit, ‘General Average’, 198–199.

<sup>31</sup> 1551 *Ordonnance*, Art. 42.

<sup>32</sup> For the exact arguments employed: Sicking, ‘Les marchands espagnols et portugais’; *Idem*, ‘Los grupos de intereses marítimos’; 1551 *Ordonnance*, Art. 28.

<sup>33</sup> This is stated in Digest 14.2.2.3. The edition used here is: J. S. Spruit et al. eds., *Corpus Iuris Civilis: tekst en vertaling* (vol. III, *Digesten 11–24*) (The Hague 1996).

were not insurable under the 1551 *Ordonnance*, making GA an attractive option for the central government to deal with the risks.

Charles V's son Philip II elaborated on the 1551 *Ordonnance* by promulgating the 1563 *Ordonnance*, which regulated all aspects of maritime law including GA and insurance. It stated that GA could be primarily declared after one of the following three acts: jettison (*werpen*), cutting mast and/or ropes (*kerven*) or voluntarily running aground (*strangen*), although it contained multiple additional acts such as extraordinary pilotage, similar to the medieval compilations such as the Amsterdam *Ordonnantie*.<sup>34</sup> Quintin Weytsen's 1564 legal treatise, which acted as an intellectual justification for the 1563 *Ordonnance*, stated the same.<sup>35</sup> This all followed common local practice, as did other rules, for example, on the negligence of the shipmaster. Building on the 1551 *Ordonnance*, it allowed expenses for the funeral of a dead sailor fighting off pirates, and the remainder of his wages to be paid to his widow under GA.<sup>36</sup> Weytsen even stated that voluntary payments or partial losses to pirates after negotiations (i.e. to diminish greater losses) could be brought into GA.<sup>37</sup> Again, piracy played a major role in this *Ordonnance*. In sixteenth-century Antwerp, it was generally possible to insure against cargo losses by pirate attacks, a development the central government unsuccessfully resisted.<sup>38</sup>

Given the 'composite monarchy' of the Habsburgs, it may be no surprise that some of these developments were inspired by Castilian legislation or normative practice.<sup>39</sup> Even whilst the 1563 *Ordonnance* did not state anything about the liability of insurers to pay for GA claims, Castilian merchants pushed for the acceptance of this principle in the Low Countries. Following their successful lobbying activities regarding the 1550 and 1551 *Ordonnances*, the Castilian *natio* published a collection

<sup>34</sup> 1563 *Ordonnance*, Title IV, Art. 9. The 1563 *Ordonnance* can be found in J.-M. Pardessus, *Collection de lois, maritimes antérieures au XVIIIe siècle* (Vol. IV) (Paris 1837), 64–102.

<sup>35</sup> Weytsen, *Een Tractaet van Avarien*, 2–3.

<sup>36</sup> *Ibidem*, 6–7; 1563 *Ordonnance*, Title IV, Art. 2.

<sup>37</sup> *Ibidem*, 6.

<sup>38</sup> D. De ruysscher, "Naer het Romeinsch recht alsmede den stiel mercantiel". *Handel en recht in de Antwerpse rechtbank (16<sup>e</sup>-17<sup>e</sup> eeuw)* (Kortrijk 2009), 286–287.

<sup>39</sup> G. Rossi, *Insurance in Elizabethan England: the London Code* (Cambridge 2016), 148–157.

of rules on Castilian insurance and GA customs, the so-called *Hordenanzas* (1569). It was published in the wake of the 1569 *Ordonnance* of Philip II and his representative the Duke of Alba which prohibited insurance.<sup>40</sup> Charles Verlinden, who published a transcription of the French and Castilian versions, accepted the claim made in the *Hordenanzas* that it followed the customs of the Antwerp and London stock exchanges, but this claim has been sharply disputed by more recent works.<sup>41</sup> For example, Guido Rossi has pointed to its strong similarities with the 1538 insurance *Ordonnance* of the Burgos *Consulado*, as well as legislation for the Seville *Casa de la Contratación* from 1556 and the 1560 *Ordonnance* of the Bilbao *Consulado*.<sup>42</sup>

