

Maritime Risk Management Instruments in Medieval Castile (Thirteenth to Sixteenth Centuries)

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During the late Middle Ages, maritime transport became one of the riskiest economic activities given the nature of the element where it was pursued and of the activity itself. Mercantile communities employed diverse instruments to lower the expenses caused by risks at sea, one of which is maritime insurance. From Antiquity onwards, the uses and customs of those involved in maritime trade were progressively codified both for Mediterranean and Atlantic navigation, leading in the Modern Age to the emergence of a distinct body of maritime law. In this chapter I will analyse the development of maritime insurance practice in Castile from the end of the Middle Ages to the early modern age. Although there are already excellent studies for later periods, paucity of sources for the medieval period has severely limited the possibility of analysis.

The aim of this chapter is to provide an overview of the historical development of the concept of maritime insurance in Castile, its evolution within maritime law and its contribution to the organisation of maritime traffic within a system moving from its ancient structures towards the creation of commercial capitalist and market economies. More specifically, it will analyse the relationship between the concepts of risk, damage and contribution as applied to navigation, and it will

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then identify those insurance techniques that developed between the fourteenth and fifteenth centuries in Castile, and which led to the refinement of maritime insurance through the sixteenth-century ordinances of the Castilian mercantile consulates. The fact that this development was carried out by the commercial communities themselves with little intervention from the State attests to the increasing professionalisation of the sector.

A. Risk, damage and contribution in maritime transport

According to Sebastián Covarrubias, the term ‘risk’ (*risgo* in Spanish) derives from *risco* or stems from the Latin *rigor* or, as it appears in Castilian sources, *risgo*.¹ Risk is associated with the very essence of seafaring, the nature of the element where it takes place, and from the agency of man at sea. More specifically, risks range from shipwreck caused by storms and rough seas to loss caused by war and piracy; from damage caused by malicious or negligent behaviour of the shipmaster to damage resulting from the mishandling of the cargo in the lading or unloading operations.

All damage causes a detriment, that is, an economic loss – whether full destruction or partial damage – and for any such loss the question arises whether it must be made good. This question was already addressed by the thirteenth-century *Leyes de Layrón*, the Castilian translation of the *Rôles d’Oléron*,² and by the *Partidas* regulating the manner in which damage sustained by the ships in the hands of the pirates was to be distributed (*Partida V*, Tit. IX, *Leyes III*); how to proceed in case stolen merchandise were to be recovered later on in full or in part (*Partida V*, Tit. IX, *Ley XIII*); how to share damage to the mast when due to fortuitous events (*Partida V*, Tit. IX, *Leyes IV* and *V*); how to distribute the loss

¹ Sebastián Covarrubias, *Tesoro de la lengua castellana o española* (Madrid 1611; reprint, 1995), 866. Cf. the Ordinances of the Consulate of Burgos of 1538.

² Cf. Manuel Flores Díaz, *Hombres, barcos e intercambios: el derecho marítimo-mercantil del siglo XIII en Castilla y Aragón* (1998); Margarita Serna Vallejo, *La historiografía sobre los Rôles d’Oléron (siglos XV a XX)*, (2000) 70 *Anuario de historia del derecho español* 1–48; *ead.*, *Los ‘Rôles d’Oléron’: el ‘coutumier’ marítimo del Atlántico y del Báltico de época medieval y moderna* (2004); Pedro Andrés Porras Arboleda, *La práctica mercantil marítima en el Cantábrico Oriental (siglos XV–XIX)*. Primera parte, (2000) 7 *Cuadernos de Historia del Derecho* 13–128; *idem*, *La práctica mercantil marítima en el Cantábrico Oriental (siglos XV–XIX)*. Segunda parte, (2001) 8 *Cuadernos de Historia del Derecho* 141–254; *idem*, *El Derecho Marítimo en el Cantábrico durante la Baja Edad Media: Partidas y Rôles d’Oléron*, in: Beatriz Arizaga Bolumburu and Jesús Ángel Solórzano Telechea (eds.), *Ciudades y villas portuarias del Atlántico en la Edad Media* (2005), 231–256; Michel Bochaca and Pierre Prétou, *Rôles d’Oléron et usages maritimes dans l’Europe atlantique à travers l’exemple de Bordeaux, Libourne et Bayonne aux XIVe et XVe siècles*, in: Jesús Ángel Solórzano Telechea et al. (eds.), *Las sociedades portuarias de la Europa atlántica en la Edad Media* (2016), 25–46.

due to jettison (*Partida V*, Tit. IX, *Ley III*); and how to proceed for other partial losses of cargo (*Partida V*, Tit. IX, *Leyes IV* and *VIII*). Such damages sustained during navigation were called *averías* (averages).³ This is not the only situation in which the term *avería* was employed. In the commercial lexicon of medieval and early modern Castile, *avería* was used in a number of different contexts, with a variety of different meanings: contribution, duty, levy, exaction, tariff, tax, tribute or imposition, leading to a considerable confusion.⁴ When referred to damage suffered during navigation, *avería* should be understood as the ‘damage sustained by the vessel or any of its parts or that sustained by the cargo on board’.⁵

Maritime risks encompass all kinds of mishap to which navigation is exposed. There exist, however, different types of risk depending on their origin and nature, which can be either fortuitous or intentional. Marta Milagros del Vas Mingo and Concepción Navarro Azcúe divided risks into three large groups: those deriving from nature (e.g., fire, tides, shallows, hurricanes and typhoons), called ordinary risks;⁶ those caused by third parties (e.g., pirates or privateers), defined as extraordinary risk; and finally those caused by the crew and/or the shipmaster, whether intentionally (in bad faith) or fortuitously (by incompetence or negligence), defined as malicious and negligent risks.⁷

When analysing the concepts of risk and damage, mention must be made of the need for protection required by vessels when setting sail and the manner in which this common venture was financed, since ships sailed in convoys.⁸ The

³ *Timoteo O’Scanlan*, *Diccionario Marítimo Español*, que además de las definiciones de las voces con sus equivalentes en francés, inglés e italiano, contiene tres vocabularios de estos idiomas con las correspondencias castellanas, redactado por orden del Rey Nuestro Señor (1831), 68.

⁴ Such definitions are used especially by authors of the sixteenth, seventeenth and eighteenth centuries, such as Juan de Solórzano Pereira, Diego de Encinas, R. Aguilar de Acuña, José de Acosta, Cieza de Leon and Veitia y Linaje. On the medieval use of these terms, see *Legado Gual Camarena*, www.um.es/lexico-comercio-medieval/index.php/v/lexico/ (last accessed 2 May 2020). For the seventeenth century, see *Sebastián Covarrubias*, *Tesoro de la lengua castellana o española* (Madrid 1611; reprint, 1995). For the eighteenth century, see the first edition of the *Diccionario de la Lengua Castellana* (Madrid 1732). This variety – and ambiguity – is due to the fact that no single source defines the whole subject. The discussion on the nature of the term *avería* has continued to the twentieth century.

⁵ *O’Scanlan* (n. 5), 68.

⁶ Cf. *Partida V*, Tit. IX; *Ley XI*.

