General Average and Risk Management in Medieval and Early Modern Maritime Business

Edited by
Maria Fusaro · Andrea Addobbati · Luisa Piccinno

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General Average in Genoa: Between Statutes and Customs

Antonio Iodice

General Average (GA) is an institution aimed at better bearing the business risks of maritime trade in the face of accidental events. It redistributes the cost of damage to a ship or the goods it is carrying if it becomes necessary to save either the ship or the goods in an emergency. The evolution of the Genoese legislation, analyzed through the Genoese Civil Statutes, legal treaties and GA practices, provides an overview of a local reality with deep ramifications at Mediterranean and European level. Through

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conventions and customs often shared across distant areas, the progressive development of this institution and the affirmation of the rules regulating it was a gradual and non-linear process. Such process was often simplified through reference to the oft-shared origins in Roman law. The Glasgow agreements and the subsequent 'York-Antwerp Rules' (YAR), published for the first time in the late nineteenth century and still in force today, were the culmination of this process.[1]

The fall of the Western Roman Empire and the crisis of the juridical-normative unity of which it had been the guarantor, pushed the countries facing the Mediterranean Sea to develop their own maritime regulations over the early Middle Ages. Among these, most states developed their own rules concerning the institution nowadays known as GA, although there were mutual influences.[2] The differences among these rules made it necessary to formulate codes and compendia of laws, or else resort to the jurists' opinions to provide practical indications to merchants, shipmasters and institutions.[3] Local maritime laws on international trade had to be recognized, understood and respected by all, even by foreigners arriving in a port. As in the Genoese case, the codes and statutes of different maritime realities often referred to the authority of Roman law, or to commonly accepted customs, in order to provide common ground and the necessary authority given the divergence of local legal and customary

[1] P. Musolino, 'A relic of the past or still an important instrument? A brief review of General Average in the 21st Century', in M. Musi ed., *Il Diritto Marittimo—Quaderni I—New challenges in Maritime Law: de lege lata et de lege ferenda* (Bologna 2015), 257–288; M. Harvey, *The York-Antwerp Rules: The Principles and Practice of General Average Adjustment* (Boca Raton 2014); W. Tetley, 'General Average now and in the future', in R. Roland ed., *Liber Amicorum* (Brussels 2003), 419–450; G. Hudson and M. Harvey eds., *The York-Antwerp Rules*, 3rd ed. (London 2010).

[2] The expression *General Average/Avaria Generale* is a modern one. In the Genoese sources, one finds only the term *getto* or *avaria,* as will be seen subsequently. See the essays of Andrea Addobbati and Hassan Khalilieh in this volume regarding etymological issues.

[3] One of the recurring themes in today's quest for uniformity in maritime law is the argument that different states applied uniform rules in the past. Scholarly discussions regarding a hypothetical *lex mercatoria* are also stimulated by the idea of these "international rules", on this see V. Piergiovanni ed., *From Lex Mercatoria to Commercial Law* (Berlin 2005). For a comparison with contemporary debates, see O. Toth, *The Lex Mercatoria in Theory and Practice* (Oxford 2017).

frameworks.[4] All of these measures generated transaction costs related to risk management, costs with which operators had to deal.[5]

Legislation concerning Mediterranean maritime traffic, perhaps also for this reason, does not seem to have been influenced by criteria of 'commercial competition' between socio-economic or rival political forces, which became more evident between the seventeenth and eighteenth centuries.[6] The legislation appears to have been based on criteria such as personal trust and a sense of fairness in business dealings, a framework designed to share the risks and encourage maritime trade. No single social or institutional actor was able to impose its own rules. For this reason, it seems that a scenario of 'perfect competition' prevailed, in which the regulations could interact with each other, to face together the unpredictability of a sea voyage. From this perspective, GAs procedures follow sets of rules and conventions that constitute an exemplary case of a long-term, non-market, self-regulating institution.

The historical evolution of the rules governing GA is particularly interesting when observed from the Genoese perspective at a particularly dynamic moment for the Republic: the years between the end of the sixteenth and the seventeenth centuries. In the aftermath of the alliance with Spain, and the reforms that had structurally modified the functioning of the State, the new Civil Statutes promulgated in 1589 regulated also some aspects of maritime trade such as GA and jettison.[7] In particular, Genoa legislated in this area in precise detail and with the clear goal to control the procedure at an institutional level, a solution that the great national monarchies would try to adopt only about a century later. The procedural peculiarities with which GA was regulated were the result of the consolidation of a specific legal tradition and, at the same time, the codification of customs shared by most of the Mediterranean area.

[4] According to Pardessus, this was the case in the Genoese statutes: J. M. Pardessus, *Collection des lois maritimes antérieures au XVIII siècle*, 6 vols. (Paris: Imprimerie royale 1828–1845), IV: 521.

[5] See D. North, 'A transaction cost theory of politics', *Journal of Theoretical Politics*, 2/4 (1990): 355–367.

[6] G. Calafat, *Une mer jalousée. Contribution á l'histoire de la souveraineté (Méditerranée, XVIIe siècle)* (Paris 2019).

[7] See A. Pacini, *I presupposti politici del "secolo dei genovesi". La riforma del 1528* (Genoa 1990); on the events relative to the promulgation of these statues, see R. Savelli, 'Statuti e amministrazione della giustizia a Genova nel Cinquecento', *Quaderni Storici*, 37/110 (2002), 347–377.

In particular, by comparing Genoese legislation with the volume of the *Consolat de Mar* of Barcelona, which served as a juridical model for several centuries across most of the Mediterranean basin, and also by studying the interpretations of some of the jurists of the period, we see an attempt to create an autonomous regulatory system, inserted into the pre-existing legal framework.[8]

Scholarly publications on the *Consolat* of Barcelona, and its influence on subsequent European legislation, are abundant, given the constant relevance of this topic, which has grown hand in hand with the increasing importance of long-distance trade through the centuries. In particular, there are numerous analyses and reconstructions aimed at investigating the evolution of rules about GA in Antiquity and in the modern period.[9] However, there is a substantial historiographic void regarding the adoption and evolution of these regulations within specific contexts, including the Genoese one. Authors such as Jean-Marie Pardessus or Antonio Lefebvre d'Ovidio constitute the main points of reference here. However, there is no organic reconstruction that connects the different models and deepens our understanding of the various rules that governed the functioning of GA in the main European and Mediterranean ports.[10] Seen from this perspective, the Genoese Civil Statutes represent an essential element for the reconstruction of the regulatory evolution of GA. Despite the research conducted in this area by important legal historians such as Vito Piergiovanni and Rodolfo Savelli, there has not been a real follow-up study on the use of the Statutes through more specific investigations.[11] Giuseppe Felloni, one of the first scholars to use Genoese GA sources for

[8] During the seventeenth century, there were Genoese claims of sovereignty in the Ligurian Sea, see T. A. Kirk, *Genoa and the Sea: Policy and Power in an Early Modern Maritime Republic (1559–1684)* (Baltimore 2005), 118–127.

[9] One of the main references for English literature on GA is W. Ashburner, *The Rhodian Sea Law* (Oxford 1909); see also F. D. De Martino, 'Note di diritto romano marittimo, Lex Rhodia II e III', *Rivista del Diritto della Navigazione*, 4 (1938): 3–86; N. Bogojevic-Gluscevic, 'The Law and Practice of Average in Medieval Towns of the Eastern Adriatic', *Journal of Maritime Law & Commerce*, 36/1 (2005): 21–59.

[10] See A. Lefebvre d'Ovidio, 'La contribuzione alle avarie comuni', *Rivista di Diritto della Navigazione*, I (1935): 36–140; Pardessus, *Collection des lois maritimes*, IV: 439–544.

[11] R. Savelli, *Politiche del diritto ed istituzioni a Genova tra Medioevo ed età moderna* (Genoa 2017); V. Piergiovanni, *Norme, scienza e pratica giuridica tra Genova e l'Occidente medievale e moderno*, 2 vols. (Genoa 2012).

a statistical analysis of maritime trade, relied on these studies for a legal framework.[12]

GA Rules from Roman Law to the *Consolat de Mar*: premises for the Evolution of a GA Genoese Policy

Roman law remained an essential model for Mediterranean states, including Genoa. The legal tradition belonging to the *Corpus Iuris Civilis* and the so-called *Basilica*, acted as a unifying factor for the various regulations that developed in the Mediterranean area during the medieval period.[13] The contemporary concept of GA (referred to by the term *jactum* in the *Digest*[14]) is based on the idea that voluntary damage to property effected to ensure the safety of the ship and its cargo must be borne by all beneficiaries.[15] In particular, the legal expedient of considering all goods on board as common property, despite belonging to different owners, was widespread. This agreement, called *agermanar* in the *Consolat* and *germinamento* in the Italian legal texts, was a reciprocal obligation concerning also unintentional damage.[16] Only after the event itself, and upon safe arrival at the first port, did the apportionment of damage suffered by one or the other consignment of goods, or by the ship itself, take place among the merchants and the ship-owners, in proportion to the economic interests of each party involved in the shipment.[17]

[12] G. Felloni, 'Una fonte inesplorata per la storia dell'economia marittima in età moderna: i calcoli di avaria', *Wirtschaftskräfte in der europäischen Expansion*, 2 (1978): 37–57.

[13] On the adoption of Rhodian law into Roman law see G. Tedeschi, *Il diritto marittimo dei romani comparato al diritto italiano* (Montefiascone: Silvio Pellico, 1899); G. A. Palazzo, *La lex Rhodia de jactu nel diritto romano* (Parma 1919). On these issues see the contribution of Daphne Penna in this volume.

[14] An anthology of 50 books belonging to the *Corpus Juris Iustinianeum*.

[15] K. S. Selmer, *The survival of General Average: a necessity or an anachronism?* (Oslo 1958), 42.

[16] See Andrea Addobbati's contribution in this volume.

[17] S. Corrieri, *Il consolato del mare. La tradizione giuridico-marittima del Mediterraneo attraverso un'edizione italiana del 1584 del testo originale catalano del 1484* (Rome 2005), 267.