The argument that these ‘customs’ originated at the Antwerp bourse was most likely an effort to gain legitimacy rather than the actual truth. Yet the *Hordenanzas* proved very influential in the Low Countries, for example, in Antwerp municipal law. On the subject of GA, the major contribution of the *Hordenanzas* was to acknowledge the liability of insurers to pay for jettisoned, insured cargo.<sup>43</sup> This was both the case when an insured good was jettisoned and the insurer had to pay for the remainder of the damage after the merchant was reimbursed by the others in the interest community by means of GA, and when insured cargo was used to determine the GA contribution towards another persons’ loss.<sup>44</sup> Antwerp legal practice already accepted this principle in the late 1540s.<sup>45</sup> It is likely that given the Castilian influence in Antwerp this idea was drawn from Castilian normative practice, although we cannot rule out

<sup>40</sup> See for the tense negotiations over insurance: De ruysscher & Puttevils, ‘The Art of Compromise’.

<sup>41</sup> Verlinden, ‘Código de seguros marítimos’; De Groote, *De zeeverzekering*, 52–58; S. M. Coronas González, ‘La Ordenanza de seguros marítimos del Consulado de la Nación de España en Brujas’, *Anuario de Historia del Derecho español*, 54 (1984): 385–407, there 390–391, Footnote 18.

<sup>42</sup> Rossi, *Insurance in Elizabethan England*, 151–153. See also Heirbaut & De ruysscher, ‘Belgium’, 122–123.

<sup>43</sup> 1569 *Hordenanzas*, Title X, Art. 6. The text is in: Verlinden, ‘Código de seguros marítimos’.

<sup>44</sup> Van Niekerk, *The Development*, 76–80.

<sup>45</sup> See: BE-SAA, *Judgement Books*, V1241, fol. 283r–v, for the first known case where this principle was held up.

Italian influences either, as in most medieval Italian city-states insurers were also held liable for GA claims.<sup>46</sup>

Antwerp published four versions of the so-called *Costuymen* (compilations of municipal customs) during the sixteenth and early seventeenth century (1548, 1570, 1582 and 1608).<sup>47</sup> The latter two are regarded as important legal milestones, with the 1608 *Compilatae* containing some 500 articles on maritime law, including on GA. The 1608 *Compilatae* followed the 1563 *Ordonnance* on most matters regarding GA, including the costs for fighting off pirates as a cause for contribution; on the liability of the insurer for GA claims, it closely resembled the *Ordenanzas*.<sup>48</sup> It also contained new rules, however, for example, the tripartite distinction between GA, SA and PA.<sup>49</sup> PA was, following the growing importance of insurers in sixteenth-century Antwerp, introduced to clarify the liability of insurers when damages befell a venture.<sup>50</sup> In the *Compilatae*, cargo given up in negotiations with pirates could be cause for a contribution, echoing Weytsen.<sup>51</sup>

As a result, the *Compilatae* should be considered as a culmination of developments that took place in the sixteenth-century Low Countries, offering an expansive view of what GA constituted. A significant number of these innovations were inspired by Castilian (and broader Iberian) normative practice, differing in one important respect: the liability of the shipmaster. In the Low Countries, the trends bent towards a strict liability of the shipmaster, which could for example be observed in the

<sup>46</sup> A. Iodice and L. Piccinno, ‘Managing Shipping Risk: General Average and Marine Insurance in Early Modern Genoa’, in: P. Hellwege and G. Rossi eds., *Maritime Risk Management: Essays on the History of Marine Insurance, General Average and Sea Loan* (Berlin 2021), 83–110, there 88–93.

<sup>47</sup> For the background to this ‘homologation’ process see: J. Gillissen, ‘Phases de la codification et de l’homologation des coutumes dans les XVII provinces des Pays-Bas’, *Tijdschrift voor Rechtsgeschiedenis*, 18 (1950): 36–67. For Antwerp process: De ruysscher, ‘*Naer het Romeinsch recht*’, 48–68.