⁷ *Marta Milagros del Vas Mingo* and *Concepción Navarro Azcúe*, *El riesgo del transporte marítimo del siglo XVI*. Congreso de Historia del Descubrimiento: 1492–1556, vol. 3 (1992), 579–614, 613 f.

⁸ In Castile, this system is defined as ‘navegar en conserva’. *O’Scanlan* (n. 5), 170: ‘Era una de las condiciones de la conserva que la embarcación que la ofrecía, había de dar cabo a la que la pedía (que siempre sería la menor, la más indefensa o la más pesada o cargada) y así es que por este auxilio cobraba del auxiliado cierto alquiler, sin duda por la

attempt to avoid or mitigate losses and accidents dominated long-distance trade from early on. The different measures – from co-ownership of vessels by several partners, who provided funds for its building and equipment, to armed convoys escorting commercial fleets – can be interpreted as attempts to avert fortuitous or intentional mishaps. These measures, however, proved insufficient. On the one hand, ‘co-ownership’ only guaranteed the vessel, never the cargo. On the other hand, the use of convoys as a risk-mitigation mechanism was often questioned, since convoys would easily disperse due to the different sailing speeds of the ships. Besides, shipmasters would sometimes abandon the convoy intentionally as soon as the vessels left the coast behind.⁹ Many shipmasters favoured sailing on their own, as it allowed for greater speed in navigation.

In Burgos and Bilbao, merchant associations (*universitates mercatorum*) sought to elaborate mutualist measures to share the cost of maritime ventures through contributions – that is, solidarity contributions based on the participation of each merchant, as a distribution of costs. In Castile, this contribution was also called *avería*, and was collected to defray the expenses arising from protecting the fleet and for the preservation of the ships and their cargo. This kind of contribution originated in the commerce with northern Europe through the Castilian *Consulados de Nación* (Consulates of the Nation),¹⁰ which enjoyed exclusive jurisdiction on commercial disputes.¹¹ With reference to the concept of damage, the term *avería* was used in three different cases: *avería ordinaria* (ordinary average);¹² *avería gruesa* (common average); and *avería general* or *de echazon*

responsabilidad a que aquel se sujetaba, de resarcir los daños, aunque fuesen casos fortuitos’ (‘One of the conditions of convoy navigation was that vessels were to provide rope haulage if another ship requested it. This would always be the smallest and the most vulnerable or the heaviest or the most loaded of the ships within the convoy. The ship providing haulage would charge for this service, certainly as coverage for the responsibility over any damage, even if this was fortuitous.’)

⁹ *Betsabé Caunedo del Potro*, *El desarrollo del comercio medieval y su repercusión en las técnicas mercantiles. Ejemplos castellanos*, (2012) 15 *Pecunia* 201–220, 211.

¹⁰ The Castilian nation established in Bruges enjoyed exclusive jurisdiction from 1447: *Louis Gilliodts Van Severen*, *Cartulaire de l’ancien consulat d’Espagne à Bruges: recueil de documents concernant le commerce maritime et intérieur, le droit des gens public et privé, et l’histoire économique de la Flandre*, vol. 1 (1901), 29.

¹¹ Chapters of the ordinances of the nation of Castile in Bruges approved by its members on 23 April 1441 and confirmed on 1 December 1467, dealing with the jurisdiction of the consuls: *Gilliodts Van Severen* (n. 10), 97–102.

¹² These were destined to the sustenance of trade associations, the protection of the fleet and its members, which sometimes involved special monetary collections, and to defray devotional and welfare practices: *Guillermo Céspedes del Castillo*, *La avería en el comercio de Indias* (1945), 12–15; *Manuel Basas Fernández*, *El Consulado de Burgos en el siglo XVI* (1963), 167 f.

(general average or average due to jettison).¹³ Later on, with the *Carrera de Indias*, the same term would also be used for the *derecho de avería* (right of average).¹⁴

B. Maritime trade and royal safeguards

As the Crown was acutely aware of the importance of maritime traffic for the economy, it implemented measures of protection of the traffic, especially regarding foreign merchants operating in Castilian markets. Such measures undoubtedly encouraged the arrival of merchants from abroad, but the special protection that they enjoyed was easily infringed in practice, and recourse to legal suits was always lengthy and costly.

During the thirteenth, fourteenth and fifteenth centuries, warfare and rampant piracy led to permanent instability in the European seas. Consequently, risks that could befall vessels and merchandise, whether by shipwreck, boarding, robbery or pillaging, became accepted as habitual occurrences. By the fourteenth century the situation became untenable. For this reason, royal legislation – namely the Ordinances of Alcalá and the Royal Ordinances – prohibited seizing ships bringing goods to the kingdom.¹⁵ Thus was established a firm commitment to safeguard, if only in writing, the stability of imports, and hence of the national market. Later on, the same commitment would be reaffirmed towards individuals or groups granting individual and collective letters of safeguards.¹⁶ General safeguards would grant protection for a specific period of time. In the ports of the

¹³ Ordenanzas Reales de Castilla, Book VI, Tit. XII, Ley IV. These correspond to the contributions destined to defray damage sustained by vessels and cargoes in case of mishap or jettison. It is not until the sixteenth century that Castilian sources include the terms of *risgo* (later *riesgo*) – identified as maritime risk – and of general average, developed in the ordinances of the consulates of Bilbao and Burgos, as a predecessor of maritime insurance of the Modern Age: Juan Antonio Arias Bonet, *El derecho marítimo en Las Partidas*, (1966) 99 *Revista de Derecho Mercantil* 91–108.

¹⁴ The right of average was exacted proportionally on all the items shipped to or from America and was allocated to defray expenses of escort ships to protect vessels against pirate or corsair attacks: *Céspedes del Castillo* (n. 12), 4.

¹⁵ Ordenamiento de Alcalá, Tit. XXXII, Ley LI (‘De los navíos que vinieren de otras tierras’); Ordenanzas Reales de Castilla, Book VI, Tit. XII, Ley II (‘Que los mercaderes que traen mercaderías en sus navíos por la mar no sean prendados’).

¹⁶ The works of Childs and Caunedo del Potro on the practices between English and Castilian merchants on the basis of sources in the General Archive of Simancas, as well as in English archives, confirm the use of these letters of safeguard linked to peace treaties and alliances signed by the monarchs as a means of providing a certain stability for the development of commercial activities. These letters, representing a special protection from the Crown, granted freedom of movement and provided guarantees in commercial traffics, safeguarding ships and merchandise from the risk of seizure or embargo. In exchange for such royal protection, the beneficiary and his factors were bound by a series of obligations in

south of Castile the most important general safeguards were those issued to the Genoese, no doubt given the significance of their colony.¹⁷ On occasion other nations, such as the Venetians, the Aragonese and other friendly countries, were granted safeguards too.¹⁸ General safeguards were usually rather generic, although on occasion they could include specific details.¹⁹

Individual safeguards could be granted to citizens or, more often, to foreigners. They could be granted, for example, for specific periods of time, for certain commercial operations and to claim restitution of assets.²⁰ Or they could be employed to safeguard a Castilian port from attacks within the kingdom. The letter would usually specify the limits of such safeguards. They could, for example, exclude the commerce of banned products; or limit trade during war time with the Moors or with specific countries (e.g., Portugal or France) or towards certain areas (e.g., Guinea, Americas, Canary Islands).²¹

Among the routes of the northern ports of the Iberian Peninsula, the highest rate of mishaps was for those crossing the English Channel. This was due to sea-perils and high frequency of shipwrecks as a result of adverse climate conditions on the one hand, and war and piratical or corsair activity on the other. The Crown granted letters of safeguard to individuals offering liberties and guarantees in

favour of the Castilian kingdom, such as refraining from shipping prohibited goods outside Castile or trading with the kingdom of Granada. Group letters covered all merchants attending the various fairs throughout the kingdom: *Betsabé Caunedo del Potro*, *Mercaderes castellanos en el Golfo de Vizcaya (1475–1492)* (1983), 221–233; *Wendy R. Childs*, *Anglo-Castilian trade in the later Middle Ages* (1978), 178–202.

