



**Application of General Average rules**  
**Dr. Zsolt Kovács**  
**Gárdos Mosonyi Tomori Law Office Budapest**





# Application of General Average on the Danube

## Agenda:

- Part I – General Average in the Light of the Budapest Convention
- Part II – General Average in the National Laws of Danube Countries
- Part III – Standard Rules Applied for Danube Transport
- Part IV – General Average and insurance



## Part I – General Average in the light of the Budapest Convention

In case of waterway transport on the Danube, Budapest Convention is likely to be applied:

- the Convention shall apply for the **contract of carriage** if the **ports are situated in different States** whereby either the **port of loading or the port of delivery** is situated in **State Party** of the Convention;
- State Parties: except for Austria, almost all Danube countries.



## The Budapest Convention provides no basis for GA claim

### The State Parties did not harmonise GA:

Article 26: *'Nothing in this Convention shall prevent the application of provisions in the contract of carriage or national law regarding the calculation of the amount of the damages and contributions payable in the event of general average.'*

- No legal basis for claim for general average;
- Rules of the convention may not prevent any applicable general average regulation – limitation of liability of the carrier?
- General average is to be regulated by the contract of carriage or national law.



## GA relevant rules of the Budapest Convention?

### 1. Consignee's obligation in relation to contribution

Article 10 '*the **consignee** who following to the arrival of the goods at the place of delivery, requests their delivery, **shall, in accordance with the contract of carriage, be liable for the freight and their charges due on the goods, as well as for his contribution to any general average.***'

- Right of disposal after the request of delivery.



## 2. Real guarantee granted for claims for contribution in case of GA – applicable law

Article 29 par.4. *‘The law of the State where the goods are located governs the real guarantee granted to the carrier for claim set out in Article 10 par. 1 (above point a) thus the real guarantee for claim for contribution in the case of general average).’*

- Unless the parties agreed on applicable law in their contract of carriage,
- Importance of the choice of law – different laws apply for the contract of carriage and the real guarantee?



### 3. Conflict of law rules of the Budapest Convention

Article 29 par.1. *In cases not provided for in this Convention, the contract of carriage is governed by **the law of the State agreed by the Parties.***

Par. 2. *In the absence of such agreement, the law of the State with which the contract is **more closely connected** is to be applied.*

National laws have special GA rules



National GA rules become part of the contract?



## Part II - General Average in the National Laws of Danube Countries

Different approaches may lead to different outcome  
Examples from Austria, Bulgaria, Croatia, Hungary, Romania, Serbia, Slovakia and Ukraine.







## 1. Is GA regulated under the national law?

### Sectoral law provides specific GA regulations

- This is the most common approach, e.g. in Austria, Bulgaria, Croatia, Hungary, Serbia, Slovakia and Ukraine (only if inland transport affects a seaport);

### There is no specific rule

- In Romania, since the entry into force of the new Civil Code there is no specific rule – any claim on civil law basis? (e.g. unjust enrichment?)



## 2. Independent regime or incorporation of standard rules

- a) **Independent regime** set up by the legislator, e.g. Austria, Bulgaria, and Ukraine (reference to international customs!);
- b) **Incorporation of YAR 94 rules** (e.g. Croatian Maritime Code), or **IVR rules** (e.g. Serbian Merchant Shipping Act);

A „**third approach**” of the Hungarian Act on Waterway Transport:  
*Section 68(1) Sacrifices and expenditure intentionally and reasonably made and/or incurred, for the purpose of saving a vessel and its cargo from a common and extraordinary peril are to be borne by the vessel, her cargo and freight on a pro-rata basis (that is general average).*

*Section 68(2) Adjustment of general average is to be drawn up if any of the interested parties so demands.*

*Section 68(3) The international rules generally applied on the place where the perilous event occurred shall apply for the method and terms of adjustment.*



### 3. Freedom of contract or mandatory rules

Sectorial law applies unless the parties agreed otherwise, e.g. Croatia, Serbia, Austria, Bulgaria, Ukraine

The parties cannot deviate from statutory rules; e.g. the Hungarian Act on Waterway Transport

**Summary:** the most common approach is to leave room for contractual freedom and provides rules on GA if the parties have not agreed otherwise.