<sup>48</sup> Van Hofstraeten, *Juridisch humanisme*, 112–117.

<sup>49</sup> 1608 *Compilatae*, Title VIII, Art. 66. The text of the *Compilatae* can be found in G. De Longé, *Coutumes de la ville d’Anvers* (Vols. 3/4); Part 4 of the *Compilatae* deals with maritime law. See Vol. 4, Part 4, Title VIII (86–171) for the chapters on GA and bottomry & Vol. 4, Part 4, Title XI (pp. 198–333) for the titles on insurance.

<sup>50</sup> Van Niekerk, *The Development*, 63–64.

<sup>51</sup> 1608 *Compilatae*, Title VIII, Art. 99.

**Table 2** GA contributions paid by Juan Henriquez (1562–1563)

<i>Henriquez as underwriter of marine insurance</i>	<i>£ Fl. gr</i>
Marine insurance premiums	763
Payment of Averages	–112
Payment of total losses	–302
Total profit	349

Source Puttevels and Deloof, ‘Marketing and Pricing Risk’, 824

1563 *Ordonnance*.<sup>52</sup> The Antwerp *Compilatae* of 1608 contained similar clauses, for example, noting that merchants could choose how a shipmaster had to contribute to the GA declaration (via his freight, the most common option, or via the value of the ship, in case he owned the ship).<sup>53</sup> In Castile, the liability of the master was looser since the master could choose how he should contribute to GA.<sup>54</sup> This was a clause already found in the *Consolat de Mar*.<sup>55</sup>

Evidence from legal practice and notarial records confirms that Castilian normative practice was already influential in Antwerp mercantile practice often long before a formal source of law incorporated the rule. The most important example was the insurability of GA contributions, which was, as noted above, drawn from Castilian legislation such as the 1538 Burgos *Ordonnance*. Evidence for example comes from the ledgers of the Antwerp-based Castilian insurer Juan Henriquez from 1562 to 1563. Henriquez set aside some 15% of premiums paid to him to pay for GA claims (see Table 2).<sup>56</sup> As Henriquez was the largest insurer in Antwerp, this was likely representative for the insurance business as a whole.<sup>57</sup>

<sup>52</sup> 1563 *Ordonnance*, Title IV, Arts. 1–2 & 11.

<sup>53</sup> 1608 *Compilatae*, Part 4, Title VIII, Arts 28, 85 & 143.

<sup>54</sup> 1560 Bilbao *Ordonnance*, Art. 47. The 1560 Bilbao *Ordonnance* can be found in Pardessus, *Collection de lois* (Vol. 6), 195–252.

<sup>55</sup> Constable, ‘The Problem of Jettison’, 217–220.

<sup>56</sup> Puttevels & Deloof, ‘Marketing and Pricing Risk’, 824.

<sup>57</sup> H. Casado Alonso, ‘Juan Henriquez, un corredor de seguros de Amberes a mediados del Siglo XVI’, in J. C. Pérez Manrique ed., *Palabras de archivo: homenaje a Milagros Moratinos Palomero* (Burgos 2018), 49–68.

Moreover, both the Castilian consular court and the Antwerp municipal court in the 1540s and 1550s already accepted the liability for insurers to cover GA claims. One case from the Castilian consular court, dating from 1556, for example, concerned a ship coming from Portugalete (Biscay). The shipmaster jettisoned salt whilst also incurring damages to the ship.<sup>58</sup> GA was declared after a request by the shipmaster, who filed two cases. In the first case, he made sure that the insurers of cargo and ship would pay for the damages, before filing the actual GA claim with the consuls. This ensured no one could opt out of the contribution.