¹⁷ For an excellent analysis of the Genoese colony, see *David Igual Luis* and *Germán Navarro Espinach*, *Los genoveses en España en el tránsito del siglo XV al XVI*, (1997) 24 *Historia. Instituciones. Documentos* 261–332; *Juan Manuel Bello León*, *Mercaderes extranjeros en Sevilla en tiempos de los Reyes Católicos*, (1993) 20 *Historia. Instituciones. Documentos* 47–84.

¹⁸ *Raúl González Arévalo*, *Presencia diferencial italiana en el sur de la Península Ibérica en la Baja Edad Media. Estado de la cuestión y propuestas de investigación*, (2013) 23 *Medievalismo: Boletín de la Sociedad Española de Estudios Medievales* 175–208; *Luis Suárez Fernández*, *Política Internacional de Isabel la Católica*, vol. 5 (1972).

¹⁹ Valladolid, 12 February 1326: two-year safe conduct petitioned by the council of Seville. 15 June 1327: safe conduct petitioned by Genoese merchants requesting immunity from reprisals for acts by Genoese pirates. Burgos, 20 March 1369: privilege granting the Genoese immunity from the seizure of merchandise to settle debts with the *almojarifazgo*. Simancas, 29 April 1382: safe conduct banning the seizure of Genoese ships. This policy of the Crown persisted throughout the fifteenth century: *Isidoro González Gallego*, *El Libro de los privilegios de la nación genovesa*, (1974) 1 *Historia. Instituciones. Documentos* 275–358.

²⁰ Charter granted to Juan de Pinedo, a Portuguese merchant, to recover a vessel and cloths seized in Ribadeo (12 November 1489): *Eduardo Aznar Vallejo*, *El mar: fuente de conflictos y exigencia de paz*, (2010) 11 *Edad Media, Revista de Historia* 63–89, 79.

²¹ *Suárez Fernández* (n. 18), 78–80.

commercial traffic. This offered a possibility of trading freely in the country under the protection of the monarch, and exempted beneficiaries from, for example, pledges and seizures. These general or individual safeguards issued by the Crown would apply in addition to the guarantees covering all merchants attending fairs – whether they were of a specific nationality or came from the provinces, cities or towns in Castile²² – a traditional form of royal protection dating back to Alfonso X the Wise. Hence, during the fifteenth century, English merchants benefitted from these instruments.²³

C. The development of insurance practice in medieval Castile

The regulations governing commercial activities emerged within the sphere of corporations and mercantile consulates, a complex process that would eventually lead to the formation of modern maritime commercial law. The commercial capital of Castile was soon established in Burgos, from which – together with Bilbao – traffic with Flanders was organised. The development of associations and guilds in addition to mercantile consulates, and the charter granted by the Catholic monarchs to the mercantile consulate of Burgos in 1494 (which envisaged a different jurisdiction for mercantile law from the general private law one), allowed the consulate to have its own ordinances regulating matters regarding maritime commerce.²⁴ Until then, merchants would mutually insure each other without the intervention of any form of insurance broker.

I. Bottomry

During the late Middle Ages, one of the earliest insurance-like instruments to emerge was the bottomry loan (*préstamo a la gruesa*).²⁵ Attested from the twelfth

²² Cf. the examples of the burgh of Guipúzcoa and of the town of Lequeitio, printed in *José Ángel García de Cortázar*, *Vizcaya en el siglo XV: Aspectos Económicos y Sociales* (1966), 152.

²³ *Caunedo del Potro* (n. 16), 222, 231 f. See also *eadem*, *La actividad de los mercados ingleses en Castilla, 1475–1492* (1984), 13 n. 17 (recording 31 such letters issued in favour of the English). Cf. *Childs* (n. 16), ch. VI, including a list of such letters granted to Castilians in England between 1400–1473 (*ibid.*, 49).

²⁴ *Ana María Rivera Medina*, *The mutualisation of maritime risk in the Crown of Castile, 1300–1550*, forthcoming.

²⁵ ‘Contract in which a certain interest or premium is paid to receive an amount in money or products calculated on the value of the vessels themselves and their purveyance and tackles for the journey, upon condition that once arrived at the ports of destination, the lenders must be freed from the risk and allowed to collect the amounts together with the premium at the agreed time’, *O’Scanlan* (n. 5), 66.

century, it consisted in the loan of a sum of money against the ship itself as collateral. It was first and foremost a loan for the purveyance and maintenance of the vessel; a shipmaster would resort to this instrument when his financial situation did not allow him to defray expenses caused by the venture. At the same time, the bottomry loan was also a risk-shifting operation: the repayment of the loaned sum plus interest depended on the successful arrival in port of the vessel on which the loan was given. As this instrument would typically cover small amounts, it seldom reveals the total cost of the operation, which often consisted of a number of such loans.

The coverage of the risk started the moment that the ship set sail and lasted up to 24 hours after its arrival at port. Recourse to bottomry loans thus allowed shipmasters to face financial difficulties while preserving their vessel. Bottomry loans were above all monetary advances to equip and maintain the ships concluded by shipmasters when they were unable to do so by their own means. But bottomry was also a system of risk coverage to avert financial ruin in the case of loss. However, it must be borne in mind that once the ship arrived in the port of destination safely, the shipmaster had a limited time to repay the loan, one month at most. If he failed to do so, the lender could lay claim to the hypothecated ship and the shipmaster's assets (in cases where he also acted as borrower).²⁶ The interest for the loan operation, together with the premium charged for the insurance of the risk, was hidden in an inflated amount of the sum actually lent. This was done to evade the prohibition of usury, as the loan itself was justified with the need to furnish and supply the vessel. In the text of the contracts, the loan was described as 'a pure and true loan', and was made 'gratis et amore', 'to please and do good works'.²⁷

Although bottomry loan was widespread across Mediterranean as well as Atlantic ports,²⁸ it was not the only system of risk insurance known to Spanish late-

²⁶ *María Teresa López Beltrán*, Financiación de los viajes y cobertura de los riesgos en el tráfico marítimo malagueño en época de los Reyes Católicos. I: Cambios y préstamos marítimos, (1997) 19 *Baetica*. Estudios de arte, geografía e historia 51–65, 55–57. The author describes certain cases where the shipmaster also acted as lender in Basque shipping ventures in the Mediterranean.

²⁷ On this point, see *Ana María Rivera Medina*, Navegación, comercio y negocio: los intereses vascos en los puertos flamencos en los siglos XV y XV, in: Jesús Ángel Solórzano Telechea et al. (eds.), *Las sociedades portuarias de la Europa Atlántica en la Edad Media* (2016), 165–196, 189. See also *López Beltrán* (n. 26).