## 2. How does the contract of carriage incorporate IVR/Bratislava Agreements? – legal implications of applicable law

### General practice:

Other conditions: During the river transportation the terms and conditions not stipulated in this Agreement as per Bratislava Conventions last edition to be applied.

**IVTB § 20 General Average** The currently valid version of IVR's general average regulations (published under [www.ivr.nl](http://www.ivr.nl)) shall apply in cases of general average. The text is available on request.



### 3. Potential problems of this practice

- it is questionable whether such a reference to a set of rules is enough to incorporate them into the contract of carriage;
- IVTB and Bratislava Agreements are general terms and conditions referring to further general terms and conditions,
- A question of applicable law – e.g. under Hungarian law, rules of general terms and conditions of the Civil Code,
- An authentic version of IVR Rules are publicly available, while Bratislava Agreements have no official availability.



# Part III – Standard Rules Applied in the Danube Transport

## 1. GA in the Bratislava Agreements and IVR Rules

### Bratislava Agreements:

- No rule on environmental damage – only damage and loss arising directly from GA event, are allowable;
- The carrier has pledge over the cargo as guarantee
- Details of allowance:
  - if the vessel was subject to reparation, the actual value of that specific element is allowable,
  - Types of damages of the vessel when allowance is possible is regulated in details
- Interest on amounts allowable to GA: 7 %

### IVR:

- Environmental damage explicitly excluded,
- No provision relating to real guarantee to the carrier,
- Details of allowance: a portion of the value of the vessel is allowable,
- Manner of survey is regulated,
- Interest on amounts allowable to GA: the Board of Directors of IVR will determine the interest to be applied each year whereby such interest shall be based on EURIBOR.



## 2. Consequences of different laws/standard rules in the contract of carriage

- The applicable law and its rules on GA may not be disregarded in the case of entering into a contract of carriage – e.g. mandatory rules, contract law (validity), interpretation;
- Different rules of allowance may result in different numbers – it matters if Bratislava Agreements or IVR rules apply,
- The contract of carriage (including GA rules) may have effects on third parties as well (e.g. insurance).



# Insurance and General Average





# What insurance has to do with GA

## What happens if there is no GA?

- Cargo insurance ➡ pays if the cargo is damaged or lost
- Hull insurance ➡ pays if the ship is damaged or lost
- Only the ship is damaged ➡ no insured event regarding the cargo ➡ cargo insurers do not pay
- Only one of the cargoes is damaged ➡ there is no insured event regarding the ship or the other cargo ➡ hull insurer and other cargo insurers do not pay



# What insurance has to do with GA

What happens if the damage was caused by a GA event?