As for the *Digest*, what we would define as a GA act is presented in book XIV.2, significantly titled *De Lege Rhodia de Jactu*. The main legal figure was that of the *Magister*, the master and, often, also the owner of the ship. The extraordinary expenses and damages suffered in the interest of only one of the parties involved constituted what we would now call a Particular Average (PA): a type of damage that did not lead to apportionment. A reconfirmation of these principles is found in the *Basilica*, a corpus of law aimed at reviewing the Justinian compilation, whose redaction started under the authority of the Byzantine Emperor Basil the Macedonian and it was issued under his son Leo VI the Wise.[18]

Finally, a further novelty was the *Nòmos Rhodìon Nautikòs*, usually referred to as the 'pseudo-Rhodian law' to distinguish it from the original *De Lege Rhodia de Jactu*, inserted in the *Corpus Iuris*. Maritime matters are found in Book 53 of the *Nòmos* and refer directly, in theory, to the maritime custom of Rhodes as reported in *Corpus*.[19] According to some authors, this work is a private collection of maritime principles applied in the eastern Mediterranean in the eighth century.[20] One of the main divergences of this legislation with respect to the *Corpus* was the need, before proceeding to the act of voluntary damage, for an agreement among the majority of the merchants. This new collection of laws was used until the twelfth century in Adriatic cities, especially those most involved in commercial traffic with the Byzantine empire, and was partially integrated into the legal systems of Trani, Venice and Ancona.[21] Two legal traditions developed, one in the Eastern Mediterranean, based

[18] B. H. Stolte, ''New *Praefatio*' to *Basilica* Online. Justinian's *Corpus iuris* in the Byzantine World', in W. Brandes ed., *Fontes Minores XIII* (Berlin/Boston 2021), 239–264. See also the bibliography of Th. E. van Bochove available online at https://referenceworks.brillonline.com/browse/basilica-online (last accessed 22 December 2021).

[19] The recall to the Rhodian law was just a way to give it a pretended authority and a legislative validity, Bogojevic-Gluscevic, 'The Law and Practice of Average': 28; Ashburner, *The Rhodian Sea Law*. On the "pseudo-Rhodian law" see also M. Pal ed., *Plenitudo legis, amor veritatis* (Rome 2002), 134–135; Lefebvre d'Ovidio, 'La contribuzione alle avarie comuni', 62–70.

[20] On this see the contribution of Daphne Penna in this volume.

[21] R. Di Tucci, 'Consuetudini marittime del Medio Evo italiano nella redazione del Libro del Consolato del Mare', in L. A. Senigallia ed., *Atti della mostra bibliografica e convegno internazionale di studi storici del Diritto marittimo medioevale* (Naples 1934), 129–138, 130–131. According to Lefebvre D'Ovidio, the statutes for these cities consisted simply of the ample exemptions to the customary law of the *Nòmos,* see Lefebvre D'Ovidio, 'La contribuzione alle avarie comuni', 70.

on the adoption of pseudo-Rhodian law rather than the one based on the *Corpus Iuris*, which maintained its influence in the western Mediterranean. However, there was no lack of mutual influence between the two legal traditions. The pseudo-Rhodian law, for example, was progressively recognized by the autochthonous practices of Pisa, Genoa and Amalfi, as well as in the *Usatges de la Ribera* in Barcelona, although these remained primarily influenced by the *Corpus Iuris*.[22]

According to Salvatore Corrieri, Genoese and Catalan maritime laws in the Mediterranean area between the thirteenth and fourteenth centuries contributed to the spreading of the Roman and Byzantine legal traditions. The Adriatic area, on the other hand, remained more tied to the Levant routes and to the direct Byzantine legislative influence.[23] Furthermore, while Roman law regarding the regulation of GA referred primarily to jettison, the need to safeguard the company with acceptable risk margins in an insecure environment such as sea transport led to experimentation with organizational forms and institutions that were progressively expanded upon becoming more inclusive.[24] In some commercial entrepôts, such as Barcelona with the *Consolat* or Genoa with the Civil Statutes, the concept of GA was expanded irregularly to include administrative costs and damages due to unforeseeable circumstances or *force majeure*.[25] There was no lack of attempts to standardize and rearrange the rules, such as with the *Costumbres de Valencia*.[26] In this collection, promulgated in 1250, jettison alone seemed to lead to a distribution of damages while, to underline the voluntary nature of the act, it was the merchants themselves who had to throw their goods overboard first. To protect ship-owners and masters who bore the risk

[22] Corrieri, *Il consolato del mare*: 24–25; see G. Benvenuti, *Le repubbliche marinare. Amalfi, Pisa, Genova e Venezia* (Rome 1989).

[23] Corrieri, *Il consolato del mare*, 14. The same unifying function between Nordic and Mediterranean law was performed by the *Ordonnance touchant la Marine* promulgated in France in 1681; see O. Chaline, *La mer et la France: Quand les Bourbons voulaient dominer les océans* (Paris 2016). The original text of the *Ordonnance* is available at https://gallica.bnf.fr/ark:/12148/bpt6k95955s (last accessed 1 December 2021).

[24] The *Tavole di Amalfi* and the *Constitutum Usus* of Pisa, for example, required each object jettisoned to be noted, and that the master make a formal declaration along with the sworn testimonies from the crew.

[25] Corrieri, *Il consolato del mare*, 266.

[26] D. S. H. Abulafia, *The Western Mediterranean Kingdoms: the Struggle for Dominion, 1200–1500* (London 1997).

of the sea voyage, the ship contributed with only half of its value to the compensation for damages.[27]

Nonetheless, it was the volume of the *Consolat de Mar* of Barcelona, derived from the judicial activity of the homonymous magistracy, that established itself as a point of reference for the *ius commune* in much of the Mediterranean basin. It remained an essential model even for Genoese jurists throughout the early modern period.[28] The reprints of the 1549 edition, published in 1564 and 1584, were the most widely diffused in Europe, and the Genoese jurist Giuseppe Maria Casaregi based his work on them.[29] Already in 1258, Barcelona had responded to the orders of Valencia with a new maritime code, and with the institution of a magistracy formed by local merchants for the resolution of disputes, the *Consolat de Mar*.[30] In 1394, it included 20 merchants who stood alongside the consuls, as well as two officers called 'defenders of merchandise'.[31] This magistracy established itself as an organ for the defence and support of international trade under the authority of the crown of Aragon.[32]

[27] *Costumbres de Valencia*, *lib.* IX, *rub.* XVII, par. VII; also in Pardessus, *Collection des lois maritimes*, V: 336.

[28] Although the oldest printed version dates to 1519 (*Capitulj et ordinatione di mare et di mercantie* (Rome: Antonio de Bladi 1519), the *editio princeps* is considered to be the second edition, edited by Giovanni Battista Pedrezzano, *Libro di consolato novamente stampato et ricorretto, nel quale sono scritti capitoli & statuti & buone ordinationi, che li antichi ordinarono per li casi di mercantia & di mare & mercanti & marinari, & patroni di nauilii* (Venice: Giovanni Padoanno 1539). A new edition was printed in 1549 making direct reference to the Catalan version, containing all of the original parts, including the chapters on the customs of Valencia and other sections that had initially been omitted. On this topic see C. De Deo, 'Il consolato del mare: storia di un successo editoriale', in L. Guatri, C. De Deo, and G. Guerzoni eds., *Il Consolato e il portolano del Mare* (Milan 2007), I–XLII, XXI–XXII.

[29] G. M. Casaregi, *Il Consolato del Mare*, (Lucca: Cappuri & Santini 1720).

[30] R. C. Cave and H. H. Coulson eds., *A Source Book for Medieval Economic History* (New York 1965), 160–168. Following the developments of maritime law and commerce, Peter IV granted additional legislative privileges in 1340; on this see Lefebvre d'Ovidio, 'La contribuzione alle avarie comuni', 104–105.

[31] See E. Maccioni, 'Il ruolo del Consolato del Mare di Barcellona nella guerra catalano-aragonese contro i giudici d'Arborea', in O. Schena and S. Tognetti eds., *Commercio, finanza e guerra nella Sardegna tardomedievale* (Rome 2017), 167–196.

[32] See E. Maccioni, *Il Consolato del Mare di Barcellona. Tribunale e corporazione di mercanti (1394–1462)* (Rome 2019). Another important role was assumed by the arbiters, who were called upon by various legal offices for commercial and maritime litigations,

The book of the *Consolat*, the product of its judicial activity drawn up at the end of the fifteenth century, did not therefore emerge into a regulatory vacuum.[33] However, while previous regulations had vaguely recalled customs deriving from Roman law, the *Consolat* positioned itself as an authority in its own right, offering a synthesis of the various models in force in the Western Mediterranean. According to Raffaele di Tucci, the various states of the Mediterranean, or at least those of its Western basin, found their juridical order partially reflected in the *Consolat* in a practical summary capable of resolving controversies.[34] For this reason, before proceeding to the presentation of the specific Genoese GA regulations it is useful to dwell on the 'general' framework offered by this compilation, starting with the diffusion and adoption of the different editions of the volume in Mediterranean ports.

Tracing the events relating to this text and analyzing the rules it contains allows us to unveil a circulation of principles that characterized the maritime regulations applied in the Mediterranean in a highly consistent way. It is significant, for example, that the *Consolat* was long considered an Italian work, and that at the beginning of the twentieth century the origin of its authorship was still a matter of investigation

especially in cases of possible 'international incidents'; on this see Maccioni, 'Il ruolo del Consolato del Mare di Barcellona', 167–196; and M. E. Soldani, *I mercanti catalani e la corona d'Aragona in Sardegna: profitti e potere negli anni della conquista* (Rome 2017).

33 For example, the following collections had a direct influence on the Book's redaction: the *Customs of Tortosa* (1271), of *Valencia* (1272), the *Ordinances of Ribera of Barcelona* (1258), the *Curia Fumada* of Vic (1231), the *Consulate of Maiorca* (1336), the *Consulate of Barcelona* (1348): see Corrieri, *Il consolato del mare*, 43–45. On the influence of the *Consolat* for the redaction of the book, see *Llibre del Consolat de Mar*, G. Colón Domènech and A. García Sanz eds. (Barcelona 2001); A. Iglesia-Ferreiros, 'La formacion de los libros de consulado de mar', *Initium*, 2 (1997): 1–372.

34 Di Tucci, 'Consuetudini marittime', 133.

and debate among legal historians.[35] Between the fifteenth and eighteenth centuries there were twenty-five editions of the *Consolat* in Italian, while only seven translations were published in Castilian, English, Dutch, French and German.[36] In most printed versions, moreover, a 'list' is attached showing the presumed date at which the rules contained in the book entered into force in the various Mediterranean ports, the so-called *chronica de les promulgacions*.[37] It is interesting to note that this list backdated the writing of the book to the period immediately following the *Basilica*, that is, to the dawn of the eleventh century. In this way, and by identifying Rome as the first place of its adoption in 1075, a direct continuity with Roman law gave strength and formal authority to the rules contained in the text. Even some well-known seventeenth and eighteenth-century jurists, such as Targa and Casaregi, presumably in good faith,

[35] For example in 1911, O. Sciolla ed., *Il Consolato del Mare* (Turin 1911) was published. The *Real Academias de Buenas Letras* of Barcelona, via Guillermo M. de Brocà, responded to this publication by accusing the editor of wanting "to fight, through a supremacy of editions, the Barcelona paternity to assign the Italian paternity to the consular collections [combattere, attraverso un primato di edizioni, la paternità barcellonese per assegnare alle raccolte consolari la paternità italiana]"; on this see O. Sciolla, 'Dell'edizione principe del Consolato del mare', in L. A. Senigallia ed., *Atti della mostra bibliografica e convegno internazionale di studi storici del Diritto marittimo medioevale* (Naples 1934), 329–334.