²⁸ On early insurance practice in the Mediterranean, see *Arcadi García Sanz* and *María Teresa Ferrer i Mallol*, *Assegurances i canvis marítims medievals a Barcelona* (1983); *Manuel J. Peláez*, *Cambios y seguros marítimos en derecho catalán y balear* (1984); *Alberto Tenenti*, *L'assicurazione nel commercio marittimo del Mediterraneo occidentale (1440 c.–1600)*, in: *Eliseo Serrano Martín* and *Esteban Sarasa Sánchez* (eds.), *La Corona de Aragón y el Mediterráneo: siglos XV–XVI* (1997), 127–144; *idem*, *El seguro marítimo*

medieval maritime traffic. From the end of the fifteenth century, merchants trading abroad began to make use of maritime insurance also in Castile, so as to avoid unnecessary losses in larger commercial transactions. In essence, this instrument was similar to the bottomry loan, albeit with different legal provisions.²⁹ Insurance, however, did not replace bottomry loan, which remained in use for a long time.³⁰

II. Premium insurance

In the fourteenth century, sedentary merchants developed a new contractual form when they realised the need for suitable means to transfer and distribute risk. This was the premium insurance or insurance proper, which represents a step further in the rationalisation of commercial risk, as it was a more specific instrument. It was possible to insure the ship, the cargo or both. It was customary for the risk on the ship to include the hull but to exclude tackle, rigging and apparel. It was also possible to insure the freight. The premium amount was contingent on the distance to travel (since the greater the distance, the greater the risk) and on other variables such as the time of year (*mare clausum – mare liberum*), type of vessel, news of war or piracy.

The reception of insurance in Castile was likely facilitated by contracts concluded in foreign ports for trade with Castile, the presence of foreign insurers in Castilian ports, and insurance transacted in foreign lands to cover transport between Castile and a third country.³¹ Local customs varied with respect to the particulars, such as the kinds of perils included in the policy and the proof of dam-

en la Europa de los siglos XV y XVI, in: Floriano Ballesteros Caballero et al. (eds.), *Actas del V Centenario del Consulado de Burgos (1494–1994)*, vol. 1 (1994), 421–442.

²⁹ *María Teresa López Beltrán*, *Financiación de los viajes y cobertura de los riesgos en el tráfico marítimo malagueño en época de los Reyes Católicos. II: seguros marítimos*, (1999) 21 *Baetica. Estudios de arte, geografía e historia* 281–300, 283. See also for the Mediterranean *Manuel J. Peláez* and *Miriam Seghiri*, *Notas sobre seguros y cambios marítimos bajomedievales y premodernos en Cataluña*, (2018) 35 *Revista europea de derecho de la navegación marítima y aeronáutica*, available online: www.eumed.net/rev/rednma/35/pelaez-seguri.html (last accessed 3 May 2020).

³⁰ *Rivera Medina* (n. 27), 165–196. Despite the paucity of extant contracts, their use is confirmed through obligatory letters. An identical situation is confirmed in the activities of the Basque seamen in the port of Málaga between 1500 and 1516. Bottomry loans and maritime insurance coexisted during the sixteenth century and beyond: *López Beltrán* (n. 26), 63–65.

³¹ *Eduardo Aznar Vallejo*, *Norma y conflicto en la navegación castellana bajomedieval*, (2018) 31 *Espacio Tiempo y Forma. Serie III, Historia Medieval* 45–67, 54.

age. But those different customs fed a common pool of experience that culminated in the early sixteenth century with the appearance of the insurance policy.³² The element displaying the greatest variability was of course that of the premium, as its amounts would depend on factors such as the destination, the political circumstances (e.g., war, privateering) or the type of vessel.

In the early sixteenth century, driven by the increase in frequency and distance of maritime trade, the consulates of Bilbao and Burgos hastened to clarify and adjust the legal formulation of maritime insurance based on their specific practice. Merchants would insure each other, although none of them acted exclusively as insurer. This system gave rise to numerous disputes that were difficult to settle and also fostered illegal behaviour among the merchants who would take up two or three insurances on the same merchandise, sometimes with an unregistered (or 'in faith') policy, which meant that in case of mishap the insured could end up overcompensated. Thus, the purpose of insurance as a risk-avoidance technique was sometimes twisted into a profit-seeking activity.

Although the regulation of insurance in the Castilian sphere came later than in other parts of Europe, there was not total dearth of provisions during the late Middle Ages and the beginning of the early modern period. The thriving economy of the kingdom led to a sustained growth in the number of maritime insurance policies taken out for the Iberian maritime trade, whether done within the kingdom (mostly following the 'models' of Burgos and Seville) or abroad (especially in insurance markets such as Barcelona, Genoa and Florence).³³ From 1483 onwards, it is possible to find also references to insurance made 'after the use of Seville'.³⁴ Although the earliest examples of insurance in Burgos date from 1481,³⁵ it is likely to suppose that its practice started earlier. The accounts of the merchant Juan de Castro, for instance, refer to no fewer than 207 maritime insurance policies taken up by Burgos citizens up to the year 1511: it is unlikely that this practice had spread in the space of just a few years. Until that period, insurance practice was a private matter concerning solely the contractual parties: an individual merchant would simply take up the risk of another merchant willing

³² On the operation of insurance in the Canarian area and its relation with international circuits, see *Antonio M. Macías Hernández*, *Aseguración marítima y comercio exterior, 1500–1560*, (2017) 63 *Anuario de Estudios Atlánticos* 1–17.

³³ *Hilario Casado Alonso*, *Comercio internacional y seguros marítimos en Burgos en la época de los Reyes Católicos*, in: *Congreso Internacional Bartolomeu Dias e a sua época*. Actas, vol. 3 (1989), 585–608.

³⁴ *José Bono y Huerta* and *Carmen Ungueti-Bono*, *Los protocolos sevillanos de la época del Descubrimiento* (1986), Book 19, document n. 4: 'seguro por 300 doblas de 34 botas de romanía enviadas a Londres (23-X-1483)'.

³⁵ *Hilario Casado Alonso*, *El mercado Internacional de seguros de Burgos en el siglo XVI*, (1992) 78 *Boletín de la Institución Fernán González* 277–306.

to pay for this service on the basis of mutual trust.³⁶ These private and unregulated contracts display similarities with later examples with regard to premium payment and the insurance price.³⁷

The earliest model of insurance policy made in Burgos dates to 1509.³⁸ Its Consulate, more receptive to the needs of the insurance business than that of Bilbao, adopted the same text as the standard policy model in 1514. The example of Burgos was pivotal to the success of maritime insurance. Its market was robust enough to cover the risks of insurance, and many of its merchants were willing to take out insurance for their merchandise before shipping it. Natives of Burgos were active across all main European markets, and would provide their fellow citizens with a constant flow of information, from dangers in the routes to the characteristics of the vessels and cargos, as well as about mishaps occurring abroad. The court of the Consulate had authority to settle disputes arising between insurers and insured.³⁹ According to the abovementioned policy of 1509, it was possible to jettison some part of the cargo and to change the itinerary for the protection of the merchandise. These specific features would seem to suggest that there was more than one single type of policy in use at the time,⁴⁰ since other policies were drafted with provisions that would not appear in the consular regulations until 1514.