In the traditional logic of insurance

- No change

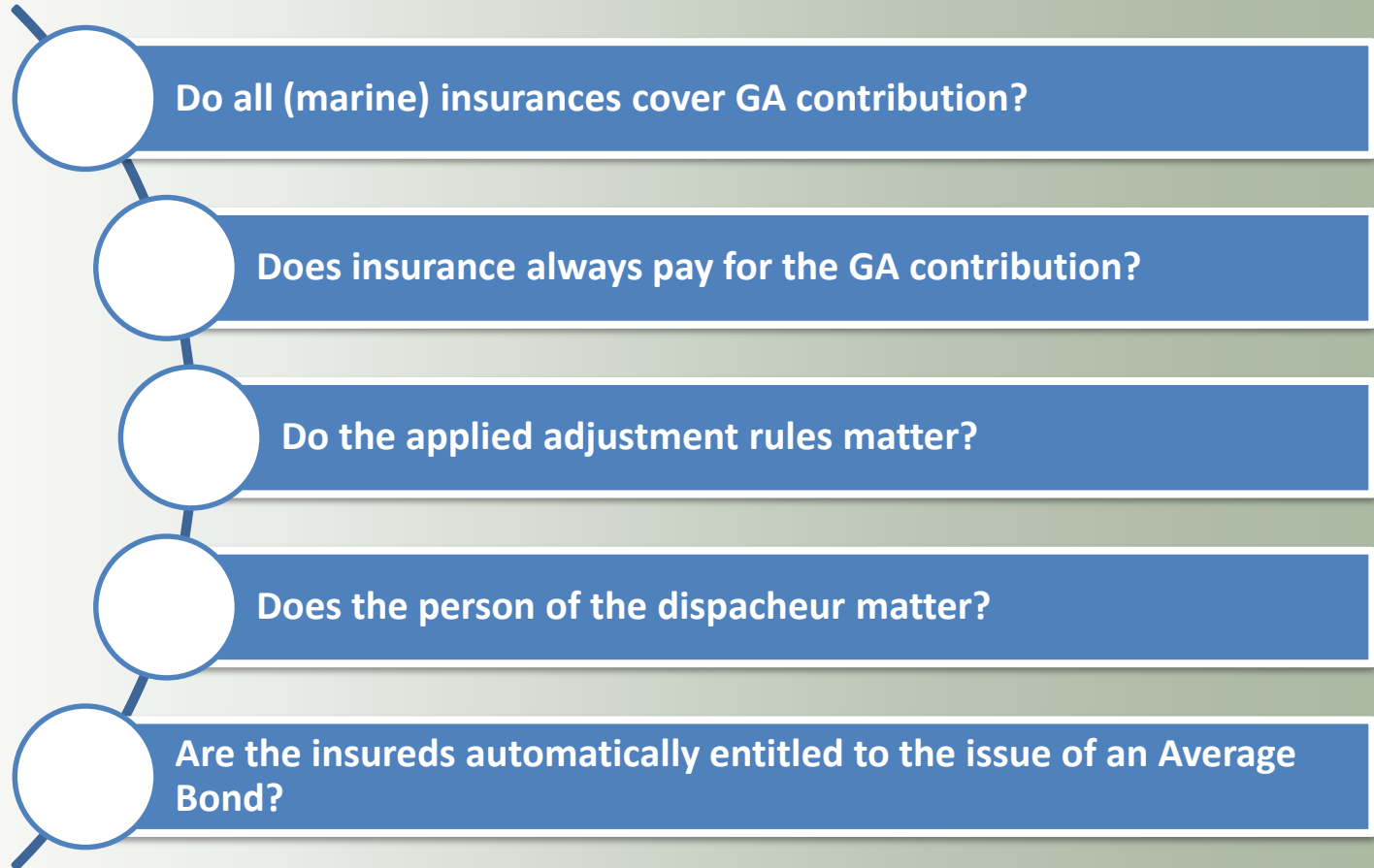
**BUT** there is an extra cover in standard cargo and hull insurance policies for GA contribution to be paid (borne) by the insured

It means that

- those who did not suffer actual loss gets a reimbursement from their insurer for the GA contribution they pay
- those who did suffer actual loss gets a reimbursement from their insurer for the full loss (subject to policy conditions) and the insurer recovers their share from GA



# Relevant issues – GA and insurance





# Do all (marine) insurances cover GA contribution?

Institute Cargo Clauses (ICC) YES

Institute Hull Clauses (IHC) YES

Local, but widely used policies (Example: Germany) YES

- AVB Flussskasko
- DTV Cargo Insurance Conditions

Other local policies NOT ALWAYS To be checked

Danube ship owners or cargo owners usually buy ICC/IHC policies



# Does insurance always pay for the GA contribution?

## Institute Cargo Clauses

- This insurance covers **general average** and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance.

## Institute Hull Clauses

- This insurance covers the Vessel's proportion of salvage, salvage charges and/or **general average, reduced in respect of any under-insurance**, but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.



# Relevance of GA adjustment rules for insurance

**Insurer pays on the basis of the GA adjustment**

**As there is no unified system results may vary**

- Foreseeability and calculability are vital for insurers

**Solution?**

- Reference to named adjustment (e.g. IVR) rules
- Embracing all potential adjustment rules



# Relevance of GA adjustment rules for insurance

## General approach

### Institute Cargo Clauses

- This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance.