In Antwerp, twenty-five out of the forty GA cases heard between 1545 and 1582 dealt with insurers unwilling to pay for GA claims or requests to force an insurer to pay.<sup>59</sup> No single insurer won a case, suggesting acceptance by the Antwerp municipal court on the matter. One 1567 case gives a clear view on the matter, dealing with a pirate attack and its fall-out for insurers.<sup>60</sup> A Portuguese ship sailing from Antwerp to Lisbon was heavily damaged in a pirate attack before the coast of France, losing all cargo. The pirates also forced the master to set sail to an unnamed French port, where they released master and crew. The master immediately abandoned the ship to the insurer, meaning the ship was now the insurer's property (although still in the hands of the pirates).<sup>61</sup> Some of the cargo had been lost due to a jettison act by the master, which according to him had been an attempt to sail faster and escape the pirates. Hence, he filed for GA for this lost cargo, with the support of the merchants involved in the venture. Although the insurers agreed with the act of abandonment, they were unwilling to pay for the GA claim as well, citing the failure of the attempt: and strictly speaking, they were right. Yet the court agreed with

<sup>58</sup> BE-SAB, Spaanse Natic, *Libro de pleitos ordinarios*, fol. 150v–151r & 151v–152r.

<sup>59</sup> BE-SAA, *Judgement Books*, V1241, fol. 283r–v; V1242, fol. 127r; V1244, fol. 128r–130r; V1245, fol. 120r–121r & 174r–v; V1246, fol. 62r–v; V1247, fol. 82v–84v, 148r–151r & 269r–v; V1249, fol. 1r–v, 6v–7v, 130r, 204r–205r; V1250, fol. 139r, 150v–151r & 241r–v; V1251, fol. 45v–46v, 71v–72r & 104r–v; V1252, fol. 78r–v & 168r–v; V1254, fol. 107r–v & 147v–148v; V1255, fol. 221v–225r; V1256, fol. 58v–59v.

<sup>60</sup> *Idem*, V1249 fol. 6v–7v.

<sup>61</sup> For the rules regarding abandonment: G. Rossi, 'The Abandonment to the Insurers in Sixteenth Century Insurance Practice: Comparative Remarks and (a few) Methodological Notes', in Pihlajamäki et al. eds., *Understanding the Sources*, 87–118, there 91–95.

the shipmaster and the merchants, citing the need for an equitable solution for which the insurers were held to contribute: moreover, the act of jettison was separate from the abandonment.

## THE SPANISH COMPULSORY CONTRIBUTIONS AND THE ISSUE OF PROTECTION COSTS

Spanish non-contractual, *ex ante* compulsory contributions have primarily received attention in the framework of the New World trade, as the role of the so-called *avería* has attracted the attention of historians in Spain and abroad.<sup>62</sup> Yet before the 1521 establishment of the *avería*, in the Low Countries both the Castilian and the Biscayer *naciones* already used two compulsory contributions as cost management tools to cover protection costs, primarily artillery and convoy ships. Protection costs, in the definition of Frederic Lane, are the costs used to protect a monopolistic trade, so that so-called protection rents could flow from the initial investment in protection.<sup>63</sup> One of the two varieties in the Low Countries was the *avería de nación*, which flowed from the privileges the Castilian and Biscayer *naciones* received. It was an annual contribution paid by the members to cover both ordinary expenses (e.g. legal fees) and maritime protection costs (artillery and convoy ships).

The present literature has often conflated the *avería de nación* with the compulsory contributions of other Southern European *naciones*, such as the Portuguese *direito da nação* and the Genoese *massaria*, lumping them all together under the name *droit d'avarie* ('right of average').<sup>64</sup> Yet a close reading of the privileges shows that only the Castilian and Biscayers used their annual contribution for maritime protection costs

<sup>62</sup> For example: G. Céspedes del Castillo, 'La Avería en el Comercio de Indias', *Anuario de Estudios Americanos*, 2 (1945): 515–698; M. Luque Talavan, 'La avería en el tráfico marítimo-mercantil indiano: notas para su estudio (siglos XVI–XVIII)', *Revista Complutense de Historia de América*, 24 (1998): 113–145; C. H. Haring, *Trade and Navigation between Spain and the Indies in the Time of the Hapsburgs* (Cambridge, MA 1918), 67–76.