The 1509 policy consists of two parts. The first is a form, with the general conditions common to any policy. It includes blank spaces, to be filled with the specific details of the contract: the name of the merchant and of the shipmaster; the specific cargo; the ports of origin and destination; and the date of the ship's departure. The second part includes the individual undertaking of each insurer. Each party would sign in his name or on behalf of another, specifying the amount of his undertaking. The document ends with the signature of a notary. This was only a cargo policy, which therefore did not cover the hull. As the policy omits the quantity of merchandise to be transported, it is possible that the merchandise

³⁶ These policies did not follow the policy model proposed by the merchant association (*universitas mercatorum*). This meant that they remained outside consular jurisdiction and were not subject to the payment of registrar fees. When presented before the consular court, these policies were declared void and not legally binding. This type of insurance was forbidden by the Ordinances of the Consulate of Burgos of 1538: *Manuel Basas Fernández*, *Contribución al estudio del seguro marítimo en el siglo XVI*, (1958) 143 *Boletín de la Institución Fernán González 157–177*, 164 f.

³⁷ *Casado Alonso* (n. 35), 280.

³⁸ *Floriano Ballesteros Caballero*, *El seguro marítimo en Burgos. Una póliza de 1509*, (2003) 207 *Boletín de la Institución Fernán González 207–217*, 207–209. The earliest documentary evidence of insurance contracts dates to 1481, but (apart from the 1509 policy) there are no other known policies prior to the Declaration of 1514: *Casado Alonso* (n. 35).

³⁹ *Hilario Casado Alonso*, *Los seguros marítimos de Burgos. Observatorio del comercio internacional portugués en el siglo XVI*, (2003) 4 *Revista da Faculdade de Letras* 213–242.

⁴⁰ *Casado Alonso* (n. 39), 221–238.

represented the tonnage of the vessel. Perhaps the discretion displayed in this document would explain why the premium rate, 4.5%, is not stated in the main text of the policy but on the reverse side of the document.⁴¹

D. Maritime insurance in the consulate ordinances

I. The model policy of Burgos

The *Declaración de póliza de seguros hecha por el Consulado de Burgos* of 26 January 1514 hails the beginning of the regulations of maritime insurance in Burgos. It gives clear guidance on to how to draft insurance contracts and what provisions to include. The *Declaración* provides, for example, for prohibited merchandise, the obligations of the parties, the payment of premium and the notification of damage.⁴² No doubt the growing number of lawsuits, the rampant frauds and the general level of malpractice prompted the Consulate of Burgos to intervene and regulate the insurance practice, although the prologue of the *Declaración* states that the occasion when these provisions were redacted was just one of the frequent meetings held to deal with insurance and, more specifically, to review the current insurance practice. As a result of long discussions between merchants, carriers and shipowners, it was decided to provide for ‘some things which are necessary to [...] clarify when dealing with insurances’.⁴³ The *Declaración* is divided in two, clearly different parts. The first part contains provisions of corrective and explicative nature, allowing us to imagine the content of the policies drawn in the consulate of Burgos until then. The second part contains provisions resembling more an insurance ordinance. Those provisions cluster around an official model policy. In summary, the *Declaración* is the first known regulation on the maritime insurance business in Burgos. It included provisions that could well be defined as innovative, such as the right of the Consulate itself to ‘intervene’ in all policies ‘from now on’. The crucial novelty of the provisions contained in this *Declaración* lies in their application to all policies without any exception.⁴⁴

⁴¹ *Ballesteros Caballero* (n. 38).

⁴² *Santos M. Coronas González*, *Derecho mercantil castellano: dos estudios históricos* (1979), 217–221: Appendix, transcription of the ‘*Declaración de póliza de seguros hecha por el Consulado de Burgos*’.

⁴³ ‘algunas cosas que son necesarias de [...] aclarar en esta negoçiaçion e trato de los seguros’, *Coronas González* (n. 42), 218.

⁴⁴ *Ballesteros Caballero* (n. 38), 210.

II. The Ordinances of Bilbao

Given the close relationship between the merchants' *universidades* of Burgos and Bilbao, it would be tempting to imagine a parallel development of their maritime insurance regulations, but this is not the case. In Bilbao, they were highly dependent on the particular commercial and maritime tradition of its consulate. This led to a distinct normative framework from that of Burgos. A few years after the Burgos *Declaración* of 1514, in 1520, the Bilbao consulate issued its Maritime Insurance Ordinances,⁴⁵ probably because at that time Bilbao was becoming an important insurance market in its own right. Its business was not limited to maritime transport, but it extended to providing security to the parties involved in it. The provisions of the 1520 Bilbao Ordinances make the insurer liable 'should any risk befall the insured vessel or merchandise or part of these, to pay and indemnify in the form and manner prescribed by the policy of the said insurance'.⁴⁶ They also required that any person taking up insurance 'whether on merchandise, on the vessel, the freight and the tackle on board, ought to bear ten percent of the risk on the said vessel, freight or tackle or on the merchandise on which insurance was made, following the will of the insured, upon condition that he contribute no less than the said ten percent'.⁴⁷ Compensation on the tackle and rigging was to be paid only if these 'are cut or jettisoned to save the said vessel and merchandise'.⁴⁸ Should an accident befall when the ship is sailing without cargo 'it is to be understood as *avería gruesa*', and so the insurer had to indemnify the insured.⁴⁹ In case of 'displacement [*corrizon*],⁵⁰ collision or damage to

⁴⁵ Edited in Javier Enríquez Fernández, *Concepción Hidalgo De Cisneros, Adela Martínez Lahidalga*, Archivo Foral de Bizkaia. Sección Notarial (1459–1520). Consulado de Bilbao (1512–1520) (2007), 171–176.

⁴⁶ '[S]i algun riesgo de la dicha nao o mercaderias o de parte dellas ansi aseguradas conecière, de pagar e de desenbolçar segun e de la forma e manera que se resare la poliça del dicho seguro', *Enríquez Fernández/Hidalgo De Cisneros/Martinez Lahidalga* (n. 45), 172.

⁴⁷ '[S]ea sobre mercaderias como sobre nao, fleytes e aparejos della como sobre qualesquier mercaderias que se hiziere el dicho seguro, aya de correr dies por çiento de riesgo sobre la dicha nao, fleyte o aparejos della o sobre las mercaderias sobre que se hiziere el dicho seguro, e dende arriba lo que la voluntad del dicho asegurado quisiere, con tal/ que non corra menos de los dichos dies por çiento', *Enríquez Fernández/Hidalgo De Cisneros/Martinez Lahidalga* (n. 45), 173.

⁴⁸ '[S]e cortaren o echaren de la dicha nao por salbar la dicha nao e las mercaderías', *Enríquez Fernández/Hidalgo De Cisneros/Martinez Lahidalga* (n. 45), 174.

⁴⁹ '[S]e entendière ser avería gruesa', *Enríquez Fernández/Hidalgo De Cisneros/Martinez Lahidalga* (n. 45), 175.