[36] Corrieri, *Il consolato del mare*: 1. Among the first printed editions we should remember that of Barcelona, dating to circa 1484. The second, revised by Francesch Celells, dates to 1494. The editions immediately following, all of which were printed in Barcelona, date to 1502 (by Johan Luschner), 1518 (by Johan Rosembach) and 1518 (by Carles Amoros). In note 28 I mention the events relative to the Italian *editio princeps*. The early editions, all printed in Venice with the exception of the Roman one from 1519, date to 1539, 1544, 1549, 1556, 1558, 1564, 1566, 1567, 1576 and 1584; on this see J. M. Edelstein, 'Some Early Editions of the "Consulate of the Sea"', *The Papers of the Bibliographical Society of America*, 51/2 (1957): 119–125, 120–122. The first French edition is that of François Mayssoni ed., *Le livre du Consolat* (Aix-en-Provence: Pierre Roux 1577). One of the most notable editions, for being faithful to the original text, is the Spanish edition with accompanying Catalan text, edited by Antonio de Capmany, *Codigo de las costumbres maritimas de Barcelona*, 2 vols. (Madrid: Don Antonio de Sancha 1791).

[37] The studies that cite this list, nonetheless, do not refer specifically to the editions that do or do not contain it, with the exception of the commented edition by Casaregi. On this topic see L. Tanzini, 'Le prime edizioni a stampa in italiano del Libro del Consolato del Mare', in R. Martorelli ed., *Itinerando. Senza confini dalla preistoria ad oggi. Studi in onore di Roberto Coroneo* (Perugia 2015), 965–978, 967; Corrieri, *Il consolato del mare*, 45–46.

reported this list, according to which, for example, the *Consolat* had been introduced in Genoa as early as 1186.[38]

The Catalan *editio princeps* dates to between 1482 and 1484.[39] According to Olivia Remie Constable, however, the regulations that made up the *Consolat* were not drawn up before the thirteenth or fourteenth century.[40] The Italian editions most cited by the Genoese magistrates and jurists between the sixteenth and seventeenth centuries were those of 1564 and 1584.[41] Casaregi used a reprint of the 1564 edition, for example. All of the editions in Italian, with the exception of the first Roman edition of 1519, were printed in Venice, one of the most important printing centres in Europe. Furthermore, the fact that the 1539 edition edited by Giovan Battista Pedrezzano was dedicated to Martino Zornoza, the imperial consul in Venice, and that it contained the *portolani* of areas of interest to the Republic, suggests that the *Consolat* was well known in Venice as a regulatory source, although its first mention in the Venetian judicial documentation found thus far dates back to 1705.[42]

The book consists of a section dedicated to the institution and jurisdiction of the Valencian *cónsules de mar*, followed by a corpus of widely accepted rules known as 'the good customs of the sea', and a large final section of regulatory clarifications made by the kings of Aragon or the

[38] G. M. Casaregi, *Il Consolato del Mare colla spiegazione di Giuseppe Maria Casaregi*, in his *Discursos Legales de Commercio,* 4 vols. (Venice: Balleoniana 1740), III: 59. See also V. Piergiovanni, 'La Spiegazione del Consolato del mare di Giuseppe Lorenzo Maria Casaregi', in Piergiovanni, *Norme, scienza e pratica giuridica*, II: 1257–1271.

[39] On the spreading of the various editions, see Tanzini, 'Le prime edizioni a stampa', 966.

[40] O. Remie Constable, 'The problem of jettison in Medieval Mediterranean maritime law', *Journal of Medieval History*, 20/3 (1994): 207–220, 215. On the dating of the *Consolat*, see also A. Garcia Sanz, 'El derecho maritimo preconsular', *Boletin de la Sociedad Castellonense de Cultura*, 36 (1960): 47–74. J. J. Chiner Gimeno, J. P. Galiana Cachón, 'Del «Consolat de mar» al «Libro llamado Consulado de mar»: aproximación histórica', Eidem, *Libro llamado Consulado de mar (Valencia, 1539)* (Valencia 2003): 7–42.

[41] Tanzini, 'Le prime edizioni a stampa', 975–976.

[42] Tanzini, 'Le prime edizioni a stampa', 974; M. Fusaro, 'Migrating Seamen, Migrating Laws? An Historiographical Genealogy of Seamen's Employment and States' Jurisdiction in the Early Modern Mediterranean', in S. Gialdroni et al. eds., *Migrating Words, Migrating Merchants, Migrating Law* (Leiden 2019), 54–83, 71–72. The 1584 reprint of the 1539 edition is analyzed and commented in Corrieri, *Il consolato del mare*. Regarding 1705, see Fusaro, infra.

Councillors of Barcelona.[43] The material collected were general rules of conduct that had legal force during navigation. According to Roman law, in fact, law and custom had equal regulatory force.[44] In maritime law, therefore, as in the rest of commercial law, the behaviours enunciated as 'good standards' were mandatory under those specific circumstances, in that particular environment, and in the context of specific activities as long as they met long-standing criteria of adequacy, equity and justice.[45]

The *Consolat* did not address technical issues, with the exception of a few exemplary cases such as, for example, the chapters on the correct stowage of goods or on the criteria to be followed during jettison: these are situations in which the safety of the shipment was at stake and to which one was to respond with the necessary precautions as dictated by custom.[46]

The chapters dealing with jettison took up the guidelines of Roman law as well as commonly accepted contemporary Mediterranean practices, such as, for example, the Genoese statutes of Pera, on which more will follow later.[47] These are chapters 93: *Del caso di getto* [Disposing of cargo overboard], 94: *Di robba gettata* [Cargo thrown overboard], 95: *In che modo si debba contare la robba gittata* [Procedure of evaluating the cargo thrown overboard], 96: *Come debba esser pagata robba gettata* [Procedure for reimbursment for cargo thrown overboard], 97: *Le cerimonia che si debba fare in caso di getto* [Formalities that must be observed in relation to throwing of cargo overboard], 281: *Di nave che getta* [Cargo tossed

[43] Tanzini, 'Le prime edizioni a stampa', 966.

[44] According to the pre-classical concept, *populus* is the holder of all normative power, from which derives also the Emperor's. 'Accepted custom' therefore has the same value as the written source, as both are substantially expressions of the same holder of legislative power. See F. Gallo, *Interpretazione e formazione consuetudinaria del diritto: lezioni di diritto romano* (Turin 1993), 55–56.

[45] Corrieri, *Il consolato del mare*, 23.

[46] Corrieri, *Il consolato del mare*, 195–196.

[47] The chapter on jettison in the *Consolat* reflects the strong influence of the *Corpus Iuris*. The institution of the *germinamento* for example, a term of uncertain origin and analyzed by Andrea Addobbati in his contribution to this volume, is primarily impacted by the influence of the post-Rhodian law but is configured as a precise contractual obligation; see Lefebvre d'Ovidio, 'La contribuzione alle avarie comuni', 113–115.

overboard] and 293: *Come debba pagar nolo in caso di getto* [Lading fees assessed for loss of cargo thrown overboard].[48]

Merchants' consent remained the essential requirement for the validity of a GA, given that they were the most exposed to the losses that this entails. The significance of this consent contradicts and voids what was explicitly stated in chapter 250: *Di accordo fatto in golfo o in mare di libera* [Agreements concluded in a bay or on the open sea], which established the absolute nullity of agreements concluded in situations of actual and present danger.[49] All liability relating to the prediction and preventive assessment of the danger fell upon the *Dominus/Magister*, to eliminate or at least reduce any likely harmful effects. In the event of jettison, the merchant's consent was necessary, but the possibility of proceeding without it was contemplated in the event of imminent shipwreck.[50] Without agreement, each batch of goods bore the damage individually. The individual merchant was free not to join, and consequently to run the risk of damage without the possibility of repartition.[51] In the case of the merchants' absence, the master needed the consent of the officers and the boatswain (*nochier*).[52]

A fundamental role in the whole process was played out in the ceremony described in Ch. 97. This 'ceremony' started from the *Dominus*, who had to correctly evaluate the current situation and report it to the

[48] I follow here the numbering of the chapters and the text from the edition with commentary by Casaregi, who relies on the 1564 Italian edition that was probably in use in Genoa (Casaregi, *Il Consolato del Mare*). The English titles are from the translation made by S. J. Stanley ed., *Consulate of the Sea and related documents*, available on the Library of Iberian resources online, available at: https://libro.uca.edu/consulate/consulate.htm (last accessed 1 July 2021). For the Catalan edition, see E. Moliné y Brasés ed., *Les costums marítimes de Barcelona universalment conegudes per Llibre del Consolat de mar* (Alicante 2001 [1914]) available at: http://www.cervantesvirtual.com/obra-visor/les-costums-maritimes-de-barcelona-universalment-conegudes-per-llibre-del-consolat-de-mar--0/html/ (last accessed 1 December 2021).

[49] Casaregi, *Il consolato del mare*, 278–280.

[50] Casaregi, *Il consolato del mare*, 86–87, 352–358.

[51] Casaregi, *Il consolato del mare*, 90–92. In the Civil Statutes of Genoa as well, the consent of the merchants in case of their absence, could be substituted by an agreement between the master and his officers, divided among 'bow officers' and 'aft officers'.

[52] In Italy, the *nochier* was in charge of the crew during navigation, see the comparative role table at: https://humanities.exeter.ac.uk/history/research/centres/maritime/research/modernity/roles/ (last accessed 1 December 2021).

merchants with a speech, partially transcribed in the *Consolat* itself, in which he suggested proceeding with the jettison as a means of saving the venture.[53] Once the merchants, also representing others if necessary, had expressed their consent, the *Dominus* could start the operation by letting one of the merchants initiate the jettison 'symbolically'.[54] The agreement had to be formalized in a deed by the *scrivano* on board; if the latter was unable to draw up the document at that very moment, the crew's testimonies would suffice. In the event of the merchants' absence, the master could act in their stead as if he were the owner of the goods himself, with the same type of legal fiction observed in Roman law. In any case, he had to seek the consent of the crew, and present their testimonies once landed. The master therefore executed the jettison aided by the boatswain and the *pennese*, keeping in mind that he had to achieve the maximum benefit with the minimum sacrifice.[55] It was considered wise, however, not to be too scrupulous in sacrificing the goods, as '[…] it is better to jettison a quantity of goods than losing the people, the ship and all the stuff […]'.[56] The extension of the GA concept is formulated in Ch. 110: *Come si paghino spese straordinarie* [Apportionment of salvage expenses]. This chapter, in just a few lines, moves beyond the traditional combination of 'average=damage' to formally include any extraordinary and voluntary expenses necessary for the completion of the trip. Another example of the extension of the concept of GA concerned the small boat used for disembarkation and boarding operations, usually tied to the ship's aft and used in the absence of an adequate pier. In case of the risk of this small boat sinking, if the merchants required its abandonment for the sake of the journey, its loss was to be shared along with that of the cargo.[57]

The contribution for the damages caused by a GA act only protected legitimate situations. For this reason, goods that were not declared or that

[53] Regarding this ceremony and the reception by the *Consolat*, see also the contribution to this volume by Andrea Addobbati.