# Relevance of GA adjustment rules for insurance

## Named adjustment rules

### AVB Flussskasko

- Der Versicherer leistet Ersatz für Beiträge, die der Versicherungsnehmer zur großen Haverei zu leisten hat. Der Umfang der Leistung des Versicherers wird durch eine nach Gesetz aufgemachte und von den zuständigen Dispatche-Prüfungsstellen anerkannte Dispatche bestimmt. Eine entsprechend den Rhein-Regeln IVR aufgemachte Dispatche gilt als gesetzmäßig.

### Local hull policy (Allianz HU)

- In case of Danube traffic adjustment is to be made (i.e. acceptable for the insurer) - in line with the transport contract of the insured - according to the Bratislava Agreements or the IVR Rules.





# Does the person of the dispatcheur matter?

No

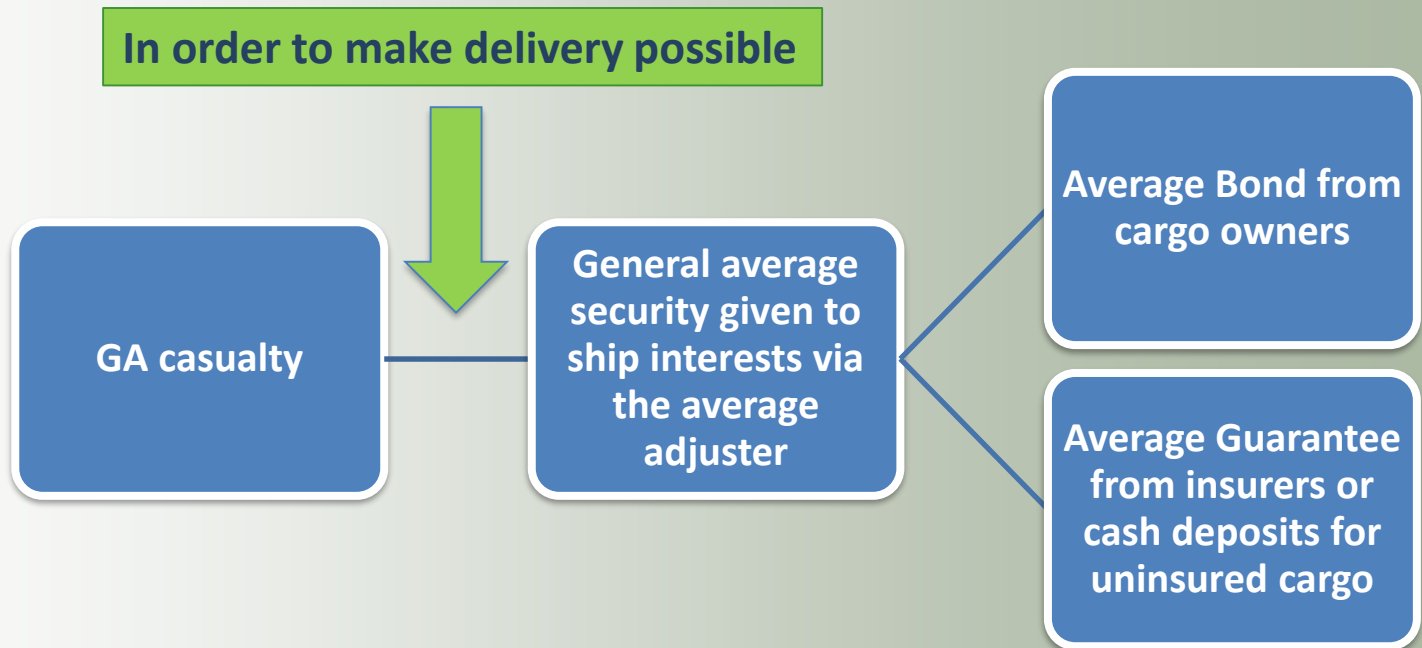
- that is the general approach

Yes

- Person of the dispatcheur is to be approved by the insurer
- in lack of approval the adjustment does not oblige the insurer