⁵⁰ 'Corrizon' is understood as displacement of the cargo. 'Correrse la estiva: irse o caer a un lado en algún temporal y por efecto de los grandes balances, cuyo accidente traería fatales consecuencias', *O'Scanlan* (n. 8), 265 f.

said merchandise due to fortuitous mishap',⁵¹ the insurer did not have to pay unless the insurer could prove that the damage was caused by a fortuitous mishap.⁵² The 1520 Bilbao Ordinances also provided for specific requirements, conditions and terms of payment of policies.⁵³

By comparison, the Ordinances of Burgos did not include the compulsory 10% underinsurance. They did not make any mention of the parties' contractual freedom but rather kept the whole negotiation process under close control. They did not provide for *avería gruesa* nor for the insurance of freight and tackle. The only thing they have in common with the Bilbao provisions is the eight-month period given to the insurers to pay the amounts underwritten.⁵⁴

It is well known that the ordinances of the consulate of Bilbao were not promulgated until 1737. However, there are at least two further earlier versions of the Ordinances (1531 and 1554), together with some subsequent changes. In its second part starting with Chapter XX, the Ordinances of 1531 focus on a number of issues concerning insurance:⁵⁵ (a) The bill of lading is described as an indispensable probatory instrument to settle disputes in case of loss, shipwreck and other fortuitous mishaps (Chapter XXII). (b) The insurers are liable to make good the loss once they receive news of it. The payment is to be distributed 'the half to the insurers, and of the other half a third to the university, a third to the poor of the hospital and to the judges'⁵⁶ (Chapter XXIII). (c) The insurers were not required to 'pay [...] for any ropes or tackle, unless the damage was an *avería gruesa*'. '[S]uch damage or jettison or cutting' could be considered '*avería gruesa* if [...] any tackle, masts or yards sustained damage and broke apart, or if the vessel suffered damaged when hitting rocks (or when entering or leaving the port, ropes, masts or yards are affected) because of a fortuitous and sudden event, as nothing else could be done'⁵⁷ (Chapter XXIV). (d) The insurers were not required to pay

⁵¹ '[C]orrizon, arrimazon o dapno ser venido en las tales mercaderías por caso fortituito', *Enriquez Fernández/Hidalgo De Cisneros/Martinez Lahidalga* (n. 45), 173.

⁵² *Enriquez Fernández/Hidalgo De Cisneros/Martinez Lahidalga* (n. 45), 174.

⁵³ *Enriquez Fernández/Hidalgo De Cisneros/Martinez Lahidalga* (n. 45), 173 f.

⁵⁴ *Declaración de póliza de seguros hecha por el Consulado de Burgos*, Chapters I, III, V, VIII and IX, in *Coronas González* (n. 42), 217–221.

⁵⁵ *Ordenanzas del Consulado de Bilbao de 1531*; the chapters cited in the text are reproduced in *Teófilo Guiard y Larrauri*, *Historia del Consulado y Casa de Contratación de Bilbao y del Comercio de la Villa*, vol. 1 (1913), 588–591.

⁵⁶ '[L]a mitad para los aseguradores y de la otra mitad la tercia parte para la universidad, la tercia parte para los pobres del hospital y para los jueces.'

⁵⁷ 'pagar [...] ningún cables ni aparejos, a no ser que fuese avería gruesa. [...] [E]l tal daño o echazón o cortado' lo que era 'avería gruesa de todo [...] si por ventura algunos aparejos o mastes o vergas recibían daño asy de romper como de quebrar como del daño que recibiera el cuerpo de la nao en dar roca (o al entrar o salir de puerto y se vieran afectados los cables, mastes o vergas) siendo por caso fortuito e con temporal y no pudiendo hacer otra cosa.'

beyond the value of the vessel plus half the freight, deducting 10% from the total value, as a deterrence against the shipmaster's fraud (Chapter XXV).

III. The Ordinances of Burgos

The Ordinances of the Consulate of Burgos⁵⁸ were enacted in 1538. They had great influence on later legislation, both in Spain and in the Americas. They received the official sanction of Charles V, in an attempt (albeit of little success) to respond to frauds and abuses. With these Ordinances, Burgos became the most important market for insurance of Castile, with the power to regulate the subject, to fix official premium rates, and with the jurisdiction to settle insurance disputes. A number of further factors made the insurance market of Burgos more secure and thus more attractive than other places, such as the presence of an official model policy prescribed by the Consulate, the registration of all policies before the secretary of the *universidad* of merchants, the possibility of payment of premiums at the fairs of the close by Medina del Campo and the requirement to the insured to provide sureties to the insurers before receiving any payment from them.⁵⁹

When drafting its Ordinances, the Consulate of Burgos relied on 'wise and expert persons with much experience in dealing with merchandise, risk, travel and navigation'.⁶⁰ This led to the inclusion of important novelties, such as the obligation to use the model policy and a series of requirements to be added to any insurance policy (Chapter XLVII). According to Chapter LI, all policies had to specify the kind and condition of the insured merchandise, 'because there are greater inconveniences with merchandise that look similar [with each other], as we have seen by experience'.⁶¹ This exempted the insurer from undertaking any risk not declared in the policy. The same chapter also provided for the standard of care required of the carrier when transporting the insured goods. The Ordinances also provided for the case of loss or damage of the merchandise due to *avería gruesa* (Chapter LXII). In case of jettison 'the said damage shall be cast in an *avería gruesa general*, to which all those who carried any merchandise would contribute [...], taking into account the value of each thing as recorded in the bill of lading signed by the scribe of the vessel, also including the value of any merchandise the shipmaster or the scribe or any other person might have

⁵⁸ *Eloy García de Quevedo y Concellón*, Ordenanzas del Consulado de Burgos de 1538 (1905), 145–295. The chapters cited further below are reproduced *ibid.*, 226–285.

⁵⁹ *Basas Fernández* (n. 36), 163.

⁶⁰ '[P]ersonas sabias e espertas e de mucha experiencia en el trato de mercadería y cosas del riesgo e viajes e navegaciones.'

⁶¹ '[P]orque sobre semejantes mercaderías traen mayores ynconvenientes, como por experiencia hemos visto.'

secretly received or loaded onto the said vessel, as well as of the freight, as it is customary that all contribute to the said *averías*' (Chapter XXXVIII).⁶² Chapter LXIII further specified how to distribute the loss between the participants.

Because of the high number of frauds suffered by the *universidad*, freight and tackle were excluded from the insurable things (Chapter LII). For the same reason, barratry (i.e., fraud) of the shipmaster could not be covered (LXXXVII). Insurance payments would take place following the calendar of the Castilian fairs (Chapter LIII). The Burgos Ordinances sought to regulate with precision the payment of premiums and insurance money. They also included provision concerning the insured with the aim to prevent the fraudulent overinsurance of the same object with a number of different policies. Chapter LVII, for example, required to state the identity of the merchant insured or of the main partner in a joint venture. Often the policy holder acted as a commission agent who signed the policy in the name of another person, an operation called 'encomienda' (Chapter LXI). In Chapters LVIII and LXII, the Ordinances further provided for the case of abandonment of the ship, shipwreck, and for the insurers' liability in case of damages or loss due to war or pirates, as well as for the case of damaged merchandise (where the insurers were exempted from liability).