<sup>63</sup> F. C. Lane, *Profits from Power: Readings in Protection Costs and Violence-Controlling Enterprises* (New York 1979), 12–22.

<sup>64</sup> Gilliodts-Van Severen, *Espagne*, 595–596.

besides ordinary expenses.<sup>65</sup> Even the Catalan-Aragonese *natio* did not use the annual contribution for maritime protection costs.<sup>66</sup>

The Spanish anomaly is explained by the particular nature of the Spanish wool trade with the Low Countries. The merchant guilds, the so-called *Consulados*, were in charge of equipping the fleets for the outward journey to transport wool to the Low Countries.<sup>67</sup> The *nationes* were, at least formally, satellites of these *Consulados*: the Castilian *natio* of the Burgos *Consulado*, the Biscayers of the Bilbao *Consulado*, and hence responsible for the return journeys.<sup>68</sup> The two non-contractual compulsory contributions were levied before a voyage and used to pay for the protection costs for the ship(s), primarily artillery and convoy ships as this was obligated by the Castilian Crown. The *avería de nación* was of course primarily used for ordinary expenses of the *natio*, with only a small portion used for the maritime protection costs. Next to the *avería de nación*, another contribution very similar to the Seville *avería* and also called the *avería(s)*, was established in the wake of the promulgation of the 1551 *Ordonnance* to cover the maritime protection costs for the Spain-Low Countries route.<sup>69</sup> Material about the *avería(s)* is extremely scant, as there only few records dealing specifically with this variety.<sup>70</sup>

Luckily, much more archival material is available about the *avería de nación*, as it was a privilege granted by various authorities (e.g. the municipality of Bruges, the Burgundian sovereign and the sovereign of the home region) to the *natio* and hence recorded by various parties in archives. Moreover, there was plenty of litigation before the Bruges municipal court and the Great Council, the superior court of the Low Countries, offering a clear view on the practical problems that arose.

<sup>65</sup> See Chapter 6 of my dissertation for the close reading of all the privileges of the Southern European *nationes*.

<sup>66</sup> As the following two cases shows: Gilliods-Van Severen, *Espagne*, 65–66 & 137–139.

<sup>67</sup> Fagel, *De Hispano-Vlaamse wereld*, 135–162.

<sup>68</sup> See for the *Consulados*: R. S. Smith, *The Spanish Guild Merchant: A History of the Consulado, 1250–1700* (Durham, NC 1940).

<sup>69</sup> Fagel, *De Hispano-Vlaamse wereld*, 419.

<sup>70</sup> See for the variant in the Low Countries: Ibidem. See for a similar structure in the context of the Spanish *Consulados*: M. Basas Fernández, *El Consulado de Burgos en el Siglo XVI* (Madrid 1963), 168–171; Céspedes del Castillo, ‘La Avería en el Comercio de Indias’, 524; Luque Talavan, ‘La avería’, 133 & 142; and the contribution of Marta García Garralón in this volume.

Although the principle was rather straightforward, questions arose during the fifteenth century in Bruges about joint ventures with merchant of other *nationes*. If Genoese merchants used Castilian-owned ships to transport their cargo, could the Castilian consuls levy the *avería de nación* on them to contribute to the maritime protection costs? In fifteenth-century Bruges, the answer was generally yes, as litigation from 1472 and 1482 for example shows.<sup>71</sup> Interestingly, this was only the case when Italian merchants (e.g. Genoese or Florentines) were involved, but not when other Spanish merchants (e.g. Catalan-Aragonese) were involved.<sup>72</sup>

We will focus here on one specific litigation process on the *avería de nación* which is especially rich in detail. The case was initiated by the consuls of the Biscayer *natio* in Bruges in 1511 and, as a first instance case, again in 1515 at the Great Council.<sup>73</sup> Since the records contain all the arguments on the *avería de nación*, it offers us a unique insight into the contemporary arguments on the compulsory contribution. The Castilians were active participants in this process as they started concurrent litigation in Antwerp and before the Great Council, again underlining their important role in the development of Averages in the Low Countries. Merchants rarely went to regional or central superior courts for commercial cases owing to their slow proceedings and high costs.<sup>74</sup> The *avería de nación* was however different, since the *nationes* went to great lengths to preserve their privileges.<sup>75</sup> At the Great Council, foreign

<sup>71</sup> Gilliodts-Van Severen, *Espagne*, 111 & 122–124.