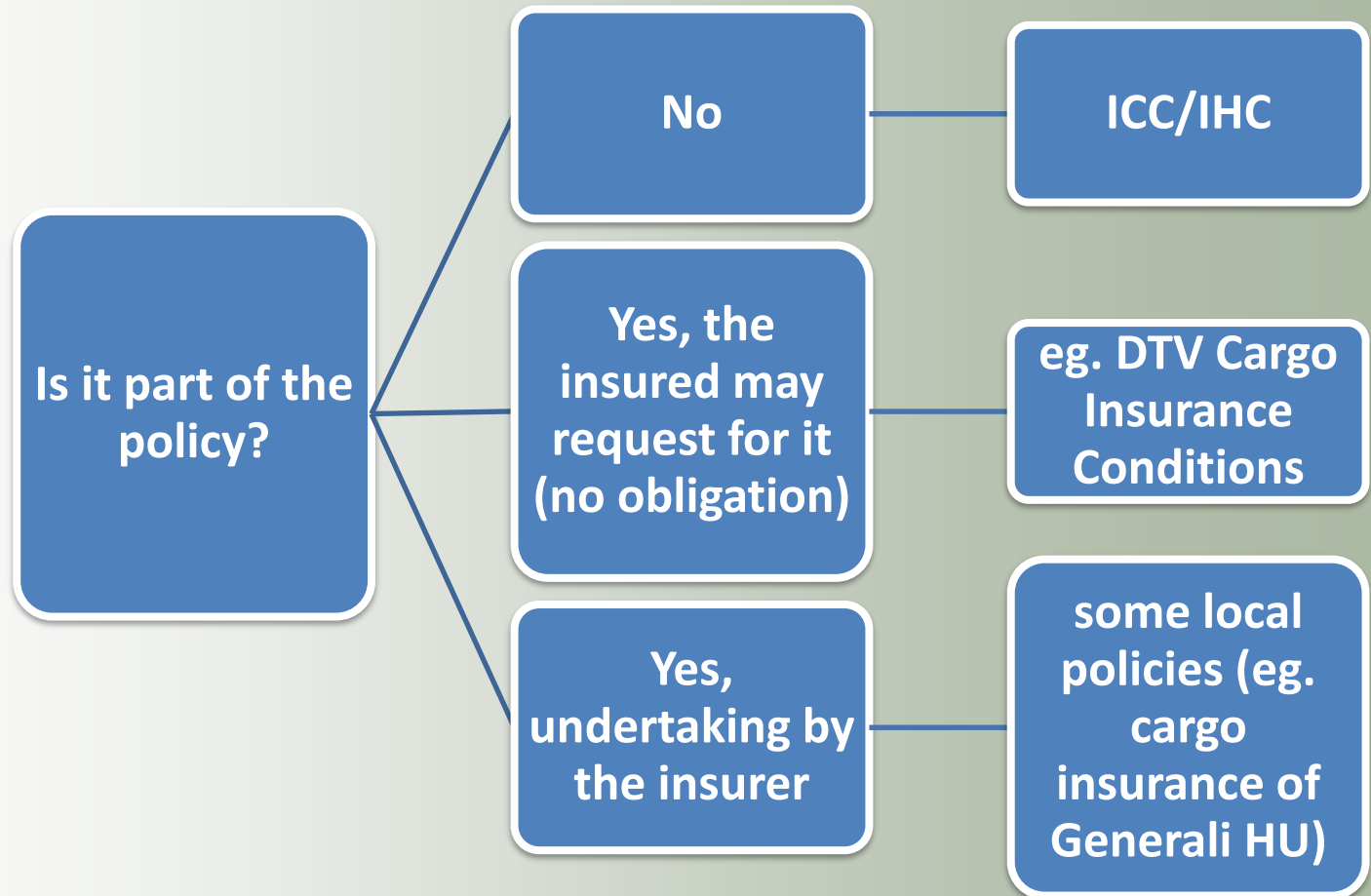


# Average guarantee





# Average guarantee





Thank you for your attention!

Dr. Zsolt Kovács  
Gárdos Mosonyi Tomori Law Office Budapest  
H-10546 Budapest, Váci utca 81.  
Tel.: +36 13 327 7560  
[kovacs.zsolt@gmtlegal.hu](mailto:kovacs.zsolt@gmtlegal.hu)