Examining the Burgos Ordinances, one might well conclude that sixteenth-century Spanish maritime insurance retained the same structure as in the Middle Ages. Insurers and insureds were still merchants who joined forces to protect their trade. Insurance remained a guild-like activity rather than a capitalist endeavour – there were no specialised insurance companies yet. The same conclusion may be drawn for the Ordinances of the Consulate of Seville of 1556. They made explicit that they followed ancient mercantile practices. The risks insured against were identical in the Seville and the Burgos Ordinances, suggesting that they both drew from a shared pool of Mediterranean and Atlantic customs.

IV. The Ordinances of Bruges

After the Ordinances of Burgos, Bilbao and Seville had been enacted, it remained an open issue to regulate the insurance business covering the important trade with Flanders. This trade was driven by long-standing commercial links

⁶² '[S]e haga la dicha avería gruesa general, o contribuyan los cargadores, todos cuantos hubieren cargado cualquier mercadería [...], tasando é moderando el valor de cada cosa, así las que parecieren en el padrón de 'saiborne' por el escribano de cada nao, como si por caso el maestre o escribano u otro cualquier de la nao hubiese secretamente recibido o cargado en la dicha nao de cualquier mercadería que sea, ó si el dicho maestre ó su compañía, y estimando su valor y el del flete como es costumbre de heredar todos en las tales averías, sea tasado todo contado.'

and the presence of a strong Spanish mercantile community in Bruges.⁶³ One of the most notable aspects of the Ordinance on Maritime Insurance of the Consulate of the Spanish Nation in Bruges⁶⁴ is certainly the thoroughness of its provisions. Drawing on a detailed knowledge of the insurance practices within the Hispano-Flemish commercial sphere and building especially on the Burgos ordinances of 1538 and, to a lesser extent, the Caroline Ordinances of 1549 for the Spanish Netherlands,⁶⁵ the Consulate of the Spanish nation in Bruges issued an extensive set of provisions on insurance.⁶⁶ These were designed to give transparency to a system that was thought to be riddled with uncertainty and to put an end to alleged abuses arising from the references in insurance contracts to ‘the use and custom of the street of London [i.e. Lombard Street] and the bourse of *Enveres* [Antwerp], whose usages and customs were never seen in writing’, consequently giving rise to many disputes.⁶⁷ Thus, it was the lack of a clear normative framework for the insurance market that made it necessary to define it for the Spanish merchants operating in Bruges and Antwerp. The Consulate of Bruges offered a clear alternative to the traditional insurance formulas with all their ambiguities, ‘stating in the policy that they ought to be insured after the use and custom of the ordinances of our Nation of Spain’.⁶⁸ In issuing its own insurance Ordinances, the Consulate also solved the problem of the lack of familiarity

⁶³ *Hilario Casado Alonso*, *La colonie des marchands castillans de Bruges au milieu du XVe siècle, Diplomates, voyageurs, pèlerins, marchands entre pays bourguignons et Espagne aux XVe et XVIe siècles*, (2011) 51 Publication du Centre Européen d’Etudes Bourguignonnes (XVe et XVIe siècles) 233–251.

⁶⁴ A copy entitled *Las Ordenanzas echas por los cónsules de la nación de Espanna residentes en la ciudad de Brujas* dating 1569 is covered by the archivist at the State Archives in Brugge *Emile van den Bussche*, *Un fibre rare, Code d’assurance maritime a l’usage des Espagnols residant à Bruges*, (1880) 11 *La Flandre: revue des monuments d’histoire et d’antiquités* 66–68. Another copy held in the Brussels Royal Library was published *Charles Verlinden* (ed.), *Código de seguros marítimos según la costumbre de Amberes, promulgado por el consulado español de Brujas en 1569*, (1947) 7 *Cuadernos de Historia de España* 146–193; see *Santos M. Coronas González*, *La Ordenanza de seguros marítimos del Consulado de la Nación de España en Brujas*, (1984) 54 *Anuario de historia del derecho español* 385–408, 385 n. 1. Yet another copy in Spanish is kept in the National Library in Madrid: *Ordenanzas echas por los consules de la nación de Espanna residentes en esta ciudad de Brujas para los sotopuestos de dicha nación sobre los seguros y pólizas de seguridad* (1568); see *Jules Finot*, *Etude historique sur les relations commerciales entre la Flandre et l’Espagne en Moyen Âge* (1899), 256 f.

⁶⁵ For which, see *Jean-Marie Pardessus*, *Collection de lois maritimes antérieures au XVIII^e siècle*, vol. 4 (1828; reprint, 1968), 38–44.

⁶⁶ *Coronas González* (n. 64), 389 f.

⁶⁷ ‘[A] uso y costumbre de la estrada de Londres y de la bolsa de Enveres, el qual uso y costumbre nunca se ha visto por escrito’, *Ordenanzas de seguros de la nación de España en Brujas*, prologue, cited in *Coronas González* (n. 64), 387.

⁶⁸ ‘[P]oniendo en la póliza que se hacen asegurar al use y costumbre de las ordenanzas de esta dicha nuestra Nación de España’, *Coronas González* (n. 64), 389 f.

of some of its members with the Antwerp customs, while strengthening its own jurisdiction over insurance disputes.⁶⁹ Approved unanimously on 11 September 1568, these Ordinances were addressed to the community of the Spanish merchants in Bruges and those trading with them. By that time, the community established in Bruges was already familiar with the Burgos Ordinances on maritime insurance of 1538, which they took as a model in many respects. As to the trade with the Americas, however, the Bruges Ordinances looked more at the 1556 Ordinances of Seville,⁷⁰ ‘because [...] they have more news about this type of navigation’ (Tit. III, Ord. I).⁷¹

Often, goods had first to be transported on a river before they could be loaded onto the vessel anchored in the port named in the policy. In such cases, to avoid any doubt as to the moment in which the risk would start accruing, the Bruges Ordinances declared that the risk was undertaken from the moment the transport would commence on the small lighters from the city of Seville to San Lucar, or from Puerto de Santa María and Cadiz on the coast. Conversely, when the merchandise was coming from the ocean and had to be transported through inland waterways, the Ordinances mentioned expressly the route from Cadiz and San Lucar to Seville, from Cascais to Lisbon, from Abra de Gragia to Rouen and other ports on the French and English coast, both for the loading and unloading operations (Tit. III, Ord. I). The Bruges Ordinances also highlighted the importance of convoy navigation, the obligation to specify the origin, amount and quality of the merchandise, and it even prescribed certain goods that had to be specifically declared (Tit. II, Ord. I–II). They spelled out the risks to be borne by the carrier and the owners of the merchandise (Tit. XI, Ord. I). To avoid problems arising from the use of different currencies, as well as from their constant fluctuation, the Ordinances provided for fixed exchange rates (Tit. IV, Ord. III). Further, they required that the name of the vessel had to be included in the policy (Tit. V, Ord. I), although they also allowed the possibility to include reference to ‘unnamed ships’, provided that the policy included the ports of departure and destination, whether layovers were allowed, the names of the carriers of the insured goods and of consignees (Tit. VI). In case of dispute, the parties were required to sue before the consular court (Tit. I, Ord. I). To curb fraud, a 10% compulsory underinsurance was established (Tit. XI).