<sup>72</sup> *Ibidem*, 65–66 & 137–139.

<sup>73</sup> The case is shortly described in A. A. Wijffels, ‘Justitia in Commerciis: Public Governance and Commercial Litigation before the Great Council of Mechlin in the Late Fifteenth and Early Sixteenth Century’, in Pihlajamäki et al. eds., *Understanding the Sources*, 32–54, there 48–49. The first instance Great Council case is in Gilliodts-Van Severen, *Espagne*, 230–240. See also: BE-ARB, Grote Raad der Nederlanden te Mechelen, *Processen in eerste aanleg*, nrs. 294 & 3519; *Idem*, *Registers*, nrs. 815.12 (fol. 70–88), 815.13 (fol. 90–106), 818.28 (pp. 283–309) 818.35 (pp. 391–405), 823.68 (pp. 547–560), 824.83 (pp. 749–755), 826.68 (pp. 567–574).

<sup>74</sup> Gelderblom, *Cities of Commerce: the Institutional Foundations of International Trade in the Low Countries, 1250–1650* (Princeton 2013), 127; Puttevils, *Merchants and Trading*, 145–147.

<sup>75</sup> In line with the arguments presented in J. Dumolyn and B. Lambert, ‘Cities of Commerce, Cities of Constraints: International Trade, Government Institutions and the Law of Commerce in Later Medieval Bruges and the Burgundian State’, *Tijdschrift voor Sociale en Economische Geschiedenis*, 11/4 (2014): 89–102.

merchants were privileged litigants.<sup>76</sup> Moreover, the court had jurisdiction over cases of maritime transport, including GA and by extension also other Averages.<sup>77</sup>

In 1511, the Biscayer consuls initiated a case before the Bruges municipal court against three Genoese and one Florentine merchant.<sup>78</sup> Concurrently, various Castilian merchants, backed by their consuls, started litigation at the Antwerp municipal court.<sup>79</sup> Both cases dealt with the question of whether the Italian merchants were liable to pay the *avería de nación* to one of the Spanish *naciones* when using the latter's ships. In Bruges, the Biscayer consuls won the case, allowing them to levy the compulsory contribution. The Antwerp municipal court, ruling against the Castilian merchants acting as proxies of the Biscayers and Castilians, in contrast decided that since the Genoese were *de facto* based in Antwerp since 1509, the litigation started in Bruges did not concern them on jurisdictional grounds. The Bruges municipal court was hence unable to enforce its ruling owing to those very same jurisdictional problems, even if it could refer to precedents on the same subject matter. Because several Genoese merchants were still based in Bruges and the *natio* itself was based there *de jure* as well, the Genoese consuls filed an appeal against the Bruges ruling at the Great Council to absolve them of liability, supported by the consuls of Lucca, Florence and Venice, as the latter were also impacted. The Great Council decided to hear the case as a first instance case, since the case posed significant jurisdictional problems.<sup>80</sup> Whilst the case centred on the payment of individual merchants, the Great Council allowed the Biscayer consuls to file the case against the Genoese consuls to decide on the principle. At the same time, the Castilian consuls launched a separate case on the same subject to guarantee this privilege against the decision by the Antwerp municipal court, which the Great Council also decided to hear as a first instance case.<sup>81</sup>

<sup>76</sup> C. H. Van Rhee, *Litigation and Legislation: Civil Procedure at First Instance in the Great Council for the Netherlands in Malines (1522–1559)* (Brussels 1997), 41.

<sup>77</sup> *Ibidem*, 42–43.