[54] This custom was lost in the following centuries; see Casaregi, *Il Consolato del Mare*, 87.

[55] The *pennese* focused on the correct storage of the ship's load. See: https://humanities.exeter.ac.uk/history/research/centres/maritime/resources/sailingintomodernity/roles/ (last accessed 1 December 2021).

[56] "[…] vale più gettar una quantità di robba che se perdessino le persone, la nave et tutta la robba […]", in Casaregi, *Il Consolato del Mare*, 91.

[57] Casaregi, *Il consolato del mare*, 100.

were stowed incorrectly were not included, as stated in Ch. 184: *Robba messa in fraude debba esser di essa in caso di getto* [Merchandise loaded aboard secretly and what should be done with it if necessity requires that it should be thrown overboard]; Ch. 113: *Si robba non manifestata* [Undeclared personal possessions and effects] and Ch. 132: *Di marcare robba nella nave* [Labelling of cargo aboard the vessel]. The ship, freight and cargo all contributed to the repartition of damages. Goods belonging to the crew did not contribute, as long as their value was less than half the salary of a seamen or officer. In the case of what was referred to as a 'flat' (*piano*) jettison, in which the quantity of goods thrown overboard was less than half of the total load, the ship contributed half its value. In the event of an irregular jettison, also defined as 'almost similar to shipwreck', which occurs when there is no time to observe the necessary formalities and more than half of the cargo is involved, the ship contributed two thirds of its value and the procedure was evaluated as explained in Ch. 281.[58] The freights were to be calculated in their entirety if collected on all the goods, also taking into consideration how much was paid for the lost or damaged cargo, and deducting what was necessary for the crew's travel expenses and wages. Freights did not contribute, however, if they were paid only for the goods saved. Following the judges' approval, the procedure continued with the liquidation phase.

Unlike the Venetian and Ancona statutes, the assessment of damages and the liquidation was not clearly regulated in the *Consolat*. It also did not concern itself with the reconstruction of the facts and events but, rather, focused only on the criteria for attributing the expense incurred, thus favouring the master/owner of the ship, whose actions were not called into question. If possible, the calculation and liquidation usually took place in the port of origin of the cargo. The *Consolat* does not explicitly refer to the liquidation process. Corrieri hypothesizes that the *Dominus* himself took on the role of liquidator, drawing up a list with the value of the goods involved according to an 'archaic and simple' procedure.[59] The surviving goods contributed according to the purchase value if the damage occurred in the first half of the trip and, if the damage occurred in the second half of the trip, according to the sale value in the

[58] Corrieri, *Il consolato del mare*, 295–296.

[59] Corrieri, *Il consolato del mare*, 300–301.

destination port.[60] The *Dominus* could requisition part of the goods or freight pending the payment of the merchants: it can be thus deduced that he assumed a pre-eminent role.[61] In fact, despite all the fairness and trust rhetoric, the master could always be suspected of acting in his own interest, as he had no real counterpart apart from the crew who, however, were still dependent upon him. For these reasons, one could appeal to the judgement of arbiters, chosen on the basis of being '[…] two good seafarers […]', as mediators between the parties.[62]

Perhaps the initial weakness of the local regulatory and customary tradition facilitated the Barcelona legislators in drafting the *Consolat*, a collection that came from the elaboration of different sources including, for example, some collections of Genoese rules such as the statutes of Pera and Gazaria.[63] The Genoese and Catalan systems agreed on the responsibility of the *Dominus* and on the criteria for allocating risk, as well as on the economic tools necessary for the construction of the ship.[64] As regards the institution of GA and jettison, the common reference was to the Pseudo-Rhodian law, so that the differences between Genoese maritime law and that of the *Consolat* were limited to secondary aspects. In Catalonia, in fact, a substantial land feudal system existed for a longer period and the need for written and shared maritime customs arose later than in Genoa, which was already master of a land and maritime domain from the late medieval period that extended from the Black Sea to North Africa.[65]

[60] Casaregi, *Il Consolato del Mare*, 88–89.

[61] Casaregi, *Il Consolato del Mare*, 87–88.

[62] Corrieri, *Il consolato del mare*, 300–301.

[63] Di Tucci, 'Consuetudini marittime', 134–136.

[64] Corrieri, *Il consolato del mare*, 36.

[65] See V. Polonio, 'Dalla marginalità alla potenza sul mare: un lento itinerario tra V e XIII secolo', in G. Assereto and M. Doria eds., *Storia della Liguria* (Bari 2007), 26–38. The Castille-Genoa axis, moreover, remained a determining factor in the economic development of Catalonia well into the sixteenth century, when relations between these two regions were further fostered by the alliance with Imperial Spain; A. Pacini, *Desde Rosas a Gaeta: La costruzione della rotta spagnola nel Mediterraneo occidentale nel secolo XVI* (Milan 2013); P. Vilar, *La Catalogne dans l'Espagne moderne*, 2 vols. (Paris 1962).

The Genoese Statute as a Source for the Study of Maritime Law

The overseas territorial expansion of the Republic of Genoa and the increase of its maritime sector in the late medieval period enlivened trade and posed the task of setting rules for the protection of distant territories and routes. The Republic sent copies of its statutes to the territories under its control, for ordinary administration, and in response to these developments the statutes of Pera were drafted.[66] The sending of the statutes safeguarded the *statum publicum* of these lands, and stated the peculiarities of these communities very distant from Genoa. The statute was the formal justification of the local territory's own order, and allowed for the preservation of a privileged and direct relationship with the motherland.[67] It is therefore significant that chapters concerning GA also appear in the statutory regulations copied from the Genoese originals and sent to the distant settlement of Pera on the Black Sea in 1316. This is the oldest known text on this subject regarding the Genoese Republic.[68]

These statutes contain rules on the most varied areas, including maritime trade, which occupies the entire fifth book. It is worth noting how, due to their formulation, these rules probably date back to the period preceding the abolition of the position of *Podestà* in Genoa in 1265.[69]

In the statutes of Pera, there is a chapter that prohibits loading goods onto the upper deck of the ship and another one that formulates the obligation to proceed with the *iactu* [jettison] of goods only in case of

[66] These territories were considered part of the Republic rather than 'colonies', a term that never appears in the sources, and which implies an administrative distance which does not seem to have been taken into consideration by the legislators. See C. Taviani, 'The Genoese Casa di San Giorgio as a micro-economic and territorial nodal system', in W. Blockmans, M. Krom, J. Wubs-Mrozewicz eds., *The Routledge Handbook of Maritime Trade around Europe 1300–1600: Commercial Networks and Urban Autonomy* (London–New York 2017), 177–191, 185.

[67] See V. Piergiovanni, 'Lo statuto: lo specchio normativo delle identità cittadine', in Piergiovanni, *Norme, scienza e pratica giuridica*, I: 317–328, 327.

[68] See V. Piergiovanni, *Gli statuti civili e criminali di Genova nel Medioevo. La tradizione manoscritta e le edizioni* (Genoa 1980); V. Piergiovanni, *Lezioni di storia giuridica genovese. Il Medioevo* (Genoa 1983).

[69] Raffaele Di Tucci also hypothesized a reciprocal influence compared to the *Constitutum Usus* di Pisa, whose earliest origins date to 1212; see Di Tucci, 'Consuetudini marittime', 134.

danger and with the approval of the merchants on board: Ch. CCXV: *De Rebus Positis in Navi Super Cohpertam Emendandis* [On how to handle cargo stored on the deck][70]; Ch. CCXXXI: *De iactu emendando facto de voluntate maioris partis mercatorum* [On the jettison made following the will of merchant's majority]. According to Pardessus, these chapters were influenced by the *Roles d'Oleron*, a well-known compilation of maritime law written in France in the twelfth century.[71] The statutes of Pera generically regulated jettison, GA (the term *avariam* appears in the body of the chapter as a synonym of generic damage) and any additional expenditure with the aim to share the risk. Here can be detected an influence of both traditions related to Roman law, the *Digest* and the Pseudo-Rhodian law.

The statutes of Pera chapters concerning jettison and GA were copied and reformulated in the subsequent statutes of the Genoa *Officium Gazariae*, in both the 1403 and 1441 editions; namely in Ch. VIII: *De non carrigando in coperta, nisi ut supra* [On not loading cargo on deck, other than as above][72]; Ch. XCVIII: *De jactis et avariis factis de voluntate majoris partis mercatorum* [On the jettison and average made following the will of merchant's majority].[73] Despite a name referring to the lost colony of Gazaria in Crimea, the *Officium Gazariae* was a maritime court based in Genoa. It had jurisdiction on maritime legislation, with particular reference 'on the facts and businesses of navigation'.[74] Its statutes were drawn up occasionally, when there was a need to update the rules or to distribute new copies of the laws currently in force, so that their

[70] V. Promis, 'Statuti della Colonia Genovese di Pera', *Miscellanea di Storia Italiana*, XI (1870): 513–780, 752. The translation of chapters' titles is mine.

[71] The *Roles d'Oleron*, however, report more specific cases, such as the cutting of the mast, etc.; see Pardessus, *Collection des lois*, I: 328.

[72] Pardessus writes that the same section can be found in the statutes of Pera (14 October 1317), thus confirming the remote origin of this rule; see Pardessus, *Collection des lois*, IV: 463.

[73] The same identical chapter appears in the 1403 edition; see Pardessus, *Collection des lois*, IV, *Officium Gazarie* (1441), chap. XCVIII: 521.

[74] "Super factis et negotiis navigandi", in C. Desimoni ed., *Statuto dei Padri del Comune della repubblica genovese* (Genoa: Fratelli Pagano 1885), XLV; M. Calegari, 'Patroni di mare e magistrature marittime: i *Conservatores Navium*', *Miscellanea Storica Ligure,* II/1 (1970): 57–91, 60. The fourteenth century volume of the *Imposicio Officii Gazariae*, which consists of 11 treatises and 153 paragraphs, does not cite the section on jettison, which instead appears in the fifteenth century texts; see 'Imposicio Officii Gazariae', in *Monumenta Historiae Patriae*, *Leges Municipales*, 23 vols. (Turin: fratelli Bocca 1836–1901), I: 303–430.

formulation was stratified through different editions. The volumes aimed to provide a sort of operational manual but do not help to clarify the genesis of individual rules.[75] As can be seen, the title of the chapter on jettison is almost the same of that of the statutes of Pera, as is its content: however, the term *avariis* is added to the title as a synonym of 'damage', while in the text also appear the terms '*avarias*', '*expensas*' and '*jactum*'. In the few lines dedicated to this theme, there are brief references to the need for the consent of those on board, to the proportional division of damages, and to the possibility of including all the expenses incurred, which are to be assessed each time.[76]

The Gazaria judges, it should be noted, were not professionals but rather merchants and trade experts, so the court functioning responded to the market's need for speed and fairness, escaping the Republic usual bureaucratic and legal subtleties.[77] Genoese masters elected even the *Conservatori delle Navi*, another institution established in the fifteenth century to deal with shipping and port discipline.[78] The *Officium Gazariae* shared its tasks with the *Officium Maris* and, following the structural reforms promoted by Andrea Doria in 1528, both magistracies were absorbed into the *Conservatori delle Navi* which, from 1546, were known as *Conservatori del Mare*.[79] The *Conservatori* inherited the authority over GA from the *Officium Gazariae*. Their jurisdiction extended to all civil and criminal maritime matters and, according to the decree of 15 October 1490, the shipmasters present in Genoa, or their

[75] In fact, the new rules nullified the preceding ones, and for this there was no reason to keep the versions that were no longer in use. This may be a Genoese peculiarity compared to other mercantile centers of the time, for example Venice; see Pardessus, *Collection des lois*, IV: 425.