Contrary to the ordinances of the Iberian Peninsula, the barratry of the shipmaster could be included in the policy (Tit. XI, containing ten ordinances on the barratry of the shipmaster). Given the large number of frauds committed in hull

⁶⁹ Coronas González (n. 64), 392.

⁷⁰ The following provisions are reproduced in *Verlinden* (n. 64), 160–186.

⁷¹ ‘[P]or [...] que tienen más noticia de aquellas navegaciones’, *Verlinden* (n. 64), 186.

policies, freight and tackle were excluded, but shipmaster or shipowner were allowed to insure the value of the hull, as well as artillery and other weapons carried for its protection (Tit. XVIII, containing nine ordinances on insurance of hull, freights, tackle, artillery and ammunition). This insurance, however, had to be made in a different policy from that of the merchandise, and it could be made for specific journeys, not for set periods of time (so-called time policies).⁷² The prohibition to insure the freight was lifted for ships sailing to the Americas and the Eastern Indies: in such cases, the freight could be insured to a maximum of three quarters of its value (Tit. XVIII, Ord. 3). The Ordinances of Bruges also regulated in detail the main obligation of the insurer, the payment of the indemnity. In order to receive the indemnity, the insured had to provide proof of his claim. When the loss was public knowledge, in the absence of news of the vessel for over a year, the insured could demand to be compensated by the insurers, who had to pay within two months following the request. The ordinances included the obligation of the insured to pay the premium (Tit. XII, containing four ordinances dealing with shipwreck and other fortuitous cases, leading to the loss of the cargo) and of the insurers to refund the premium in the case of changes in the terms of the insurance (Tit. IX, containing 13 ordinances on the procedures for the refund of the premium).

General average and abandonment of the vessel are minutely regulated in Titles XIII and XIV, on the basis of the general principle of attributing the damage to the merchandise to the shipmaster if the mishap was due to his fault. The period granted to the insured to request compensation for loss or damage to the merchandise insured amounted to one-and-a-half years from the day the last insurer had signed the policy. If during this period the insured was unable to gather all the documentation required to be paid, he had to notify the majority of the insurers and file his claim before the Secretary of the Nation once the documentation was complete. This period was extended by a further year if the insurance covered a particularly long voyage, such as those to the Americas and the Eastern Indies. Furthermore, the Bruges Ordinances provided for the abandonment of the insured property, establishing the periods within which abandonment had to be done depending on the location of the port of departure. They also provided for premium refunds – that is, the part of the premium that the insurer had to return to the insured because of variations in the terms covered by the policy. If the insurer had already collected the premium, he was to refund the sum withholding 2% of the total. If the premium did not exceed 3% of the insured value, the insurer was to retain 1% (Tit. IX, Ord. II).

⁷² The Ordinances regulated several types of policy: hull policies, cargo policies for round voyages; general cargo policy for outward journeys to the Americas; general cargo policies for return journeys from the Americas; return policies on ship hulls; and life insurance. *Verlinden* (n. 64), 161.

The last title of the Ordinances regulated life insurance (Tit. XX), which was later prohibited by the royal Ordinance of 1570⁷³ in view of the number of frauds and abuses committed with life insurances.

In conclusion, it is fair to say that the kind of risks that maritime insurance covered during the sixteenth century were mainly those caused by natural events, war and piracy. The emergence of a new type of ‘stateless piracy’ favoured the search for new instruments to mitigate the enormous losses that it caused.⁷⁴

E. Conclusion

Throughout the late Middle Ages and the early modern period, Castilian mercantile communities had to address the risks of navigation. This spurred them to devise various ways to preserve their investments in maritime ventures. Endemic warfare led the Crown to issue letters of safeguard in order to stabilise imports that supplied the national market. Such letters especially benefitted foreign merchant communities operating in Castilian ports. The need to preserve and encourage maritime transport led to the development of further forms of protection, such as the bottomry loan. The repayment of the loan and the agreed premium was contingent on the safe arrival of the insured assets at the port of destination. This system became widespread in both Mediterranean and Atlantic ports, but it was not the only one used to transfer risks in late medieval maritime trade.

Another form of risk transfer was mutual private insurance developed by the Castilian community involved in international trade. It emerged from a range of practices in use at the time, and later it had an impact on premium insurance, progressively shaping its content. At the same time, the regulations imposed on the insurance business gradually introduced the jurisdiction of the mercantile community. Until then, insurance was an unregulated practice among merchants, lacking legal formalities. A first model insurance policy was probably used during the late fifteenth century, although the first evidence of such policy appears only in 1509, which served as a common template.

The absence of a single and common insurance instrument, the use of different insurance policies, and the ensuing frauds, drove the consulates of Burgos and Bilbao to intervene for three main reasons: imposing a single standard model policy to curb fraud and avoid conflicting interpretations; asserting their jurisdiction so as to intervene in case of disputes; and controlling the transactions done within their institution, while charging contributions for their service. With the

⁷³ *Pardessus* (n. 65), 103–119.

⁷⁴ *Milagros del Vas Mingo/Navarro Azcue* (n. 7), 579–614.

1509 policy serving as a blueprint, the consulates of Burgos and Bilbao formalised their model policy in 1514 and 1520, respectively. With their ordinances, insurance practice gained uniformity, formal structure and specificity, granting greater security to the parties involved.

The consulates largely consolidated pre-existing practices, securing minimal state intervention. Consequently, maritime insurance ultimately maintained the same structure as in the late Middle Ages. However, even when referred to the Americas, insurance had to be regulated: this was done with the Ordinances of Consulate of Seville in the mid-sixteenth century, shaped after those of Burgos. Lastly, to prevent conflicts on insurance among the Castilian merchant community established in the Flanders, the Ordinances on maritime insurance of the Consulate of the nation of Spain in Bruges (shaped after those of Burgos and Seville) were promulgated. With these Ordinances, Castilian merchants reinforced their privative jurisdiction beyond the Spanish borders. While the Ordinances of Burgos were the most relevant in practice, they did not serve as a universal model. The Ordinances of Bruges, too, introduced significant innovations, such as the model policy for hull insurance, and even later, the Ordinances approved by Felipe II on 1 August 1572 included a model policy for slave insurance.⁷⁵

In conclusion, as argued by Gabriel Tortella Casares, maritime insurance contributed to the allocation of the risks, and thus also to the distribution of wealth. Its economic function lies in that ‘it gives strength to carry out great ventures’ – that is, it makes it possible to engage in large investments. Therefore, the two great contributions of maritime insurance are the distribution of risk and the encouragement of investments.⁷⁶

⁷⁵ *Eugenio Larruaga Boneto*, *Memorias políticas y económicas sobre los frutos, comercio, fábricas y minas de España: con inclusión de los reales decretos, órdenes, cédulas, aranceles y ordenanzas expedidas para su gobierno y fomento* (Madrid 1787–1800), vol. 28, 197–297 and vol. 29, 1–84.

⁷⁶ Tortella quotes a memorandum written in the eighteenth century by the Cadiz merchant Juan Mora y Morales and submitted to the Board of Directors of Insurance Companies, Carriers and Shipowners of Cadiz in 1786: *Gabriel Tortella Casares*, *Introducción*, in: *idem* (ed.), *Historia del seguro en España* (2014), 21–45, 21.