<sup>78</sup> BE-ARB, Grote Raad, *Processen in eerste aanleg*, nr. 294 (12/07/1511).

<sup>79</sup> *Ibidem* (28/08/1515). This was probably already an appeal given the date of the case, but the actual file from Antwerp has unfortunately not survived.

<sup>80</sup> *Ibidem*, *Registers*, nr. 815.12 (fol. 70–88).

<sup>81</sup> *Idem*, *Registers*, nr. 815.13 (fol. 90–106).

The lengthy arguments written down by the two parties are invaluable in informing us about the nature of the *avería de nación*. The Biscayers presented the differences between three variations of maritime Averages in their arguments. They explained that there were three varieties of maritime Averages: GA plus SA (*grosse et commune avarie*); PA (*petite*); and the compulsory contribution of the *natio* (*denier de nation*).<sup>82</sup> Whilst this distinction is fairly close to the divisions presented in Table 1, no distinction was yet made between risk and cost management structures. The Biscayers explained that the *avería de nación* was primarily used for the maintenance of the chapel of the *natio*, but also for maritime protection costs such as convoy ships.<sup>83</sup> They argued that since the protection measures benefited everyone, it was fair to expect those using their ships for transport to pay the compulsory contribution.<sup>84</sup> As evidence, they cited a number of precedents: the 1368 privileges of the Castilians, ‘ancient usages and customs’,<sup>85</sup> an arbitrational sentence of 1454 admitting this principle as reciprocal, several court records from 1458, 1471, 1481, 1482 and 1490,<sup>86</sup> a 1492 agreement between the Spanish and Italian *nationes* on the subject<sup>87</sup> and their latest privileges of 1494.<sup>88</sup> In the concurrent case launched by the Castilians, their consuls explicitly referred to precedents from the Bruges municipal court and the fact that the Biscayers won their case in Bruges.<sup>89</sup> Moreover, the Castilians argued that both the municipal law of Bruges and the aldermen of Middelburg (Zeeland) had accepted the principle that Italian merchants had to contribute to the *avería de nación* as they profited from the protection arrangements.<sup>90</sup> In both cases, the Genoese argued that the compulsory contribution could be levied on individual merchants in exceptional cases, but that the cited cases did not constitute a precedent.<sup>91</sup> In the case

<sup>82</sup> Gilliodts-Van Severen, *Espagne*, 231–232.

<sup>83</sup> *Ibidem*, 231.

<sup>84</sup> *Ibidem*.

<sup>85</sup> *Ibidem*.

<sup>86</sup> *Ibidem*.

<sup>87</sup> *Ibidem*. Unfortunately, this agreement is not in the case file.

<sup>88</sup> *Ibidem*, 233.

<sup>89</sup> BE-ARB, Grote Raad, *Registers*, 815.13, fol. 91r.

<sup>90</sup> *Ibidem*, fol. 93r.

<sup>91</sup> *Ibidem*, fol. 100r–v. See also: Gilliodts-Van Severen, *Espagne*, 233–234.

launched by the Castilians, the Genoese also argued that the decision of the Bruges municipal court unduly infringed on the freedom of the *natio* and their members.<sup>92</sup>

The Biscayers, in a lengthy answer, elaborated upon the legal basis of the *avería de nación*. They argued that they did not seek control over individual Genoese merchants, but that the freight contract signed by a Biscayer shipmaster constituted the legal basis to levy the *avería de nación*.<sup>93</sup> Given the fact that individual Genoese merchants had consented to the voyage by means of the freight contract, they also by implication agreed to contribute to the mutual protection costs as a contractual obligation.<sup>94</sup> According to the Biscayer consuls, the Bruges municipal court precedents showed that this was enough to consider the compulsory contribution binding for the Genoese merchants, citing the 1472 and 1482 decisions.<sup>95</sup> The Great Council decided in both cases that the Genoese had to pay for the *avería de nación*, although it acquitted the Florentine merchant in the first case for he was only a junior partner in the case, having commissioned the Genoese merchants to act on his behalf.<sup>96</sup> In the second case, the Great Council, decided that the Genoese had to pay for the *avería de nación* of the Castilians as well in future cases, referring to the 1492 agreement (which has unfortunately not survived) and the precedents from Bruges. However, the Florentine, Venetian and Lucchese *nationes* were absolved from paying the compulsory contribution for unknown reasons.<sup>97</sup>