[76] Pardessus, *Collection des lois*, vol. IV, *Officium Gazarie* (1441), chap. XCVIII: 521; he further suggests a clear reference to the *Rolls d'Oleron*, see Pardessus, *Collection des lois*, I: 328.

[77] V. Piergiovanni, 'Celesterio di Negro', in Piergiovanni, *Norme, scienza e pratica giuridica*, I: 219–224, 222.

[78] Calegari, 'Patroni di mare', 57–91. This was a common practice in cities with a strong mercantile vocation, like Barcelona in this same period; see also M. E. Soldani, 'Arbitrati e processi consolari fra Barcellona e l'Oltremare nel tardo medioevo', in E. Maccioni and S. Tognetti eds., *Tribunali di mercanti e giustizia mercantile nel tardo medioevo* (Florence 2016), 83–105.

[79] Calegari, 'Patroni di mare', 62–63; Desimoni, *Statuto dei Padri del Comune*: XLV; L. Piccinno, *Economia marittima e operatività portuale, Genova, secc.XVII–XIX* (Genoa 2000), 75–76.

delegates, elected the members of this magistracy.[80] Following the reform law of 18 March 1602, originally for five years but made perpetual in March 1607, the appointment of the *Conservatori* passed to the *Serenissimi Collegi* who, in agreement with the *Minor Consiglio*, chose five nobles to fill these positions. The term *Collegi* encompasses members of the *Senato* and the *Camera* who, along with the *Doge*, held executive power. Furthermore, the *Collegi*, along with the *Maggior Consiglio* and the *Minor Consiglio*, also exercised legislative power.[81]

The Genoese rules on GA remained unchanged until the sixteenth century. This was a particularly troubled period in the history of the Republic, marked by a series of important political and administrative reforms, of which the best known were the 1528 *Reformationes novae* promoted by Andrea Doria, and the 1576 *Leges novae*.[82] The institutional solutions adopted following these events, and the alliance with the powerful Spanish empire, strongly characterized the Republic until the end of the eighteenth century. The alliance with Spain guaranteed international protection without creating excessive interference on the local political level. This alliance was the result of the intense commercial and financial relations between the two countries: in addition to being the financial centre of the Spanish empire, Genoa was a key territory for the Spanish dominions in Italy, pivotal for the supply of silver and troops to Flanders, and for the maritime trade of wool, wine and other goods with the eastern coasts of the Iberian Peninsula and the Balearic Islands.[83] Although it is therefore reasonable to assume the circulation and adoption of a text like the *Consolat* between the two allies, the presence of an anti-Spanish faction, the vagueness of some rules, and the conflicts of

[80] G. Forcheri, *Doge, governatori, procuratori, consigli e magistrati della repubblica di Genova* (Genoa 1968), 147–150. Biblioteca Universitaria di Genova (=BUG), 716.C.V.15, *Magistrati antichi e moderni, Consegli, Presidenze dal principio della repubblica*, manuscript from the eighteenth century, cc. 65v–66r.

[81] See Forcheri, *Doge, governatori, procuratori*.

[82] R. Savelli, *La repubblica oligarchica. Legislazione, istituzioni e ceti a Genova nel Cinquecento* (Milan 1981).

[83] M. Herrero Sánchez et al. eds., *Génova y la Monarquía Hispánica (1528–1613)* (Genoa 2011); see also C. Dauverd, *Imperial ambitions in the Early Modern Mediterranean. Genoese merchants and the Spanish crown* (New York 2015); G. Parker, *The army of Flanders and the Spanish road 1567–1659* (Cambridge 1972); W. Brulez, 'L'exportation des Pays-Bas vers l'Italie par voie de terre, au milieu du XVIe siècle', *Annales. Economies, sociétés, civilisations*, 3 (1959): 461–491.

jurisdiction in the stretch of sea belonging to the Republic, could all be factors that influenced the will to assert an independent Genoese jurisdiction.[84] As late as 1592, there are masters who arrive in Genoa and promise to pay for GA according to the 'customs of the sea'.[85] Towards the end of that decade, however, the promise to respect the Civil Statutes of Genoa became instead increasingly frequent. Another common formula was the promise to respect 'correctly the calculators' statutes and their function'.[86] The text cannot be easily interpreted: it could refer to the chapter on the calculators within the Civil Statutes or to specific statutes of this magistracy of which, up to now, all traces have been lost.

The long preparatory phase of the new Civil Statutes began in 1551 with the appointment of a first committee of 'experts' and ended only in December 1588 with the decree of promulgation and subsequent publication by the following June 1589.[87] These Statutes are an essential moment in the formation of the Genoese legal apparatus. Although the new corpus of laws of the Republic contained multiple references to the 1528 Dorian reforms, within the maritime and commercial sphere Genoa confirmed much older rules, dating back to the *Liber Gazariae*.[88] The compilers evidently opted for continuity in an area at the centre of the economic interests of the local ruling class whose representatives, nobles as well as businessmen and politicians, invested their capital in maritime trade and in associated activities. It should be noted that, despite Republic's geographical, political, and economic proximity to Spain, and the fact that probably, until recently, the *Consolat de Mar* had been informally integrated into the Genoese customs for the resolution of GA, we find

[84] According to Giulio Pace, the Genoese, dependent upon the king of Spain, lost juridical control over the Ligurian Sea; see G. Pace, *De dominio maris Hadriatici* (Lyon: Bartolomeus Vincenti 1619), 70–71, in Calafat, *Une mer jalousée*, 155.

[85] "[…] pagandomi […] l'avaria secondo il Costume del mare […]", in Archivio di Stato di Genova (=ASG), *Notai Giudiziari* (=NG) 630, 10/04/1592.

[86] "Juxta formam statuti de Calcolatoribus et eorum officio": see, for example, ASG, *NG* 636, 16/11/1599. The promise to respect the calculators' statutes, which can be found in ASG, *NG* 636, 07/01/1600, is cited also in Felloni, 'Una fonte inesplorata', 848.

[87] BUG, ms. C. III. 13, *Statutorum civilium Reipublicae Genuensis* (Genoa: Hieronymum Bartolum 1589). Biblioteca Civica Berio, F.Ant.Gen.C.110, *Degli Statuti civili della Serenissima Repubblica di Genova* (Genoa: Pavoni 1613). The draft text of these statutes can be found in ASG, *Manoscritti* 197.

[88] Savelli, 'Statuti e amministrazione', 362–363.

no mention of it within the Civil Statutes. According to the authoritative opinion of Casaregi, the *Consolat* had pre-eminence over Roman law, yet the Civil Statutes do not mention it, and in fact introduce some important innovations and clarifications at the institutional and procedural level that deviate from it.[89]

GA Rules in Genoa According to the Statutes: Jettison and Calculators

Genoese lawmakers tried to insert the GA procedure into a rigid institutional framework apparently autonomous from the *Consolat*. This involved several of the Republic's governmental bodies including a new office created ad hoc: the *calcolatori* (calculators). The new Statutes, as well as subsequent editions published without significant changes in the following centuries, devote ample space to the institution of GA with two chapters dedicated to it: vol. I, Ch. XI. *De calculatoribus et eorum officio* [On the calculators and their function]; vol. IV, Ch. XVI. *De jactu, et forma in eo tenenda* [On jettison and the procedure to be followed].[90] Apart from minor modifications, the Statutes remained largely unchanged until the end of the Republic. Although the topic, as observed in the *Consolat*, is vast, it is interesting to note that the legislators chose to focus only on two crucial aspects. One of these is jettison, a key element in the development of the GA concept itself. The other chapter, on the other hand, focuses on the calculators and their function. This is a novel and important element with respect to the Genoese and European legislation of the period.

Regarding jettison, the Genoese procedure recalled the practice laid out in the *Consolat*, while departing from it in some ways, also demanding

[89] Casaregi, *Discursos*, II, 2. The lack of clarity in the normative text on the hierarchy of the legal sources and the desire to emphasize the authority of the statutes is different, for example, from the clarity of the Venetian case described in 'Migrating Seamen': 54–83.

[90] As Rodolfo Savelli emphasizes, in Genoa the *Statuti* were printed and reprinted, while scarce attention seems to have been devoted to the laws. The final edition was published in 1787; see R. Savelli ed., *Repertorio degli statuti della Liguria (XII-XVIII secc.)* (Genoa 2003), 145, 150. Furthermore, a partial procedural continuity with the preceding period is discussed in E. Grendi, 'Genova alla metà del Cinquecento: una politica del grano?', *Quaderni storici*, 5/13 (1970): 106–160, 136. He found two GA calculations drafted in 1552 and 1558, in ASG, *Finanze, Atti*, 32.

a greater bureaucratic effort from the parties involved.[91] As in the *Consolat*, the Civil Statutes specified that the master evaluated the danger, which could be a storm or 'any other reason', and he proposed the jettison. The Statutes then went on to explain a rather complex procedure. The vote on the master's proposal was to be carried out between the crew officers and the merchants; only in the event of approval with a two-thirds majority could three consuls be appointed, two of which had to be chosen from the officers, and one from the merchants.[92] The master had to:

> […] consult all officers of the vessel and merchants on it. If two thirds of them agree to make the jettison for the aforesaid salvation, in that case three consuls shall be elected, two of them from among the said officers and one from among the said merchants. […]

It is not clear whether the criterion for establishing a two-thirds majority was based on an individual vote or on a vote by 'parties involved', where one part was represented by the master, one by the officers, and one by the merchants. If there were no merchants on board, however, the master was obliged to seek the consent of his crew. Those elected as consuls were called to hold a temporary position of great responsibility: they chose what to jettison and the common salvation depended on them. The master, therefore, proposed the solution to avoid the imminent danger, but it was not he who put it into practice. All losses were progressively recorded by the *scrivano* on board and the list was to be signed by the consuls.[93] Because of its complexity, it is legitimate to hypothesize that

[91] BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 154–157.

[92] "[…] facere consultam cum omnibus officialibus navigii et mercatoribus in eo existentibus, et si duae tertiae partes praedictorum concurrerint in faciendo iactu pro dicta salvatione, eligantur eo casu tres consules, quorum duo sint ex dictis officialibus et unus ex dictis mercatoribus […]", in BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI, *De iactu, et forma in eo tenenda*, 154–155. In cases where there were no merchants on board, the *Statuti* called for the election of two *consoli* from among the "ufficiali di prua [bow officers]" and one from the "ufficiali di poppa [aft officers]".

[93] "[…] quicquid de ordine dictorum consulum iactum fuerit, scribi et annotari debeat per scribam navigii in suo libro in praesentia dictorum consulum cum eorum subscriptionibus, si scribere scirent [The scribe of the vessel must record in his book whatever was thrown overboard by order of the said consuls, at their presence and with their

this procedure was largely theoretical and aimed at ensuring the regularity of the process. A consultation certainly took place informally and this procedure was followed in the past, when merchants usually travelled alongside their goods. For example, Vilma Borghesi reports the election of the *consoli* in a jettison occurred in 1504.[94] However, taking into account that this was a response to immediate events, and that the speed of the measures adopted could make the difference between the safety or demise of the venture, all of these formalities were impossible to observe in daily practice.[95] Each jettison made according to this procedure was distributed proportionally: 'it must be divided by penny and by pound between the vessel, freight, goods and all other things on board at the time of the jettison'.[96]

The Statutes' chapter also indicates as contributing elements some types of goods, which seemed to be excluded in other ports such as Livorno: 'money, gold, silver, jewellery, male and female slaves and any other animal that was on the vessel'.[97] However, these assets could not in turn be jettisoned.[98]

signatures, if they know how to write]". See BUG, ms. C. III. 13. *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 155.

[94] This document is transcribed in V. Borghesi, *Il Mediterraneo tra due rivoluzioni nautiche (secoli XIV–XVII)* (Florence 1976), 74–77.

[95] Within the GA procedures consulted thus far, no mention has been found of a list drafted during a storm, nor of the election of the *consoli*, ASG, NG 629 (1590), 630 (1592), 634 (1598), 635 (1599), 636 (1600), 2084 (1639–1640). Based on the presence or absence of merchants on board, these types of expressions were used: "*fatto il debito consiglio* [with the crew and the merchants]" or "*d'accordo con li suoi ufficiali* [with the crew only]", see ASG, *NG* 2084, 18/04/1640; ASG, *Conservatori del Mare* (=CdM) 377, 28/02/1696.

[96] "[…] dividi debeat secundum aes et libram inter navigium, naula, merces et omnes alia res existentes in dicto navigio tempore iactus […]", in BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 155.

[97] "[…] compraehensis pecuniis, auro, argento, iocalibus, servis maribus et foeminus, quis et aliis animalibus existentibus in navigio de transitu", in BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 155. Although detailed regulatory sources are missing for Livorno, cases of exclusion of money and slaves from contributions have been found. These questions are presented in J. A. Dyble, *General Average in the Free Port of Livorno, 1600–1700*, Unpublished PhD thesis, University of Exeter and Università di Pisa, 2021.

[98] C. Targa, *Ponderationi sopra la contrattatione marittima* (Genoa: A.M. Scionico 1692), 324; this prohibition dates to the *Digest*; see also Constable, 'The problem of jettison', 211.

Although the Statutes do not specify it, the documentation examined shows that *Consolat* practice was usually followed for the calculation of the value of goods and freight. The Genoese jurist Casaregi reports this custom. Each piece of merchandise, both saved and jettisoned, was evaluated based on the moment in which the jettison took place, whether during the first or the second half of the journey.[99] The value was assessed on the basis of the price in the departure or the destination port. In case of doubt, as explained by both Targa and Casaregi, the value of the property at the port of departure was calculated, its value in the port of arrival was added, and the final sum was halved.[100] The freight contribution criterion is deductible from the documents examined. In theory, they only contributed if the damage had occurred during the second half of the trip, as only in this case were they 'earned':

> Since the freight rates for the overriding goods are not included in the present risk, because the accident happened in the port of loading, and so they are not earned for not having made not only half of the voyage, but [...] any part of it.[101]

Accidents had the same chance to happen in the first as well as in the second part of the voyage. As an example, freights contributed in 51% of calculations drafted between 1590 and 1616.[102] Finally, the Statutes specified that the ship contributed for the whole of its value.[103] This element would seem to favour merchants and their insurers: a higher contributing value would have allowed a reduced rate of the damages. However, writes

[99] Casaregi, *Il Consolato del Mare*, 88–89.

[100] Targa, *Ponderationi*, 323, Casaregi, *Discursos*, I: 164.

[101] Of the approximately 1200 cases between 1590 and 1705 that have thus far been analyzed, we often find the explanation of this principle. For example, in ASG, *CdM 377*, 20/08/1705: "Non ponendosi nel presente risico li noli delle soprascritte merci, perché il sinistro […] è seguito nel caricatore, e così non per anche guadagnati per non aver fatto, non solo la metà del viaggio, ma […] parte alcuna del medesimo". According to Targa, by contrast, freight makes up part of the calculation only when calculating the net value of the expense, as in *Consolat* chap. 96; See Targa, *Ponderationi*, 326. However, several cases show different procedures that deviate both from the Statutes and from the jurists' texts. I am currently studying the freight contribution criteria in a new research.

[102] Statistics based on sources in ASG, NG 629–640, 1643–1646, 1590–1616.

[103] BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 155.

Targa, the value of a ship consisted of both the body of the ship and its accessories: the latter counted for about half of the value of the vessel. Therefore, although the Statutes did not explicitly mention the *Consolat*, they referred to it and specifically so in Ch. 94 when they specify only 'ship' and not 'ship and accessories'. According to Targa, it would not be possible 'in one part of the world, with regard to maritime negotiations, to operate in one way and in another in a different way, for the common interest that so many different people can have in one instance'.[104] The juridical doctrine manages to collect and regulate the factor of diversity introduced by the Civil Statutes and inserting it into a Mediterranean, if not European, context.[105] However, the sources were explicitly against Targa's opinion. Calculations drawn up across all the seventeenth century explicitly record the values of the body as well as of each accessory of the ship, while those drawn up at the beginning of the eighteenth century record only the value of the body of the ship.[106] So far, the only calculation from the first half of the seventeenth century in which the calculators considered half of the ship's value, referred to a vessel bound for Majorca. It was only for this reason, according to the source, that half of its value was included in the GA.[107] According to Targa, the ship contributed two thirds of its value in the event of an 'irregular jettison', for example when, due to the necessity of prompt action, the necessary procedural formalities were not observed.[108] Even in this case, there are no calculations that confirm this part of the procedure.

The jettison chapter goes on to explain the conditions under which the journey should continue. After the event, in order to avoid fraud,

[104] "[…] non potendosi, in una parte del mondo, circa la contrattatione maritima operare in un modo e in altra in diverso, per l'interesse comune che tanta gente diversa puonno haver in un istesso fatto", in Targa, *Ponderationi*, 323–324.

[105] On this adaptability see V. Piergiovanni, 'Il valore del documento alle origini della scienza del diritto commerciale: Sigismondo Scaccia giudice a Genova nel XVII secolo', in *Ianuensis non nascitur, sed fit. Studi in onore di Dino Puncuh*, 3 vols. (Genoa, 2019), III: 1061–1068. In Venice, for example, in maritime matters preeminence was given to local statutes, on this Fusaro, 'Migrating seamen', 69.

[106] See, as an example, ASG, *NG* 2084, 20/03/1640, ASG, CdM, Atti Civili 124, 03/03/1699 and ASG, *CdM* 377, 27/08/1707.

[107] ASG, NG 1645, 18/12/1612: "La metà della pollacca, si li mette solo la metà conforme al Consolato perché la mercantia non veniva a consegnare in Genova ma in Maiorca, così a peritia del sindaco di Prestantissimi Conservatori di Mare […]".

[108] Targa, *Ponderationi*, 325.

an attempt should be made to 'freeze' the situation as far as possible until the final destination is reached, or in any case until the presentation of the request for the GA calculation. It was therefore forbidden for the master to load any goods other than the necessary supplies, the passengers baggages, or the '*merci sottili*', that is, those with high unit value and therefore for the most part excluded from a jettison.[109] Only if the jettison had occurred in the loading port would it then be possible to load as many goods on board as those previously jettisoned, regardless of their typology. In the event of a violation of this rule, or if the master had ordered a new load, and a new jettison should then occur, the latter's damages were the sole responsibility of the master.[110] In this case, the ship-owners paid the freight collected on the new cargo for one third to the insurers, and two thirds to the *Conservatori del Mare*.[111] It is significant that the section on insurance immediately follows that on the jettison, a sign of the correlation between the two institutions, and that in this section there is a definition of the term '*avaria*' [Average]. A peculiarity of Genoese GA law, starting from the 1589 Statutes, was the possibility of insuring cargo against the GA contributions:

> The insurers, if they have not made any legitimate agreements with the insured, are required to pay for the jettison proven in accordance with the Statutes. They are also required to pay for the Average, which is any damage that occurs as a result of an accident.[112]

[109] "[…] victualia pro usu et necessitate navigii, merce subtiles et capsias passageriorum […] [provisions for the needs of the ship, thin goods and passenger crates]", in BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI, *De iactu, et forma in eo tenenda*, 155. *Merci sottili*, were made up of finished products, usually woolen cloth and drapery. See A. Fiorentino, *Il commercio delle pelli lavorate nel Basso Medioevo. Risultati dall'Archivio Datini di Prato* (Florence 2015), 38.

[110] "[…] patronus […] teneatur ad satisfaciendum omne damnum in casu novi iactus […] [the master must pay for any damage in case of a new jettison]" BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI, *De iactu, et forma in eo tenenda*, 155.

[111] On the ties between these two institutions in Genoa, see the essay by L. Piccinno and A. Iodice, 'Managing Shipping Risk: General Average and Marine Insurance in Early Modern Genoa', in G. Rossi and P. Hellwege eds., *Maritime Risk Management: Essays on the history of Marine insurance, General Average and Sea Loan* (Berlin 2021), 83–109.

[112] "Assecuratores, si cum assecurato super infrascriptis nullum licitum pactum fecissent, teneantur de iactu secundum formam statutorum facto et probato, et etiam teneantur de avaria quae est omne damnum quod caso fortuito sequitur […]", in BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVII, *De securitatibus*, 159.