Although the Biscayers won the first instance case, a true legal thriller followed the verdicts of the Great Council of 1515. Among other things, the Genoese filed a petition with the Secret Council in 1515 to annul the verdicts of the Great Council. In 1518, the Secret Council, an advice council to the sovereign which could hear petitions against Great

<sup>92</sup> Ibidem, fol. 101r–v.

<sup>93</sup> Gilliodts-Van Severen, *Espagne*, 236.

<sup>94</sup> Ibidem.

<sup>95</sup> Ibidem.

<sup>96</sup> Ibidem, 239–240.

<sup>97</sup> BE-ARB, Grote Raad, *Registers*, nr. 815.13, fol. 105v.

Council decisions,<sup>98</sup> filed an ‘advice’ ordering the Great Council to rehear the case, which only happened in 1524 and 1525.<sup>99</sup> Although the Great Council subsequently ruled in favour of the Biscayers on multiple occasions, the Genoese were still litigating on technicalities during the 1540s.<sup>100</sup> Legal practice in the fifteenth and early sixteenth centuries offered an expansive view of the *avería de nación*, allowing two ‘Spanish’ *naciones* to levy the compulsory contribution on Italian merchants using their ships for cargo transport. The case studied here shows the importance attached by the Spanish and Italian *naciones* on the subject, putting the issue of protection costs at the core of the development of Averages in the Spanish case. Although no new litigation can be found after the 1530s, the *avería de nación* was clearly of great importance for the two Spanish *naciones* between roughly 1460 and 1550. Again, the Castilians (and Biscayers) were instrumental in pushing the limits of the instrument and influencing its normative development.

## CONCLUSION

The development of GA in the sixteenth-century Low Countries was to a substantial extent inspired by Castilian normative practice or incentivised by the lobbying activities of Iberian merchants. Uninsurable costs arising from pirate attacks originated in Castilian normative practice, and the liability of insurers to pay for GA claims was also likely drawn from Castilian practice, as evidenced (for example) by the records of the Castilian Antwerp-based insurer Juan Henriquez. From around 1550 onwards, formal sources of law, such as the Habsburg *Ordonnances*, Weytzen’s treatise, the *Ordenanzas* and Antwerp municipal law incorporated these developments into written sources of law. Given that Castile and the Low Countries shared a ruler up to 1581 (and much longer in the case of the Southern Netherlands), it should not be exactly surprising that the Castilian normative framework was so influential in the sixteenth-century Low Countries. Castilian merchants moreover developed two

<sup>98</sup> H. De Schepper, ‘De Grote Raad van Mechelen, hoogste rechtscollege in de Nederlanden?’, *Bijdragen en Mededelingen voor de Geschiedenis der Nederlanden*, 93/3 (1978): 389–411.

<sup>99</sup> BE-ARB, Grote Raad, *Processen*, nr. 294 (17/04/1515) & (24/03/1518); Idem, *Registers*, nrs. 823.68 (pp. 547–560) & 824.83 (pp. 749–755).

<sup>100</sup> For example: *Ibidem* (14/05/1542, 15/11/1544 & 28/03/1545).

non-contractual, *ex ante* compulsory contributions to the Low Countries, the *avería de naçion* and the *avería(s)*, to cover maritime protection costs such as artillery and convoy ships which in turn also lowered risk. The Castilian and Biscayer *nationes* actively litigated to safeguard the *avería de naçion* privilege, showing the importance of Averages in creating protection rents. The influence of Castilian normative practice on GA and other forms of Averages was therefore of great significance in the Southern Low Countries during the sixteenth century, marking the long-lasting impact of the Castilian trade with the Low Countries in both formal law and mercantile practice.

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