Finally, the chapter on jettison ordered to the master to unload the remaining goods on board only in the agreed ports and by presenting the relevant bills of lading. All operations were to take place during the day, and the master had to request a certificate from the local customs authority: otherwise, he was required to pay the damages deriving from each jettison.[113] If, at the behest of the merchant who owned the goods or for other exceptional conditions, part of the goods were unloaded in a port other than the one envisaged, the 'consuls' elected during the jettison had to be present, in addition to the local Genoese consul or, in his absence, a local magistrate.[114] At the time of this unforeseen unloading, which took place before the calculation was done, the master was to demand the share of the contribution from the owners of the unloaded goods. The contribution rate was calculated based on the economic interests involved, by calculating them '*per soldo et per lira* [by penny and by pound]'.[115] However, since the calculation had not yet taken place and this instalment had not yet been officially established, the master would only make an estimate and, in case the contribution due from the previously unloaded goods resulted in an amount greater than foreseen, it was he who was obligated to pay the difference.[116] This rule was probably an additional incentive to carry out the calculation as soon as possible, to avoid both disputes with merchants and inaccuracies in the accounts.

The master had to ensure the drafting of a sea protest, a 'report', to register all of the lost or damaged goods in the first port reached after the jettison, with the help of the *scrivano* and the elected consuls. The *scriptura* [sea protest]—in the archival documents variously referred to as the '*consolato*', '*testimoniale*' and '*manifesto*'—was to be accompanied by the testimony of the officers, merchants and any passengers, under penalty

[113] BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 157.

[114] BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 157.

[115] This expression also appears in the statutes of Pera and Gazaria, just as it is possible to read in the *editio princeps* of the *Consolat*: "per sou et per liura et per besant", where this last term refers to the Byzantine coin; on this Corrieri, *Il consolato del mare*, 298.

[116] "[…] contributionem iuxta calculum fiendum cum damnis et interesse [contribution in accordance with the calculation, with damages and interest]", in BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 156.

of full responsibility of the master for any damage that had occurred.[117] This list was to be registered and approved by the Genoese consul or by the local magistrate, who had to provide an authentic, sealed copy to the master for the continuation of the journey on to the location where the final calculation would take place.

According to the Statutes, the vessel that had declared GA had the right of way over all other ships in the port, even those that had arrived before her. This is a relevant measure in a crowded seaport like Genoa in the seventeenth century.[118] The master and his *scrivano* had to go to the magistrate responsible for unloading the ships, or to an ordinary judge, and indicate the month, day and time of the jettison, providing also the list of damages. Although the Statutes did not require it, the vessel's tonnage was also frequently indicated in the first years following their promulgation. This custom almost completely disappears in the GA practice following a modification of the taxation system in 1638.[119] If officers or seamen were to break these rules, for example by unloading their belongings or other goods earlier than allowed, they would lose their jobs and their possessions on board.[120] The illegally unloaded cargo, on the other hand, could be confiscated by the *Padri del Comune*, the magistracy in charge of the management and maintenance of the port and piers,[121] or by the *Conservatori del Mare*: 'if goods unloaded against

[117] BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* IV, chap. XVI, *De iactu, et forma in eo tenenda*, 156–157. According to Targa these three denominations have a precise logic, which is not always followed in practice: the *manifesto* refers to the master who 'manifests' the case; the *consolato* refers to the fact that the document was drafted in front of a consul; finally, the *testimoniale* refers to the presence of at least three witnesses; see Targa, *Ponderationi*, 309.

[118] G. Doria, 'La gestione del porto di Genova dal 1550 al 1797', G. Doria, P. Massa, V. Piergiovanni eds., *Il sistema portuale della repubblica di Genova. Profili organizzativi e politica gestionale (secc. XII-XVIII)* (Genoa 1988), 135–198, 152.

[119] See the contribution of Luisa Piccinno in this volume.

[120] "[…] amitta exonerata et privati remaneant officiis [be fired and relieved of duty]", in BUG, ms. C. III. 13, *Statutorum civilium, lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 157.

[121] See Forcheri, *Doge, governatori, procuratori*, 90.

these Statutes were found they would became the property of the *Padri del Comune* and of the *Conservatori del Mare* of the city of Genoa'.[122]

If the fraud was discovered thanks to an accuser, the latter was rewarded with a third of the assets and the promise that his name would be kept secret. The jettison chapter ends with a significant extension of jurisdiction: the aforementioned rules, in fact, apply not only to ship-owners and masters, but also to any other legal figure responsible for the ship, such as 'the prefect, the master or the person responsible for the vessel'.[123]

This legislation reveals an attempt to contain as much as possible the master's autonomy. On the one hand, in the event of an irregularity, he was directly financially responsible for any damage, while on the other hand he had great decision-making power together with his crew. In a period in which merchants travelled together with their goods with less and less frequency, he was an almost exclusive arbiter and narrator of any event that occurred during navigation. The complexity of the rules, though aimed at avoiding fraud and irregularities, also made it difficult to apply them effectively. Targa, who sat in the *Conservatori del Mare* office at the time of the approval of the master's sea protests in the mid-seventeenth century, confirms this[124]:

> […] when confronted with a great danger, precise respect of formal juridical procedures is not foremost in the mind, and in my sixty years of maritime legal practice of the great quantity of such proceedings that I have seen, I remember just four or five of these in which jettison happened with all the required formalities, and in each of these there was reason to question the premeditation of the act.[125]

[122] "Si bona fuerint reperta exonerata contra formam praesentis statuti sint effecta patrum communis et conservatorum maris civitatuis Genuae […]", in BUG, ms. C. III. 13, *Statutorum civilium, lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 157.

[123] "[…] prefectus, magister seu praepositus navigii", in BUG, ms. C. III. 13, *Statutorum civilium, lib.* IV, chap. XVI. *De iactu, et forma in eo tenenda*, 157.

[124] He participated in the Court's session as a *causidico*; a *causidico* acted in court representing the party, but he was not a lawyer.

[125] "[…] sopraggiungendo un grande pericolo, poco vengono a memoria li atti giuridici, et io in anni sessanta di pratiche maritime che n'havrò veduto gran quantità non mi ricordo haver veduto Consolati á pena quattro in cinque fatti per gettito notato giuridicamente alla forma prenarrata, et in ogn'un di questi vi è stato da criticare per esser parsi troppo premeditate", in Targa, *Ponderationi*, 253. Though his work was published

Targa believed that, when faced with a case that observed all the rules and complex theoretical indications envisaged, there was probably the desire of the masters or others to conceal far greater irregularities. Adaptation to an ever-changing reality therefore remained a necessary prerogative of maritime law. However extensive its provisions and instructions, laws and norms could never take into account every variable of a sea voyage. The appraisals, estimates, or the calculations of the contribution, in fact, leave space to strong arbitrary element even today. In Genoa, an important effort was made at the institutional level to limit this arbitrariness through the creation of the office of calculators, sanctioned in Book I of the Statutes.[126] According to the current state of research, this specific role seems to have been a local peculiarity. Genoese calculators were not experts appointed for one specific case and therefore theoretically susceptible to be rejected or contested by the parties, but rather institutional figures selected by the *Senato*.[127] Institutionalizing this figure was probably intended to save time and avoid possible litigation: if the *Conservatori* appointed experts from case to case, one of the merchants involved could complain and ask for a different person, precisely because it was a flexible procedure. On the other hand, setting up the calculators as a permanent office allowed Genoese maritime authorities to avoid the process of nomination and eventual acceptance, and to proceed directly to the drafting of the calculation. The magistracy was composed of three individuals who remained in charge for eighteen months, signed all of the calculations, and had their own specialized notary with a renewable five-year mandate. The calculators' mandate was renewable, but three years' pause was required between each mandate.[128]

in 1692, his name already figured among the *causidici* present during the drafting of the calculations in 1640, see ASG, *NG* 2084, 21/05/1640. On the life of Targa see M.G. Merello Altea, *Carlo Targa giurista genovese del secolo XVII*, vol. I: *La Vita e le opera* (Milan 1967).

[126] Moreover, we know that they dealt exclusively with GAs. See BUG, 716.C.V.15, *Magistrati antichi e moderni, Consegli, Presidenze dal principio della repubblica*, c.12r.

[127] Such a specialization can be observed in the notarial *filze* of Orazio Fazio, Gio. Agostino Gritta and Gio. Benedetto Gritta, significantly noted on the back as "Atti dei Calcolatori", see ASG, *NG* 629–637, 1643–1646, 2083–2088.

[128] There could also be some exceptions; an example was the extension of the mandate of Gio. Benedetto Gritta for two consecutive fifteen-years periods. See ASG, *Biblioteca Rari 8*, *Statutorum Civilium Serenissimae Reipublicae Ianuensis*, *lib.* I, chap. XI. *De calculatoribus, et eorum officio*, 1688, 29.

According to these laws, upon arrival in port the master was to ask the magistrate of the calculators to proceed with the account of the damage and of the individual contribution rate. Before carrying out this task, the calculators listened the interested parties (the master, the merchants, eventual insurers) and their witnesses, and then approved, or did not approve, the sea protest:

> Whenever the ship-owner, the captain, the prefect of the vessel, or anyone else who is in charge, will require the calculation of the jettison or average, the calculators' magistracy must listen to the parties and have the witnesses examined.[129]

At this stage, it was possible for the parties to make appeals regarding the jettison or the GA that had occurred. Following the approval of the master's report, the calculators had the power to order the unloading of the cargo and to require the presence of guards on the ship to prevent any fraud during this operation. In the documents, the presence of a '*giovane dei calcolatori*' [calculators' assistant] is often noted, who was to witness the unloading of the ships, and hand in a note listing the goods that he personally saw being unloaded.[130] A master guilty of irregularities during the unloading of goods on land would be fined one hundred *scudi* or the full value of the GA itself. The master was also to swear that he had not discharged anything in violation of the Statutes, and that he was ready to pay twelve *scudi* as a deposit. One third of the fine was to be collected by the calculators, and two thirds by the *Padri del Comune*.[131] In the presence of an accuser who reported the master's guilt to the magistrate, the third part of the fine was paid to him as a reward, as occurred in the anti-fraud procedure illustrated in the chapter on jettison.

The Civil Statutes also specified the remuneration due to these officers, which could receive between ten and one hundred and fifty *lire*

[129] "Quotiescumque patronus, magister seu prefectus navigii, aut alius ad quem de iure spectet, petierit fieri calculum de iactu seu avaria […] Magistratus calculatorum intelligat partes, examinari faciat testes […]", in BUG, ms. C. III. 13, *Statutorum civilium, lib.* I, chap. XI. *De calculatoribus, et eorum officio*, 19.

[130] See ASG, *NG* 2084, 1640.

[131] BUG, ms. C. III. 13, *Statutorum civilium, lib.* I, chap. XI. *De calculatoribus, et eorum officio*, 19.

per calculation. Half of the fee was subject to taxation by the *Conservatori del Mare*. If there were unexpected gains for whatever reason, these were handled by the *Padri del Comune* for the maintenance of the port.[132] Finally, the parties could agree to appoint 'external' calculators. For example, in 1640 the merchants Francesco Spinola, Nicolao Scaglie and Ambrogio Digherio agreed on the nomination of calculators in a GA in which they, along with numerous English and Genoese merchants, were involved. Thus, Carolus Vulstatuis, Michael Belhomus and Hieronimus Pallavicinus were appointed as calculators. It is interesting to note that Michele Bonomo and Geronimo Pallavicino were two official calculators whose names appear in almost all of the calculations from these years. The nomination of a third expert, probably Dutch, was thus in response to a need for oversight that was likely expressed by the English merchants involved. The calculation was to be approved also by the notary of the *Conservatori del Mare*, Filippo Camere.[133] However, if this agreement was not reached, the judges of the *Rota Civile* would assign the case to the ordinary calculators.[134] At the end of each calculation, a public reading followed in the presence of the interested parties, and the procedure then passed to the *Rota Civile*, which in turn ratified its validity by pronouncing a sentence:

> Let us say that the merchants and their insurers and others who have or may have an interest in this calculation must accept, discuss, and calculate. We release the master [...] from the said jettison followed because of the misfortune suffered. We reserve the actions to anyone against any person who sooner or later were interested in the present calculation. They compete, or can compete in ordinary judgement and so it is presented to

[132] "[…] et alia dimidia solvatur conservatoribus maris eroganda in usus dicti offici et pro eo, quod dictis usibus supererit, dando patribus communis in impensas portus et moduli erogando [and others are divided in half and given to the *Conservatori del Mare* for their office and use. And those that exceed the said use, shall be paid to the *Padri del Comune* for the expenses on the port and the docks]", in BUG, ms. C. III. 13, *Statutorum civilium, lib.* I, chap. XI, *De calculatoribus, et eorum officio*, 19–20.

[133] see ASG, *NG* 2084, 16/04/1640.

[134] More precisely, the foreign judges of the *Rota Civile* sent the case to the *Senato*, which was in charge of transferring back the responsibility to the calculators. See BUG, ms. C. III. 13, *Statutorum civilium*, *lib.* I, chap. XI, *De calculatoribus, et eorum officio*, 20.

> the magnificent Auditors of the *Rota Civile* of the Most Serene Republic to be accepted, reasoned, calculated and paid.[135]

This final passage was not specified in the Statutes. However, it emerged regularly in the daily practices. The *Rota Civile* made the calculation executive and it also had jurisdiction over appeals.

The Legislative and Procedural Changes of the XVII Century

During the seventeenth century, GA practice in Genoa experienced only slight changes. These were largely attributable to an increase in the authority, duties and involvement by the *Conservatori del Mare*, and to the competing dynamics in the evolution of the procedure between them and the calculators. Although the calculators appeared as an independent magistracy in the 1589 Civil Statutes, it seems that the *Conservatori* absorbed their office during the following century, thus they rapidly became the only ones to receive the masters who wanted to declare GA or PA. Furthermore, calculations underwent a progressive standardization.[136] The value of the ship and its equipment, for example, was increasingly provided by the *Conservatori del Mare*, so that the calculators would merely copy this estimate into the calculation.[137]

[135] The calculations regularly ended with formulae like "Diciamo doversi accettare, ragionare, e calcolare tra il mercanzie, o sia mercanti, e suoi assicuratori et altri che nel presente calcolo abbino o possano avere interesse, liberano come liberiamo il patrone […] dal detto gettito seguito per colpa di detta fortuna patita, riservando siccome riserviamo le ragioni e azioni a cuiusvoglia contro qualunque persona che prima o poi del presente calcolo avesse o fossero obbligati tali quali li competano, o possono competere in giudizio ordinario e così in fero a magnifici Auditori della Rota Civile della serenissima repubblica doversi accettare, ragionare, calcolare e pagare", in ASG, *NG* 2084, 19/02/1640. On the role of the *Rota Civile* see V. Piergiovanni, 'Genoese Civil Rota and mercantile customary law', in his *Norme scienza e pratica giuridica*, II: 1211–1229.

[136] For an example of standardization in the sea protests, see the form mentioned in Targa, *Ponderationi*, 326–328.

[137] The person in charge of making this evaluation was the *Sindaco* of the *Conservatori*. This role, which lasted three years, included controls on the vessels departing from the port along with another regular member of the *Conservatori*, as well as the collection of a tax of 6 *soldi* for every 100 *salme* of loaded goods. See Forcheri, *Doge, governatori, procuratori*, 150.

From 1602, the authority to receive masters who presented a sea protest in the port of Genoa passed to the *Conservatori*, while previously it had been the responsibility of the calculators.[138] The procedure therefore arrived to the latter only for the redaction of the calculation of the damages and of the amount to be paid, following the *Conservatori*'s approval.[139] Probably based on their approval, the masters' sea protests were described as '*aperti e pubblicati*' or, in case of rejection, as '*segreti*'.[140] In order to guarantee the speedy execution of the proceedings/trials/cases, where any delay could cause extra costs and damages, this reform also restored to the *Conservatori* the criminal jurisdiction regarding the violation of navigation safety regulations. This authority had initially been under their jurisdiction but, in 1576, it had been entrusted to the *Rota Criminale*.[141] For example, the new powers of the *Conservatori* included the ability to force witnesses to 'tell the truth' and, failing this, to have them imprisoned and proceed against them with the same authority as the *Rota Criminale*. They could proceed as well against all those involved in the unloading and loading of ships in the port, such as 'the barge owners, camalli, and others'.[142] Perhaps part of these competencies had previously belonged to the calculators: a judgement of March 23, 1625, signed by the *Conservatore del Mare* Ottaviano Canevari, officially established that the calculators could not be judges in these cases, recalling that all judicial authority belonged to the *Conservatori*.[143] Unfortunately, at the present state of research, it is not possible to formulate further hypotheses regarding this administrative competition.

[138] In 1598, there was already an isolated case of a request approved by the chancery of the *Conservatori del Mare*. See ASG, *NG* 635, 31/12/1598. This practice, however, was only established during the early years of the following century.

[139] ASG, *Manoscritti Biblioteca* 9, *Legum 1590–1608*, 18/03/1602, 263.

[140] See, for example, ASG, *CdM Testimoniali all'estero segreti*, 277–301 (1635–1796).

[141] A further reform in 1605 authorized them to proceed at any time. See ASG, *Manoscritti* 41, *1576 in 1639, Leggi perpetue*, 27/05/1605, c. 104r.

[142] "I patroni delle chiatte, i camalli e altri", in ASG, *Manoscritti* 41, *1576 in 1639, Leggi perpetue*, 17 marzo 1607, c. 119r. At the beginning of the seventeenth century the crisis of the *Rota* led to the return to the use of earlier institutional practices such as the use of mercantile courts, made up of members of the citizen elite. This was also due to a deep-seated mistrust of the oligarchy regarding judicial experts; on this Savelli, *Politiche del diritto*, 1–3.

[143] This judgment appears in a *glossa* of the 1688 edition of the Civil Statutes. See ASG, *Biblioteca Rari* 8, *Statutorum Civilium Serenissimae Reipublicae Ianuensis*, 1688, 29.

The strengthening and centralization of the practice may have been the response to a specific petition from merchants and insurers who wanted greater institutional control against frauds. It should not be forgotten that the main merchants and businessmen of Genoa were often one and the same, or in any case were closely linked by business or family relationships, with the class of patricians running the state.[144] On 27 November 1654, the *Consigli*, the legislative body of the republic, issued a decree asking the *Conservatori* to take the necessary measures to stem the growing phenomenon of false declarations by the master.[145] These discussions resulted in a series of countermeasures, such as the possibility of proceeding *ex officio* against suspected offenders, and in an edict drawn up in 1698 (but approved and published in 1703), to prevent 'big averages founded on baseless calculations'.[146] By the eighteenth century, the calculators lost their own notary and there emerged the figure of the *Magistrato di Avaria*, directly dependent on the office of the *Conservatori*. Documents produced by this new magistracy appear to be complete for the period 1720–1817.[147] From the end of the seventeenth century, moreover, all of the Genoese documents on GA were preserved in the archival *filze* of the *Conservatori del Mare*.

GA proceedings, in Genoa as elsewhere, responded to the primary function of commercial justice: to render a judgement that ensured the sharing of costs and responsibilities quickly and to prevent imbalances, without 'wasting time' in the economic cycle of which maritime trade was a part. This is what guided Genoese businessmen and legislators in

[144] C. Bitossi, 'Il governo della Repubblica e della Casa di San Giorgio: i ceti dirigenti dopo la riforma costituzionale del 1576', in G. Felloni ed., *La Casa di San Giorgio: il potere del credito* (Genoa 2006), 91–107; G. Felloni, 'Il ceto dirigente a Genova nel secolo XVII: governanti o uomini d'affari?', *Atti della Società Ligure di Storia Patria*, 38 (1998): 1323–1340; C. Bitossi, *Il governo dei magnifici. Patriziato e politica a Genova fra Cinque e Seicento* (Genoa 1990).

[145] This edict is cited in a memorandum of a response of the *Conservatori* in ASG, *CdM* 444, 15/03/1655.

[146] "Grosse avarie fondate sopra calcoli insusistenti", in ASG, *CdM* 444, 15/09/1698. The path to publication of the edict seems to have begun on 20 November 1698 and ended on 26 September 1703. It is also interesting to note how the edict on sea loans, the financial tool discussed in this volume by Andrea Zanini, develops in parallel with the edict on GA, perhaps a sign of a link between these two institutions.

[147] ASG, *CdM* 451–453, *Sessioni diverse del magistrato d'avaria ed altro (1720–1817)*. A sampling of these folders shows that the acts are only the minutes from the meetings of this office. They only record date and names of the masters involved.

drafting the relevant rules, and it was precisely these needs that underpin such a continuous and detailed regulatory evolution, although in some cases it could lead to excessive bureaucratisation. The postponement of the appeal function to the *Rota Civile*, the presence of the merchants or of their delegates at the time of the approval of the sea protest and the calculation, as well as the speed of the procedure, were essential to the mercantile environment and to the customary practices that characterizes maritime law.[148] As written by Vito Piergiovanni:

> Since the commercial world moves in ever-increasing international spaces, it is not conceivable that the law becomes a barrier, and this is especially true in those cases – such as Genoa – that based their living and their fortunes on trade.[149]

These are likely some of the reasons why this institution, based in certain ways on experience, shared customs and 'trust' among the parties, has survived up to today, with the YAR regularly revised.[150]

[148] It is worth noting that the rules of Genoese GA regarding credit and insurance are also reported in the work of other jurists of the period as exemplary measures. For example, see Sigismondo Scaccia, *Tractatus de commerciis et cambio* (Venice: Sumptibus Bertanorum 1650), 351.

[149] "Se il mondo del commercio si muove su spazi internazionali sempre più ampi, non è pensabile che il diritto possa diventare un freno, almeno in realtà, come quella genovese, che sulla mercatura ha basato prima la propria sopravvivenza e poi le sue fortune", in Piergiovanni, 'Il diritto del commercio internazionale e la tradizione genovese', in Piergiovanni, *Norme, scienza e pratica giuridica*, I: 424.

[150] The latest edition are the YAR 2016, see: https://comitemaritime.org/work/york-antwerp-rules-yar/.